

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.  
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Date of Decision: 18.2.93

OA 2872/92

A.P. MISHRA

... APPLICANT.

Vs.

DELHI ADMINISTRATION.

... RESPONDENT.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).  
HON'BLE SHRI S.R. ADIGE, MEMBER (A).

For the Applicant

... SHRI J.P. VERGHESE.

For the Respondents

... NONE.

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI S.R. ADIGE, MEMBER (A).)

This application is being disposed of at the admission stage itself.

By Secretary (Labour), Delhi Administration, order No.121 dated 7.2.90 (Annexure-I), after obtaining the UPSC's recommendations, the petitioner Shri A.P. Mishra, Assistant Chemist, DESU, was appointed to the post of Chemical Inspector of Factories by transfer on deputation, initially for one year, and extendable upto three years on year to year basis. By Labour Department's notification dated 2.4.91, (Annexure-II), the Administrator, Union Territory of Delhi, in exercise of powers conferred upon him under Section 8(1) Factories Act, 1948, appointed the petitioner as an Inspector for the purposes of the said act in the Union Territory of

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Delhi with immediate effect till such time as he held the office of Chemical Inspector of Factories, Delhi.

In this application, the petitioner now prays that the respondents be directed to treat the order dated 7.2.90 as an order of appointment as Chemical Inspector of Factories under Section 8 Factories Act read with Rule 13(A) Delhi Factories Rules, 1950 and declare the recruitment rules for the post of Chief Inspector of Factories (Annexure-IV) as Ultra Vires of the Constitution. Incidentally the words 'Chemical Inspector' occurring in paragraph 8(B) of the application is obviously a misprint for the words 'Chief Inspector'.

We have heard Shri J.P. Verghese, learned counsel for the applicant, who contends that although on the face of it the petitioner's appointment as Chemical Inspector of Factories vide order dated 7.2.90, was an order of deputation, in reality it was a substantive direct appointment to the post of Inspector, and if the same was not deemed to be so the petitioner would be discriminated against, in respect of promotions. He has also contended that the impugned recruitment rules for the post of Chief Inspector of Factories (Annexure-IV) have been made under a proviso to Article 309 of the Constitution, which is a transitory provision and as the Legislature has already regulated the recruitments by Section 8 Factories Act, and

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Rule 13(A) of the Delhi Factories Rules, the impugned recruitment rules are ultra vires of the Constitution.

None of these contentions is tenable.

The impugned order dated 7.2.90 clearly states that the petitioner has been appointed to the post of Chemical Inspector of Factories by transfer on deputation and goes further to state that the terms and conditions of his deputation will be settled in due course. The Notification dated 2.4.91, on the other hand, in fact empowers the petitioner to perform the duties and functions of an Inspector under the Factories Act within Delhi Union Territory till such time as he held the office of Chemical Inspector of Factories. The petitioner himself in his representation dated 24.9.92, addressed to the Secretary (Labour), Delhi Administration, (Annexure-III-A), states that he has been appointed to the post of Chemical Inspector of Factories by transfer on deputation, and his only plea in that representation was for an early decision on the terms and conditions of his deputation. The question of deeming the order of deputation dated 7.2.90 to be one of substantive direct appointment under Section 8 Factories Act read with Rule 13(A) Delhi Factories Rules does not arise, because the order dated 7.2.90 categorically states that the petitioner has been deputed to the post of Chemical Inspector of Factories and to treat an order of deputation as one of

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substantive direct appointment violates the very basic principles of Service Rules. Moreover, the order dated 2.4.91 issued under Section 8 Factories Act does not confer any privilege of substantive direct appointment to the post of Inspector, but merely empowers the petitioner to discharge the duties and functions of an Inspector within the limits of Delhi UT till such time as he continues to hold the office of Chemical Inspector of Factories. This view finds further support from Section 8(4) and 8(5) Factories Act, which provides that District Magistrate and other such officers may be so empowered.

Coming to the second prayer, the question of holding the impugned recruitment rules for the post of Chief Inspector of Factories as ultra vires of the Constitution would no doubt arise if they were repugnant to the contents of the Factories Act, but, a plain reading of Section 8 Factories Act or Rule 13(A) Delhi Factories Rules, relied upon by Sh. Verghese does not indicate that the impugned Recruitment Rules are repugnant to the same. In fact the impugned Recruitment Rules, which have been framed in exercise of the powers conferred by proviso 2 of the Article 309 of the Constitution after prior consultation with the U.P.S.C. relate to the post of Chief Inspector and Deputy Chief Inspector of Factories, while Section 8 Factories Act and Rule 13(A) Factories Rules refer to the exercise of powers and qualifications of an Inspector.

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Under the circumstances, prima facie, this application has no merit and it is dismissed at the admission stage itself.

Before parting with this case we may observe that in case the petitioner's terms and conditions of deputation have not been finalised as yet, the respondents should finalise the same within two months from the date of receipt of a copy of this order.

*S.R. Adige*  
( S.R. ADIGE )  
MEMBER (A)

*J.P. Sharma*  
( J.P. SHARMA ) 18.2.93  
MEMBER (J)

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