

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.380/92

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New Delhi this the 24th day of September, 1998.

Hon'ble Mr. K. Muthukumar, Member (A)

Hon'ble Dr. A. Vedavalli, Member (J)

D.R. Nag

...Applicant

(By Advocate Shri B.B. Raval)

-Versus-

Union of India & Others

...Respondents

(By Advocate Mrs. Raj, Kumari Chopra)

1. To be referred to the Reporter or not? YES
2. To be circulated to other Benches of the Tribunal? No

(Dr. A. Vedavalli)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

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(2X)

New Delhi this the 24th day of September, 1998.

Hon'ble Mr. K. Muthukumar, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

D.R. Nag,
S/o Shri Siri Dhar Nag,
Working as Assistant Director (OL),
Ministry of Welfare,
Hindi Section,
Room No.242, 'A' Wing,
Shastri Bhawan,
New Delhi-110001.

...Applicant

(By Advocate Shri B.B. Raval)

-Versus-

Union of India through:

1. Secretary,
Ministry of Information
and Broadcasting,
Shastri Bhawan,
New Delhi-110001.

2. Secretary,
Ministry of Home Affairs
Department of Official Language,
Loknayak Bhawan,
Khan Market,
New Delhi-110003.

...Respondents

(By Advocate Mrs. Raj Kumari Chopra)

O R D E R

Hon'ble Dr. A. Vedavalli, Member (J):

The applicant, an adhoc Assistant Director (OL) in the Ministry of Welfare, (Hindi Section), is aggrieved by an order dated 21.3.91 (Annexure V) rejecting his representation dated 20.1.86 (Annexure S) regarding his induction as Assistant Director in the initial constitution of the Central Secretariat Official Language (CSOL, in short) Service on the ground that he is not eligible and another order dated 5.10.1991 (Annexure 'X') turning down his appeal dated 27.5.1991 (Annexure 'W') in this respect. The afore-



said orders passed by Union of India through Ministry of Information and Broadcasting, Department of Official Language (respondent No.1) have been impugned in this OA.

2. The facts of this case, briefly stated, are as under.

2.1 The Central Secretariat Official Language Service (Group 'C' posts) Rules, 1981 (1981 Rules, in short) ^{made} by the President in exercise of his powers conferred by the proviso to Article 309 read with Article 318 of the Constitution were notified in the official Gazette on 19.9.81 (Annexure R-2). Rule 3 of the said Rules deals with the Constitution and composition of the services which consists of two grades, viz. (Grade IV - Senior Translator) (Grade V - Junior Translator). The initial constitution of the service and the procedure to be followed for selection and appointment to the above two grades, inter alia, are provided under Rule 6 of the said rules. Rule 5, which deals with members of the service runs thus:

"5. Members of the Service:-

(1) The following persons shall be the members of the Service:-

(a) Persons appointed to duty posts under rule 6 and

(b) Persons appointed to duty posts under sub-rule (5) of Rule 4 and rule 7.

(2) A person appointed under clause (a) of sub-rule (1) shall on such appointment be deemed to be a member of the Service in the appropriate grade applicable to him in Schedule I.

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(3) A person appointed under clause (b) or sub rule (1) shall be a member of the service in the appropriate grade applicable to him in Schedule I, from the date of such appointment."

2.2 While so, one Shri Gorakh Nath, who was appointed on 30.12.78 as ad hoc Hindi Officer in the Principal Information Officer's office by an order dated 15.3.80 apprehending his reversion to his substantive post of Junior Hindi Translator in the Press Information Bureau filed C.W. No.1556 and C.M. No.2342/82 in the High Court of Delhi. It appears from the High Court's order dated 28.9.83 (Annexure P) that the present applicant D.R. Nag was impleaded as respondent No.6 in the said case. The present applicant was recommended for the said post of Hindi Officer under the "Hindi Officers Recruitment Rules, 1962" in the Ministry of Information and Broadcasting by the DPC on 19.12.80. Notwithstanding the selection of respondent No.6, Gorakh Nath continued in the ad hoc post. Ultimately the Ministry of Information and Broadcasting by its order dated 21.11.81 directed the Press Information Bureau (PIB in short) that the respondent No.6 should be appointed to the said post immediately by reverting Gorakh Nath (petitioner before the Delhi High Court) to his substantive post. PIB decided on 25.11.81 to revert the said petitioner and asked respondent No.6 (applicant in the present OA) for acceptance of the offer in this regard which was accepted by him in May, 1982. But, the petitioner before the High Court Gorakh Nath was still not reverted due to certain circulars issued by the Department of Official Language stating the Hindi Officials who were working on ad hoc or deputation basis be allowed to continue in those posts till the framing of the Central Secretariat Official Language Service Rules or 30.9.1983, whichever is earlier.

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Under the stay order granted by the Delhi High Court, Gorakh Nath, petitioner therein was allowed to continue and respondents were restrained from reverting him. However, the petition was disposed of by the High Court, inter alia, with the following observations and directions by its order dated 28.9.83 (Annexure P):

"We may in this connection also now note that Mr. Mehra has brought to our notice that Central Secretariat Official Languages Service Rules 1983 have come into force. Mr. Mehra says that they have been notified and Gazetted but the respondents are not in a position to tell us. A difficulty may arise because respondent No.6 who also appears in person says that by virtue of the stay order given by this Court the result has been that he has not been able to join as Hindi Officer in Press Information Bureau and he says that because of this he may suffer because the initial constitution of service under the Rules of 1983 in terms of Rule 6 provides that the Selection Committee will hold selection for determining the suitability of departmental candidates holding the posts included in Grade III on regular basis as well as those holding these posts on ad hoc or deputation basis and his apprehension is that as he the respondent No.6 was not actually holding the post which he would have but for the stay order given in favour of the petitioner it will be the case of the petitioner which will be considered by the Selection Committee and not the case of respondent No.6. This evidently is a hardship and we would wish to make it clear that the Selection Committee should not merely on the ground of our order treat the petitioner to be holding the post legally on that date but will independently decide whether the petitioner or respondent No.6 was entitled to hold the post on the crucial date and which of these two persons on the merits and in the circumstances is entitled to be considered for being absorbed in the initial constitution of service. We are saying that because we do not want that by any stay order given which was only because of the circulars issued, the right of respondent No.6 to be considered for absorption in the initial constitution of service should be ignored. Of course the Selection Committee

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will consider the cases of both the petitioner, who naturally claims he has a right to be considered for the initial constitution of service, as well as respondent No.6 who also points a similar claim and determine independently and objectively as to who has a right or even both to be considered for absorption in view of the facts and circumstances of the case. With these observations the petition stands disposed of."

2.3 In the meanwhile, the Central Secretariat Official Languages Service (Group A and B Posts) Rules, 1983 were notified on 24.9.83 (1983 Rules in short) (Annexure R-1). The present applicant D.R. Nag was also promoted on ad hoc basis as Assistant Director and was posted in the Directorate of Estates by the Official Languages Office Memorandum dated 25.2.86 and he joined his duties on 3.3.86.

2.4 However, it appears that the aforesaid Writ Petition was transferred to this Tribunal and numbered as T-806/85 (CW 1556/82). The order of this Tribunal dated 19.5.86 (Annexure T) is extracted below:

Regn No. T-806/85(CW 1556/82)

Shri Gorakh Nath

...Petitioner

V E R S U S

Union of India & oRs.

...Respondents

CORAM: Hon'ble Mr. H.P. Bagchi, Judicial Member
Hon'ble Mr. S.P. Mukerji, Member

PRESENT: Petitioner in person.

Mr. U.K. Poddar on behalf of respondent No.1.

Respondent No.6 in person.

Petitioner states that his case has already been decided by the order of the Hon'ble High Court passed on 28th September, 1983. A copy of the said order has been shown by respondent No.1 to us. Order passed by the Hon'ble Court shows that directions were issued to respondent No.1 to consider the cases of the petitioner as well as of respondent No.6 for being absorbed in the initial constitution of the service. The petitioner states that he has no grievance

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since he has already been inducted in the service. Respondent No.6 says that he has not been inducted in the service and he has made a representation against that. In case, respondent No.6 has any grievance he can come up in a separate petition. In the circumstances, this petition is dismissed as infructuous."

sd/-
(H.P. BAGCHI) (S.P. MUKERJI)
JUDICIAL MEMBER MEMBER"

2.5 After the applicant's representation dated 20.1.86 was rejected by the first impugned order dated 21.3.91 and his appeal against the said rejection was also turned down by the second impugned order dated 5.10.91, he filed the present O.A.

2.6 The applicant seeks the reliefs contained in para 8 of the O.A. Relief No.1 is for order of promotion of the applicant as Hindi Officer by the Ministry of Information and Broadcasting w.e.f. 29.11.78. However, the main relief sought by him is for his induction in the initial constitution of the CSOL Service as Assistant Director (OL) w.e.f. 19.9.81/1.2.85 as was done in the case of Gorakh Nath whom he claims, is his junior in pursuance of the order dated 28.9.83 of the High Court of Delhi and the order of this Tribunal dated 19.5.86.

2.7 As already noted supra, the applicant has challenged the two impugned orders rejecting his representation dated 20.1.86 and the appeal regarding aforesaid induction as ADOL in the CSOL Service. The main ground on which the said orders have been challenged is that the relevant provisions of the 1983 Rules have been wrongly interpreted by the respondents regarding his appointment/promotion to the post of Hindi Officer and induction as Assistant

Director in the initial constitution of the CSOL Service and the impugned orders suffer from non application of mind, as his prayers in the said representation have not been considered.

3. The O.A. is contested by the respondents who have filed their reply to which a rejoinder has been filed by the applicant. The learned counsel for the respondents has also submitted her written arguments on 16.12.97, as permitted by this Tribunal by the order dated 24.11.97.

4. As per the relevant contents of the reply filed by the respondents the applicant was neither holding the post of Hindi Officer nor a lien on the said post on 19.9.81, i.e., the crucial date for induction into the initial constitution of the CSOL Service under the 1983 Rules and as he does not possess the required status, he is not eligible for being considered for the post of Assistant Director and has been rightly left out.

5. It was also submitted by the respondents there there was no common seniority in respect of the concerned post in the various offices of the Ministry of Information and Broadcasting before the initial constitution of the CSOL Service and the applicant can have no claim for promotion as Hindi Officer w.e.f. 29.11.78. The respondents have also enclosed a copy of this Tribunal's order dated 7.4.92 in OA-4/87 - Ram Raj Misra & Ors. Vs. Union of India, through Ministry of Home Affairs, Department of Official

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Languages and Others, wherein, inter alia, the procedure to be followed by Selection Committee etc. have been discussed in detail and was upheld in the cases concerned.

6. We have heard the learned counsellor for the parties and have gone through the pleadings and the material papers and documents placed on record. The matter has been considered carefully.

7. The crucial question which arises for adjudication is whether the two impugned orders are vitiated by any illegality or non-application of mind as urged by the applicant. For this purpose it would be necessary in the first instance to examine the relevant provisions of the 1983 Rules.

Rule 3 of the aforesaid Rules provides for the constitution of CSOL Service (Group A and B Posts) consisting of persons appointed to the service under Rule 6 & 7.

The classification of posts included in the services are specified in Schedule I of the said Rules and the break up of the duty posts included in the services and the names of Ministries, Departments and attached offices participating in the service in which these posts exist are specified in Schedule II of the said Rules.

Rule 4 (1), inter alia, provides that the duty posts in the various grades etc. are as specified in Schedule-I.

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As per Schedule I the duty post included in the various grades of the said service are as under:

"SCHEDULE I

(See sub-rule (1) of rule 4)

Name, Number and scale of pay of Duty Posts included in the various grades of the Central Secretariat Official Language Service

(Group 'A' and 'B' Posts)

S. No.	Name of the Post	No. of Posts	Classification	Scale of pay
1.	Grade I (Director)	5	Group 'A'	Rs.1500-60-1800.
2.	Grade II (Deputy Director)	25	Group 'B'	Rs.1100-50-1600
3.	Grade III (Assistant Director)	105	Group 'B'	Rs.650-30-740-35-810-EB-35-860-40-1000-EB-40-1200.

8. The applicant's main claim is for induction as Assistant Director which is a Grade III Group 'B' post.

Rule 6 deals with the initial constitution of the service and contains provisions, inter alia, as to the constitution composition and the procedure to be followed by the Selection Committee for holding selection to post concerned. Sub rule (1) of Rule 6 provides as follows:

"(1) The Commission shall constitute a Selection Committee with the Chairman or a Member of the Commission as Chairman and not more than two representatives, not below the rank of Joint Secretary to the Government of India to be nominated by the Department of Official Language, as Members. The Selection Committee shall determine the suitability of the departmental candidates holding posts being included in grade I and Grade II of the service on regular basis and prepare

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separate list, containing names of officers, arranged in descending order according to the length of their regular service considered suitable for appointment to Grade I and Grade II of the service at its initial constitution. These officers shall be placed senior to those selected in the manner specified in sub-rule (2)."

Sub Rule (3) of said Rule 6, which is particularly relevant, is as under:

The Selection Committee constituted under sub-rule (1) above shall hold selection for determining the suitability of the departmental candidates holding posts being included in Grade II of the Service on regular basis as well as those holding these posts on ad-hoc or deputation basis from the date the last departmental candidate was appointed on regular basis and prepare a list, arranged in the order of merit, of officers considered suitable for appointment to Grade III of the Service at its initial constitution. These Officers shall be placed senior to those selected in the manner specified in sub-rule (1)."

Sub Rule (4) runs thus:

"For making appointment against the remaining vacancies if any, in Grade III at its initial constitution, the Commission shall hold selection for determining the suitability of departmental candidates holding posts being included in Grade III of the Service, other than those mentioned in sub-rule (3) above and also those holding posts in Grade IV of the Central Secretariat Official Language Service (Group 'C' Posts) who have put in a minimum of 3 years' regular service in the scale of Rs.550-800-(900) and prepare a list, arranged in the order of merit, of officers considered suitable for appointment to Grade III of the Service at its initial constitution. These officers shall be placed en-bloc junior to those selected under sub-rule (3)."

As per sub Rule (c) of Rule 2 "Departmental Candidate" means:

" a person who has been appointed to and holds a post or holds lien on a post:-

(i) specified in Schedule-I on the 19th September, 1981, or

(ii) encadred in the Service after its initial constitution and included in Schedule-I on the date of such encadrement."



9. While so, the applicant was selected by DPC on 19.12.80 for appointment to the post of Hindi Officer in PIB. He was offered that post in 1982 which is stated to have been accepted by him in May, 1982, as already noted earlier. He has also submitted that after the order of the High Court of Delhi dated 28.9.83 he was intimated about his selection by UPSC for recruitment to the post of Hindi Officer in the Income Tax Department by letter dated 10.4.84 as per his representation dated 30.4.84 (Annexure Q).

10. However, the applicant has not given any valid reason as to why he did not seek appropriate remedy before a competent judicial forum if he was really aggrieved by his non-appointment to the post of Hindi Officer in PIB and the Income Tax department in respect of his selection to the said post in the concerned department. He was obviously satisfied by making only certain representations to the authorities in this regard and waiting indefinitely for an unduly long period instead of moving a competent judicial forum, as noted above for redressal of his grievances. It is well settled as per the law laid down by the Hon'ble Supreme Court in a catena of cases, including S.S. Rathore vs. State of M.P. (AIR 1990 SC 10) and Ratam Chandra Sammanta & Ors. vs. Union of India & Ors. (JT 1993 (3) SC 418) that repeated representations do not extend the period of limitation and a person who sleeps over his rights without taking necessary action at the appropriate time loses his right as well as the remedy.

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11. In view of the above position, we are of the opinion that the claim of the applicant for promotion as Hindi Officer w.e.f. 29.11.78 is hopelessly time barred and is hit by limitation and lack of jurisdiction under the provisions of Section 21 of the Administrative Tribunals Act, 1985 as the cause of action, if any, obviously arose prior to 1.11.82. Moreover, what cannot be done directly cannot be done indirectly also and the applicant has no justification for pushing through and agitating such a stale claim under the guise of the present O.A. challenging the aforesaid two impugned orders issued in the year 1991 in respect of post of Assistant Director under the 1983 Rules. The said claim is, therefore, rejected on the ground of limitation and lack of jurisdiction under Section 21 of the Administrative Tribunals Act, 1985.

12. Re the claim for induction into the initial constitution of CSOL Service as Assistant Director (OL) w.e.f. 19.9.81/1.2.85 as was done in the case of Gorakh Nath in pursuance of the order of the Delhi High Court and the Tribunal (supra), the applicant, it is obvious, has only been selected for the post of Hindi Officer in PIB and the Income Tax department. Mere selection by itself does not confer upon him the status of a person who has been appointed to and holds a post or a lien on a post specified in Schedule I on 19.9.81 or encadred in the service under the relevant Rule 2 (c) (i) and (ii) of the 1983 Rules, extracted supra. The applicant has has failed to establish the existence of any legally enforceable right which would entitle

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him to the aforesaid relief claimed by him and the grounds urged by him are, therefore, untenable in the eye of law and are rejected.

13. We do not think it is necessary to go into the other minor grounds raised by him in view of the aforesaid position.

14. In the facts and circumstances of this case and in view of the foregoing discussion we are of the opinion that the O.A. is devoid of any merit and the two impugned orders do not warrant any judicial interference.

15. In the result, the O.A. is dismissed. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

'Sanju'

K. Muthukumar

(K. Muthukumar)
Member(A)