

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

....

O.A. No.1452 of 1993

Dated New Delhi this the 18th day of February, 1994

Hon'ble Shri J. P. Sharma, Member (J)

Hon'ble Shri B. K. Singh, Member (A)

Shri B. B. Panchal
C/o Shri M.R. Bhardwaj
Advocate
D-7, Haus Khas
NEW DELHI

... Applicant

By Advocate Shri M.R. Bhardwaj

VERSUS

Union of India, through

1. Secretary
Ministry of Health & Family Welfare
Nirman Bhawan
NEW DELHI 110 011

2. Secretary
Department of Personnel & Training
North Block
NEW DELHI 110 011

3. Director General of Health Services
Ministry of Health & Family Welfare
Nirman Bhawan
NEW DELHI 110 011

4. Union Public Service Commission
Dholpur House
Shajahan Road
NEW DELHI

... Respondents

By Advocate Mrs Raj Kumari Chopra

O R D E R

Hon'ble Shri B. K. Singh, Member (A)

This O.A.1452/94 Shri B. B. Panchal as
applicant versus Union of India & others as
respondents has been filed against office Memo
No.32018/4/92-Admn.I dated 15.4.1993 ^{from D.G. Health Services} (Respondent No.3)
rejecting the representations made by the applicant
for his formal appointment as Chief Architect in the
Central Design Bureau of the office of the
Director General of Health Services. (Annexure-A
of the paper book.)

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2. The admitted facts of the case are:

The applicant joined the Directorate General of Health Services in the Ministry of Health and Family Welfare in September, 1956 as Senior Draftsman. He was subsequently promoted as Selection Grade Draftsman. He was promoted to the post of Assistant Architect w.e.f. 28.12.1963. Subsequently he was promoted as Architect w.e.f. 12.12.1972. He was further promoted to the post of Senior Architect in the scale of Rs.3700-5000 w.e.f. 17.12.1982.

Shri P. G. Jaitly who was the Chief Architect, retired on 30.6.1990. Shri Jaitly handed over project which were under his charge amongst various Architects who were under him i.e. S/Shri S.B. Kalkar, V. K. Bugga, Suresh Chand, Chandrasekhar, R.C. Kumar, M. S. Sehgal and Dhote. This making over charge of the projects and the distribution of works on the 26th June, 1990 was done by Shri Jaitly, Chief Architect (Annexure A-3 of the paper book). It is interesting to note that the name of the applicant Shri B. B. Panchal, is not included in the list of those to whom the project and the distribution of work were assigned. It is only on the 20th March, 1991 that a letter No. I.34011/1/90-O&M ^{was issued} asking the applicant to look after the work as Chief Architect, in addition to his own duties as Senior Architect, and until

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further orders. It was added in the above said Office Order that the applicant would not be entitled to any extra remuneration for holding additional charge of the post of Chief Architect. The applicant took over the additional charge of the post of Chief Architect w.e.f. 1.7.1990 and discharged the duties to the full satisfaction of the authorities. A copy of the certificate dated 22.12.1992 from the Director General of Health Services is annexed (Annexure A-5).

3. This is the usual notification issued when the process of promotion/selection is not complete and the seniormost officer available is asked to combine the duties of the higher post in addition to his own duties and until further orders. A perusal of Annexure A-4 will also show that there was a stipulation that no extra remuneration will be admissible to Shri Panchal for combining the duties of the Chief Architect.

4. The reliefs sought for by the applicant are:

- (i) Issue directions or orders to the respondents to obtain the approval of the ACC to the recommendations made by the UPSC for the regular appointment of the applicant to the post of Chief Architect w.e.f. 1.7.90, the date from which he held additional charge thereof;
- (ii) Further direct the respondents to issue formal notification appointing the applicant to the post of Chief Architect w.e.f. 1.7.90 and to fix his pay in the scale of pay attached thereto under the rules and regulate

the usual allowances accordingly and pay all the arrears to the applicant for the period from 1.7.90 to 31.12.92 and to re-determine all the retirement benefits accordingly after issuing fresh orders retiring him from the post of Chief Architect, instead of from the post of Senior Architect.

OR

The Tribunal may pass such further orders as it may deem fit and appropriate on the facts and in the circumstances of the case.

5. A notice was issued to the respondents who filed the reply and contested the application and opposed the grant of reliefs prayed for by the applicant.
6. We heard the learned counsels Shri M.R. Bhardwaj for the applicant and Mrs Rajkumari Chopra for the respondents and perused the record of the case.
7. The recruitment rules for the post of Chief Architect notified vide notification No.A.12018/4/78-Estt.I dated 8th July, 1980 of the Ministry of Health and Family Welfare (Respondent No.1) provides for the filling up of the post 'By promotion/transfer on deputation (including short term contract), failing which by direct recruitment.
8. The post of Chief Architect was circulated to the Ministries and departments of the Central Government on 30.8.90 and only one application that of the applicant Shri B. B. Panchal was received and the Ministry forwarded the application of Shri B. B. Panchal to the UPSC for consideration. After considering the

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application, UPSC advised the Ministry vide letter dated 15th March, 1991 to re-circulate the post to give wider publicity. Accordingly, the post was re-circulated on 4th April, 1991. 6(six) applications in all were received in response to the second circular which were processed in the Ministry of Health and sent to UPSC for consideration on 13.10.91. These applications were based in different States of the country and it took time to get their confidential reports and other relevant records from them. Thus there was delay of a few months in finalising the selection. Finally UPSC called the applicants for interview/personal talks along with other candidates in October, 1992. The recommendation of UPSC was received on 30 October, 1992 recommending Shri B. B. Panchal for the post of Chief Architect.

9. The fact that the applicant was looking after the current charges of the post of Chief Architect and order to that effect was issued on the 20.3.91, is not controverted. The notification directed Shri Panchal to look after the work of the Chief Architect in addition to his own duties and until further orders without any extra remuneration. It is extracted below:-

"It has been decided that the work of Shri P.C. Jaitley, Chief Architect, who retired on superannuation, will be looked after by Shri B.B. Panchal, Senior Architect, in addition to his own duties and until further orders without any extra remuneration."



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This notification of 20.3.91 does not bestow on him any right of appointment to the post of Chief Architect on regular basis. He filed several representations to the respondents for giving him the benefit of pay and all his representations were turned down by them. The last representation of the applicant in this respect is the impugned order at Annexure A.1. The fact that the applicant was notified to look after the work without any extra remuneration and he accepted the terms and conditions of that notification will imply that he is not entitled to any remuneration as asked for ^{by} him. It is a case of promissory estoppel. Once he accepted the terms and conditions, he was not entitled to raise the question of any extra remuneration subsequently. Once the terms and conditions of an appointment are accepted by a person, he is bound by it. If no grievance is made at the time of accepting the notification (Annexure A-4), he cannot be permitted to raise a grievance ⁱⁿ future. The learned counsel for the applicant also quoted the following rulings in support of his arguments:

(1) Dr Sunil 1992(20)ATC.667. This is not relevant to the present case since there is a question of dereservation of a post ~~is~~ involved of this.

The other case is: Girdh Bhardwaj Vs. UOI 1990 (13) ATC.178 and that of B. K. Bhagat Vs. UOI 1991(18) ATC 132 CAT Patna.

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The Hon'ble Supreme Court in the case of *Shri*
K. K. Bevinkatty as applicant versus Karnataka Public
Service Commission and others as respondents.

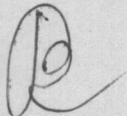
(AIR 1990 S.C.1233, K. N. Singh/N.M. Kasliwal J.J.) *has held that*
no right accrues till one is appointed to a post and joins in performance thereof. *B*

10. In the present case, the applicant was not
appointed to the post of Chief Architect and as
such there was no question of his joining that post.
All the appointments of gazetted officers in the
Central Government have to be approved by ACC and
in this case there was ~~not~~ approval of ACC ~~either~~ *B* for
holding the post of Chief Architect in addition to his
own duties ~~nor~~ was it approved after the receipt of
UPSC's recommendation. The question whether the
matter was referred to ACC has no relevance because
the approval of the ACC is not there. This means
that the proposal was not approved by ACC and as such
the applicant was not entitled to hold the post of
Chief Architect. Even the order of the 20th March '91
for combining the duties of the higher post in addition
to his own would have required the approval of ACC and
even this was not obtained, and as such no rights
accrues to the applicant for holding the post of Chief
Architect or combining the duties of the post with his
own. Thus, no case has been made out for grant of any
relief to the applicant.

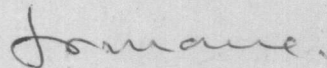
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11. The O.A. is devoid of any merit or substance
and is dismissed as such leaving the parties to
bear their own costs.



(B. K. Singh)
Member (A)



(J. P. Sharma)
Member (J)

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