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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1261/2004

New Delhi, this the 6th day of April, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Shri Sridhar Prakash
DPA-B
National Crime Records Bureau (MHA)
East Block - 7, R.K.Puram
New Delhi - 110 066. ... Applicant

(By Advocate: Sh. V.S.R.Krishna)

Versus

Union of India through:

1. The Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. The Director
National Crime Records Bureau (MHA)
East Block - 7, R.K.Puram
New Delhi - 110 066. ... Respondents

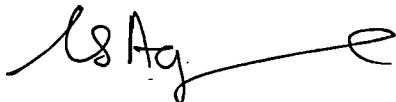
(By Advocate: Sh. N.K.Aggarwal)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant, by virtue of the present application, seeks a direction to consider him for promotion to the post of Junior Staff Officer/SAP (for short 'JSO/SAP') against the existing vacancy from the date from which the other two officials were promoted on regular basis, with consequential benefits.

2. Some of the relevant facts are that the applicant was working as Inspector with the respondents. The post was re-



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designated as Data Processing Assistant Grade 'B' (for short DAP (B)) in the National Crime Record Bureau on restructuring of the Organisation. The applicant filed OA 2832/1997 praying for promotion to the post of JSO on adhoc basis as had been done in the case of other employees. The said application was disposed of holding:

"5. We now take the second contention first. It is true that as per the Ministry of Home Affairs (Directorate of Co-ordination Police Computers) Group 'A' and 'B' posts Recruitment rules, 1988 that only Inspectors in the computers and systems Division of National Crime Records Bureau with five years regular service in the grade are entitled for promotion. The essential qualification is Degree in Engineering/Computer Sciences of a recognized University or equivalent. It is the case of the applicant that none of the officers promoted on ad hoc basis possessed five years regular service as Inspectors. The officers who were promoted were holding the post of DPA Group 'B'. Under the Rules, as seen supra only Inspectors are entitled for promotion. It is true that as contended by the learned counsel for the respondents that the rules are being amended by replacing the word 'Inspector' by DPA 'B'. But until the rules are amended the existing rules will be in force and will have to be relied upon. Hence, the promotions made, are not in accordance with the Rules. Hence the insistence upon the qualification under the Rules does not arise."

It was further held that respondents should consider the applicant for ad hoc promotion to the post of JSO from 13.8.1997. The respondents had implemented the said order and promoted the applicant as JSO on ad hoc basis.

3. The applicant claims that since he was the senior most DPA (B) in the Organisation, he was entitled to be considered for

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promotion against the vacant post and that he has satisfied the requisite eligibility criteria as per the recruitment rules for the post of JSO/SAP. He further pleads that since the recruitment rules for the posts had not been amended and since promotions had been ordered de hors the rules, the same criteria should be made applicable in the case of the applicant. The respondents did not consider the applicant for promotion against the third regular vacancy. The result was that he filed OA 3008/2001. It was disposed of by directing that the OA should be treated as a representation and it may be disposed of within three months. The representation was disposed of by the respondents on the ground that there was no vacancy in the post of JSO. Resultantly, the applicant filed OA 1237/2002 for redressal of his grievance. It was allowed by this Tribunal directing:

“11. In this view of the matter, keeping the scales even, we direct that steps should be taken immediately to revive one of the posts which had been abolished in the peculiar facts and thereafter the applicant in accordance with law may be considered to fill up the said post. The abovesaid exercise should be completed preferably within six months from the date of receipt of a copy of this order.”

4. According to the applicant, when the compliance was not made he filed a Contempt Petition No.324/2003. Thereafter, the respondents informed this Tribunal that in terms of the directions that have given by this Tribunal, they have revived one post of JSO and the applicant did not fulfil the eligibility conditions of the post. According to the applicant, he fulfilled the eligibility conditions and the respondents plead that the applicant does not fulfil the

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eligibility conditions or that Sahitya Sudhakar Examination (conducted by the Bombay Hindi Vidyapeeth), qualification possessed by the applicant, is equivalent to a Degree only for purpose of appointing Hindi related jobs in the Government and it does not come up to his expectations in the recruitment rules is illegal. Hence, the present application has been filed.

5. The application is being contested. According to the respondents, the applicant was initially appointed as Inspector. In pursuance of the restructuring of EDP cadre, the post of Inspector was re-designated as DPA (B). He is holding that post. According to the respondents, the applicant does not possess the required educational qualifications for the post of JSO, namely, Degree in Statistics/Mathematics (with Statistics/Operations Research/Physics or Economics (with Statistics) or Degree in Engineering/Computer Science of a recognized University or equivalent.

6. The basic facts to the earlier litigation were not disputed. It has pleaded that it had already been held in the Contempt Petition No.324/2003 that applicant is not eligible to hold the post of JSO.

7. We have heard the parties' counsel and have seen the relevant record.

8. On behalf of the applicant, reliance was placed on the decision of this Tribunal in the case of **Shri M. Rajakumar & Others v. Union of India & Others**, OA No.3128/2002, decided on 03.09.2003. In the cited decision, this Tribunal had directed that

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respondents should take steps to revive the abolished posts of DPA (B) and as soon as the posts are revived, the applicants therein should be considered for promotion who fall within the zone of consideration in accordance with the model recruitment rules of the Department of Personnel & Training's OM dated 14.10.1998 and if their own recruitment rules are not yet notified. This decision will not come to the rescue of the present applicant because the applicants in the referred matter were Sub-Inspectors. They were absorbed as Sub-Inspectors in NCRB. Therefore, the applicant could not claim parity with them. Otherwise also, this Tribunal had directed that if their own recruitment rules were not notified only then they have to go by the model recruitment rules of the DoPT as would be mentioned hereinafter. That is not the position herein.

9. In the present case before us, the recruitment rules for the posts already exist and the essential qualifications required for promotion to the grade of JSO are:

“Degree in Statistics/Mathematics (with Statistics)/ Operations Research/ Physics or Economics (with Statistics) or Degree in Engineering/ Computer Science of a recognized University or equivalent.”

10. The applicant does not possess the required qualifications.

11. The learned counsel for the applicant, in that event, contended that in the earlier litigation, i.e., OA No.2832/1997 between the parties, it had already been directed that promotions made are not in accordance with the rules hence



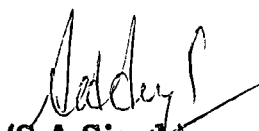
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the insistence upon the qualifications under the Rules does not arise. These findings clearly show that this pertains to ad hoc promotions that were directed to be accorded and given. The applicant's case was considered for ad hoc promotion. There is a clear distinction between the ad hoc promotion and the regular promotion. For ad hoc promotion, one may not strictly go by the recruitment rules to meet the exigencies but regular promotions necessarily cannot be effected de hors the Rules.

12. In that event, the learned counsel urged that for the past 15 years, the recruitment rules have not been amended though at times the said statements have been made. It is unfortunate but all of us have to be servants of law rather masters of the same. Under the law, the recruitment rules would prevail. When the recruitment rules itself prescribed a particular qualification, the applicant must meet the said educational qualification before he can claim the promotion. Unfortunately, he does not meet the same and resultantly, the application must be stated to be without merit.

13. No other arguments have been advanced.

14. For these reasons, we find that application being without merit must fail and is dismissed.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

/NSN/