

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1608/92

Date of decision: 08.04.1993.

Shri J.R. Masih

...Petitioner

Versus

Union of India through its
Secretary, Ministry of Human
Resources Development & Another

...Respondents

Coram:-

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman (J)
The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner Shri S.C. Luthra, Counsel.

For the respondents Shri M.L. Verma, Counsel.

1. Whether Reporters of local papers may be allowed to see the Judgement? *No*
2. To be referred to the Reporter or not? *Yes*

S.K.
(S.K. Dhaon)
Vice-Chairman (J)

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For the respondents Shri M.L. Verma, Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. I.K. Rasgotra, Member (A))

The petitioner in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 has prayed that the respondents be directed to treat him as Library Assistant, appointed on regular basis as per recruitment rules and not on deputation for a period of two years.

2. The undisputed facts of the case are that the petitioner was working as a Lower Division Clerk on substantive basis in the office of the respondents. He was appointed as Library Assistant on ad hoc basis on 12.8.1983 in the pay scale of Rs.1400-2300. The appointment order makes it clear that the appointment will not confer any title to his permanent appointment to the said post, nor shall the ad hoc service count for the purpose of seniority in that grade or for eligibility for promotion to the next higher grade. After uninterrupted continuance as Library Assistant from the date of appointment to 15.4.1988 the petitioner was reverted to the post of Upper Division Clerk to which he had been promoted in his cadre in the meanwhile vide order dated 16.4.1988.

He represented against his reversion to the respondents. The said representation, however, was rejected vide order dated 30.4.1988. The post of Library Assistant was again circulated for filling up in accordance with the recruitment rules in December, 1989. The petitioner also applied for the said post. The Departmental Promotion Committee (DPC) comprising Director, National Gallery of Modern Art, Deputy Secretary, Department of Culture, Under Secretary, Department of Education and Keeper and Head of Office, National Gallery of Modern Art, made the following recommendation:-

"LIBRARY ASSISTANT (Scale Rs.1400-2300) - One post.

The Selection Committee considered the CRs. and selected Shri Vek Parkash Gera. The Selection Committee also decided that in case Shri Gera fails to join duty within two months, Shir Johnson R. Masih may be offered the post."

A copy of the recruitment fules filed by the petitioner does not throw any light as to when the list ^{said Rules} were notified. The respondents have also failed to do so. In the course of the hearing it was not disputed that the selection was made in accordance with the recruitment rules. The recruitment rules provide direct recruitment for filling up the post if it is not filled up by transfer on deputation/transfer.

3. The case of the petitioner is that Shri Gera ^{list} who was first on the select/was offered the post but he did not accept the offer. In the circumstances the petitioner should have been appointed on regular basis by treating him as direct recruit for the post.

(D)

4. The respondents in their counter-affidavit have taken the stand that the petitioner was initially appointed as Library Assistant on ad hoc basis, pending finalisation of the recruitment rules. He was reverted from the post, as the Department of Personnel vide their OM dated 30.3.1988 had directed that all ad hoc arrangements should be reviewed and terminated as far as practicable. Accordingly, the petitioner was reverted to the post of U.D.C. in his own cadre. It is further averred that the petitioner belongs to the clerical cadre of the National Gallery of Modern Art and as such he could not be promoted to the post of Library Assistant. There is no such avenue of promotion for L.D.C./U.D.C. in the recruitment rules. It is, however, admitted that the petitioner possessed the prescribed qualifications for the post of Library Assistant.

5. We have considered the matter carefully and perused the record. Admittedly the petitioner possesses the qualification prescribed for the post of Library Assistant. There is also no dispute that his initial appointment was made as a stop gap arrangement, pending finalisation of the recruitment rules. However, once the recruitment rules were finalised and a proper selection was held, there was no occasion for the respondents to deviate from the provisions of the recruitment rules. The first person placed on the select list Shri Ved Parkash Gera who was working in Delhi Public Library refused to accept the offer of appointment. The mantle of the post of Library Assistant, therefore, naturally fell on the petitioner Shri Johnson R. Masih who was placed second on the select list.

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(M)

6. Since the selection was made in accordance with the Rules there were only three options available to the respondents viz.:

- a) to transfer the petitioner on deputation;
- b) to transfer him to the post of Library Assistant and absorb him; and
- c) to treat him as a direct recruit to the post, as according to the respondents no provision for promotion of U.D.C. to the post in question exists in the recruitment rules.

The petitioner had already put in 5 years as Library Assistant on deputation on ad hoc basis, pending the finalisation of the recruitment rules. It would be unfair and unjust to again treat him as transfer as on deputation basis to the post of Library Assistant even after the recruitment rules had been finalised. The proceedings of the DPC too are silent on the question whether the petitioner was considered for empanelment as a direct recruit or on transfer or on transfer on deputation. In our opinion, having worked for 5 years on transfer on deputation basis, pending finalisation of recruitment rules he cannot be again considered for transfer on deputation after the recruitment rules had been finalised and D.P.C. held in accordance with the Rules.

7. Column 12 of the Rules gives details of "Grade/Sources from which promotion/transfer is to be made." Under this heading the rule states "From amongst persons holding analogous posts in the Central Government or posts in scale of Rs.1200-2040 with five years regular service in the grade failing which in the scale of Rs.950-1500 with 12 years of regular service under the Central Government. (Period of deputation in another ex-cadre post in the same organisation immediately preceding this appointment shall not ordinarily exceed 3 years)."

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The petitioner was promoted to the post of L.D.C. with effect from 17.3.1964. He had thus rendered more than 12 years of service when he came for consideration before the DPC for appointment as Library Assistant. In the meanwhile, on 27.3.1985 he had also been promoted as U.D.C. on regular basis. In the circumstances the petitioner is entitled to be considered for promotion in accordance with the Rules to the post of Library Assistant even though the respondents have stated that the petitioner cannot be promoted from clerical cadre to the ex-cadre post of Library Assistant. This contention is not consonance with the provisions made in column 12 of the Rules. Since the petitioner has been recommended by the DPC for appointment as Library Assistant vide its deliberations dated 5.4.1990 he is entitled to be appointed on transfer/promotion to the post of Library Assistant and not on deputation basis, as has been done by the respondents.

8. In view of the above facts and circumstances, we direct the respondents to deem the petitioner as having been duly selected and appointed to the post of Library Assistant with effect from July 3, 1990 - the date on which he was appointed on temporary basis for a period of two years against the ex-cadre post of Library Assistant, after he had been placed on the select list by the DPC held on 5.4.1990 on a regular basis. No costs.

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(I.K. Rasgotra)
Member(4)

kd
(S.K. Dhaon)
Vice-Chairman(J)

San.