

Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.837/2004

M.A.No.712/2004

New Delhi, this the 24th day of November, 2004

Hon'ble Mr.Justice V.S. Aggarwal, Chairman  
Hon'ble Mr.S.K. Malhotra, Member(A)

1. Shri R.K. Pandey,  
S/o late Shri B.D. Pandey  
Resident of : F-1518, Netaji Nagar,  
New Delhi-23
2. Shri S.S. Negi,  
S/o Shri T.S. Negi,  
Resident of: H 4/25, Bengali Colony,  
Mahavir Enclave,  
New Delhi-45
3. Shri B.T. Dasgupta,  
S/o late Shri Hari Prasanna Dasgupta,  
Resident of: D-5-E (MIG Flats Mayapuri),  
G-8 Area, Rajouri Garden,  
New Delhi-64
4. Shri M.K. Joshi,  
S/o Shri G.D. Joshi,  
Resident of: A-508, Flex Apptt.  
Sector-62, Noida

(All the applicants are Section Officers in the Dte. General Special Service Bureau, Ministry of Home Affairs, East Block-V, R.K. Puram, New Delhi-110066. However, applicant no.1 (Shri R.K. Pandey) is at present on deputation to Special Protection Group, Cabinet Sectt. New Delhi and Applicant No.4 (Shri M.K. Joshi) is on deputation to Narcotics Control Bureau, New Delhi

.....Applicants

(By Advocate: Shri K.L. Bhandula)

Versus

1. Union of India through,  
Ministry of Home Affairs,

North Block, New Delhi.

2. Director General,  
Special Service Bureau,  
Ministry of Home Affairs,  
East Block-V, R.K.Puram,  
New Delhi-66

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....Respondents

(By Advocate: Shri B.S. Jain)

**Order(Oral)**

**Justice V.S. Aggarwal, Chairman**

The settled principle in law is that a person has a fundamental right to be considered for promotion rather than that he must be promoted. The law started taking shape and it is no more in controversy that if there is a post, the same may not be filled up if the employer so desires, subject of course to just exceptions. Yet another principle which we can briefly state is that ordinarily in terms of the decision in the case of Y.V. Rangaiah and others v. J. Sreenivasa Rao and others, (1983) 3 SCC 284, a post has to be filled up as per the recruitment rules when it fell vacant. But if a conscious decision has been taken not to fill up the post till the rules are amended, the ratio decidendi in the case of Y.V. Rangaiah will not apply and therein the decision of the Supreme Court in the case of Dr.K. Ramulu and another v. Dr.S.Suryaprakash and others, (1997) 3 SCC 59 will hold the field.

2.The applicants herein are Section Officers in the Special Service Bureau and they claim that they should be promoted to the post of Assistant Director which is the next post in the hierarchy. They have completed the necessary eligibility period but despite that they are being denied their just claim.

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3. The petition is being contested and in the reply filed, the respondents' contention is that there are no such recruitment rules that are in force. It has further been pleaded that the recruitment rules are to be amended or finalized. Proposal in this regard is in the process and matter is under consideration.


4. We have considered the submissions made at the Bar.


5. Keeping in view the propositions that we have enumerated above, indeed if the respondents deem it appropriate not to fill up the posts as per the rules/instructions prevalent and want to amend the same, we find that the applicants cannot insist that they must be so promoted.

6. However all good things must come to an end. The record reveals which in fact is not in dispute that from the year 2000, this process of consideration pertaining to amendment of the rules/instructions is in process. During the course of submissions, we were informed by the learned counsel for the respondents that they are taking up the matter with the Ministry of Home Affairs. Keeping in view these facts, we in the present case deem it appropriate and direct accordingly that a decision should be taken at the earliest so that legitimate expectations to which the applicants hope, are not totally denied.

7. Accordingly, we dispose of the present application directing –

- (a) decision pertaining to amendment of rules/instructions should be taken preferably within six months from today; and
- (b) decision so taken should be communicated to the applicants.

  
( S.K. Malhotra )  
Member(A)

  
( V.S. Aggarwal )  
Chairman