

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1605/92

DECIDED ON : 20-8-1992

Sudershan Kumar Sethi

... Applicant

-Versus-

Union of India & Anr.

... Respondents

CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)

THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Applicant through Shri G. K. Aggarwal, Counsel

Respondents through Shri P. P. Khurana, Counsel

J U D G M E N T

Hon'ble Shri P. C. Jain, Member (A) :-

The applicant is working as Assistant in the Ministry of Surface Transport. His grievance pertains to the selection for the post of Technical Officer in the Chartering Wing of the Ministry. One post of Technical Officer in the pay scale of Rs.2000-3500 fell vacant. With a view to filling up the same on transfer on deputation/transfer basis, applications from officers who volunteered for the aforesaid post were invited vide office memorandum dated 3.1.1991. As per the recruitment rules in which the total number of posts of Technical Officers are shown to be five as in 1988, the post is to be filled up 50% by transfer on deputation/transfer failing which by direct recruitment and remaining 50% by direct recruitment. As per the recruitment rules, a DPC is provided only for confirmation, and consultation with the UPSC is necessary while making direct recruitment and selecting an Officer for appointment on transfer. The post belongs to General Central Service, Group 'B' Gazetted Non-Ministerial. The applicant also applied for the above post in pursuance of office memorandum dated 3.1.1991. After scrutinising the applications, meeting of the DPC was

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convened on 13.11.1991. The committee recommended one person for regular appointment as Technical Officer on transfer on deputation basis and two candidates for appointment as Technical Officers on ad-hoc basis against ~~the~~ ^{two} posts meant for direct recruitment. The committee also recommended that for filling up the two posts on ad-hoc basis against direct recruitment, necessary relaxation, if any required, may be obtained from the competent authority. The applicant's name was not included in the three names recommended by the DPC as aforesaid. Aggrieved by the selection, the applicant filed O.A. No. 2695/91 with the following prayers :-

- "(P-1) Call for relevant records, including Select List and Promotion/Appointment Orders, from Respondents 1 and 2 and
- (P-2) Set-aside the Selection and appointment of Respondent 3, 4 and 5 to the post of Technical Officer pursuant to (A/1) dated 3-1-1991 and
- (P-3) Direct Respondents 1 and 2 to make selection and appointment to the three posts of Technical Officers pursuant to Circular (A/1) dated 3-1-91 on the basis of Service Records, i.e., the A.C.Rs and Seniority of the candidates who applied and were short-listed, excluding Respondent 5, and to appoint the Applicant with effect from 14-11-1991 or earlier, if he made the grade, with all benefits of pay and allowances etc. effective such date, and
- (P-4) Grant any other relief to the Applicant, and
- (P-5) Allow this Application with cost."

As the earlier selection had been cancelled by the competent authority, O.A. 2695/91 was disposed of by the following order dated 13.4.1992 :-

"Both are heard.

2. The prayer of the applicant in regard to P-I and P-II has already been met. According to the Learned counsel for the applicant who states that

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the selection has already been set aside, the only prayer that he makes is that a review DPC should be held earliest possible to re-consider the cases in accordance with the rules. This prayer is allowed and the respondents are directed to have a review DPC earliest possible, preferably within 2 months in case the Select List earlier drawn up has already been cancelled by the respondents.

With the above directions, the O.A. is disposed of finally."

2. Ministry of Surface Transport (Establishment-II) issued a letter on 23.6.1992 (Annexure A-1) by which eight candidates including the applicant were requested to report to Joint Secretary (T & A) at 10.45 A.M. for necessary interview. It is against this impugned communication that the applicant has filed this O.A. praying for setting aside the impugned order (Annexure A-1) dated 23.6.1992 and for directing the respondents to fill three posts of Technical Officers in the Chartering Wing on the basis of A.C.R.s for the last five years and seniority, and for granting any other relief. As an interim measure, the applicant had prayed for an ex-parte ad interim order restraining the respondents from holding interview pursuant to the above impugned letter till the final disposal of the O.A. The Tribunal by order dated 23.6.1992 declined to grant the interim relief prayed for. However, for safeguarding the interest of the applicant, the respondents were directed to allow the applicant to appear in the interview, without prejudice to his claim for not giving effect to the recommendations of the selection committee till the next date of hearing. The above interim order has continued since then.

3. With the consent of both parties, this O.A. is being disposed of finally at the admission stage itself.

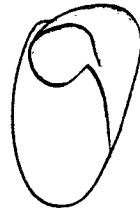
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4. The respondents have contested the O.A. by filing a reply to the show cause notice. We have perused the material on record and also heard the learned counsel for the parties.

5. One of the grievances of the applicant is that while the earlier selection was held for three posts, the fresh selection is being held for only one post. The case of the respondents on this point is that even in the office memorandum dated 3.1.1991 applications were invited only for filling one post of Technical Officer. It is further stated that earlier the DPC had recommended names of two candidates for appointment on ad-hoc basis for the vacancies meant to be filled up by direct recruitment quota, and as the UPSC has already fixed 13.7.1992 for selecting two candidates for filling up the two direct recruitment posts of Technical Officers, the Ministry does not propose to fill up any post on ad-hoc basis. As there is only one post which is to be filled on a regular basis by transfer on deputation/transfer, the selection is being held only for one post. There is nothing on record to rebut the above contention of the respondents and as such, the respondents cannot be faulted for taking action for filling up only one post on transfer on deputation/transfer basis. Another contention of the applicant is that while the earlier selection was held by the DPC, the fresh selection is being held through a selection committee. The case of the respondents on this point is that the recruitment rules ^{do not} provide for any DPC for selection of a candidate on deputation/transfer basis, and it is on this account that the recommendations of the DPC earlier held were not accepted by the competent authority. It is further stated that the Ministry approached the Department of Personnel and Training for advice as to how to make selection on transfer on deputation in such an eventuality, and that that Department advised that the appointing authority can

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constitute an appropriate selection committee for the purpose of selection of a candidate on transfer on deputation/transfer basis. Accordingly, a selection committee with the following composition was formed with the approval of the Secretary (SFT) :-

1. Joint Secretary (T)	-	Chairman
2. Chief Controller of Chartering (or Deputy Chief Controller of Chartering in absence of Chief Controller of Chartering)	-	Member
3. Deputy Financial Adviser	-	Member
4. Deputy Secretary (C)	-	Member

Here, it may be mentioned that the earlier selection was conducted by the DPC comprising of the following :-

1. Joint Secretary (T)	-	Chairman
2. Chief Controller of Chartering	-	Member
3. Deputy Secretary (Coordination)	-	Member
4. Deputy Financial Adviser	-	Coopted Member from minority community

We have already referred to above the provisions of the recruitment rules and the fact that these rules do not provide for a DPC for selection of a candidate for appointment on deputation/transfer basis. In view of this fact, the action of the respondents in constituting a selection committee as per the advice of the Department of Personnel & Training cannot be faulted. Another contention of the applicant is that so far selection to the post of Technical Officer on the basis of deputation/transfer has been held only on the basis of scrutiny of service records including A.C.R.s but the selection by the impugned order dated 23.6.1992 has also brought in the element of interview, which is alleged to be arbitrary. In the absence of any specific provision in this regard in the relevant

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recruitment rules, it is difficult to uphold the contention of the applicant that the action of the respondents is arbitrary. However, it needs to be stated that it is expected that the component of *viva voce* would not be the determining factor in the selection of a candidate. The respondents in their reply have stated that the selection committee shall also take into account the A.C.R.s of the eligible candidates, but the criteria of seniority is not applicable as the post is to be filled up by transfer on deputation/transfer basis and not by promotion. We may also state that the weightage which may be assigned by the selection committee to the performance in the interview should not be excessive and in this regard observations made by the Supreme Court in a number of cases should be fully complied with by the selection committee.

6. The last grievance of the applicant is that while the Tribunal in its order dated 13.4.1992 had directed the respondents to hold a review DPC, the respondents are holding a fresh selection. The case of the respondents is that the same eight candidates who were considered for earlier selection have been invited for the fresh selection, and that since there is no provision in the recruitment rules for a DPC for filling up the post on transfer on deputation/transfer basis, the only appropriate manner by which the directions of the Tribunal could be complied with in the true sense was to constitute a selection committee, the composition of which is not significantly different than the composition of the earlier DPC. We have carefully considered this aspect of the matter and are of the view that on the facts and in the circumstances of the case, going only by the letter of the direction of the Tribunal in the order dated 13.4.1992 would not have been in accordance with the provisions of the recruitment rules. The intention

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behind the direction of the Tribunal has to be understood in the manner in which the field of selection is to be confined to the same set of candidates and the process of selection is by a selection committee; whether this committee is named as a DPC or a selection committee, does not appear to make any vital difference to the process of selection.

7. In the light of the foregoing discussion, we find that this O.A. is devoid of merit and subject to the observations in para 5 above, the same is accordingly dismissed leaving the parties to bear their own costs.

(Dec 20/8/1992)
(P. C. Jain)
Member (A)

Dec 20.8.92
(T. S. Oberoi)
Member (J)