

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1188 of 1993

New Delhi, this the 13th day of January, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Mr. N. Sahu, Member (Admnv)

Shri G.P. Saraswat, S/o late Shri
Maharaj Swarup Saraswat, R/o Qr.
No. G-202, Nanakpura, Moti Bagh-II, New
Delhi-110021. -APPLICANT
(By Advocate Shri Ashok Aggarwal
through proxy counsel Shri Dinesh Kumar)

Versus

1. Union of India through Secretary, Ministry of Home Affairs, North Block, New Delhi-110001.
2. The Secretary (Rajbhasha), Department of Official Language, Ministry of Home Affairs, Lok Nayak Bhawan, New Delhi-110003.
3. The Director, Central Hindi Training Institute, Department of Official Language, Ministry of Home Affairs, 7th Floor, Paryavaran Bhawan, C.G.O. Complex, Lodi Road, New Delhi-110003.
4. Shri M.S. Kathaith, Deputy Director (Mukhyalaya), Central Hindi Training Institute, Ministry of Home Affairs, 7th Floor, Paryavaran Bhawan, C.G.O. Complex, Lodi Road, New Delhi-110003.
5. Shri R.N. Mehrotra, Deputy Director (Examination), Hindi Teaching Scheme, 10th floor, Mayur Bhawan, New Delhi-110001.
6. Shri G.D. Keshwani, Deputy Director (East), Hindi Teaching Scheme, Ministry of Home Affairs, Room No. 18, Floor-18, Nizam Palace, 234/4, A.J.C. Bose Road, Calcutta-700020.
7. Shri R.N. Jha, Deputy Director (West), Hindi Teaching Scheme, Ministry of Home Affairs, Commerce House, Ballard Estate, Corrimbhoi Road, Bombay-400038. -RESPONDENTS
(By Advocate Mrs. Raj Kumari Chopra for official respondents.)

O R D E R (Oral)

By Mr. N. Sahu, Member (Admnv)

The applicant is aggrieved by the impugned order dated 7.5.1993 whereby his representation for

considering him for promotion to the post of Deputy Director, Hindi Teaching Scheme with retrospective effect was rejected.

2. The applicant states that the action of respondent nos. 1 to 3 for permitting respondents 4 to 7 to continue to hold the post of Deputy Director, Hindi Teaching Scheme on deputation basis after 31.12.1992 was improper because the applicant became eligible for consideration on 1.1.1993 (according to his claim).

3. After notice, the official respondents state that under the Recruitment Rules for the post of Deputy Director dated 4.12.1990 recruitment can be made "by promotion failing which by transfer on deputation". Promotion is to be made from the grade of Assistant Director with 8 years of regular service or for persons holding the post of Assistant Director on the date of notification the eligibility for promotion is five years. Two posts of Deputy Director fell vacant during January and February, 1991 on account of retirement. The undisputed fact is that at that time no Assistant Director was eligible for consideration for promotion as none of the working Assistant Directors, including the applicant completed the period of five years. Therefore, the official-respondents had to resort to the "failing which clause" as per the notified rules and select respondents 4 to 7 to fill in the existing vacancies. Respondents 4 to 7 were appointed for a

period of three years with effect from the date they took over charge of the post. They took over charge on the dates mentioned as under -

1. Shri R. N. Mehrotra - 28.10.1991
2. Shri M. S. Kathaith - 24.9.1991
3. Shri R. N. Jha - 1.5.92
4. Shri G. D. Keshwani - 26.12.1991.

4. As they were appointed under the enabling provisions of recruitment rules they could not have been reverted till they completed their period of deputation. In these circumstances the earliest vacancy would have arisen only on 24.9.1994 when Shri M. S. Kathaith would have completed his period of deputation. The applicant, however, had retired on 30.6.1993 on which date all the appointees under the "failing which clause" continued to hold the posts.

5. The applicant's counsel urged that there was no need to appoint the deputationists for a period of three years. We note that under FR&SR Swamy's compilation Appendix 5 Page 435, 12th Edition, it is stated that the period of deputation shall be subject to a maximum of three years in all cases except for those posts where a longer period of tenure is prescribed in the recruitment rules. Thus, granting a period of three years to respondents 4 to 7 was well within the rules permitting a tenure deputation. The official respondents, therefore, cannot be faulted for giving a three year period of deputation to respondents 4 to 7. To sum up : we notice that

filling up the post under the "failing which clause" by deputation is permitted by the recruitment rules; when the posts had fallen vacant, no Assistant Director was eligible. When the applicant became eligible there was no post available and when the deputationists completed their term, the applicant superannuated much before. We are constrained to conclude that the applicant has no case on merits.

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

N. Sahu
(N. Sahu)
Member (Admnv)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

rkv.