

Central Administrative Tribunal  
Principal Bench: New Delhi

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OA No.1958/93

New Delhi this the 2nd Day of May, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)  
Shri C.J. Roy, Member (J)

S. Pandirajan  
S/O Sh. M Subas Chandra Murthi,  
R/o 105, Arya Nagar,  
Meerut Cantt-250001.

...Applicant

(Applicant in person)

Versus

Union of India through:

1. Secretary, Ministry of Defence,  
South Block, New Delhi.
2. D.G.E.M.E. (EME Civ), AHQ,  
DHQ, P.O., New Delhi.
3. Officer-in-Charge,  
EME Records, Trimulgherry,  
Secunderabad-500 021.
4. Commandant and Managing Director,  
510 Army Base Workshop,  
Meerut Cantt-250 001.
5. Development Commissioner,  
Small Scale Industries,  
Nirman Bhavan, New Delhi.
6. The Secretary, U.P.S.C.,  
Dholpur House,  
Shahjahan Road, New Delhi.

...Respondents

(By Advocate Sh. M.K. Gupta, Additional Central  
Govt. Standing Counsel for respondents 1-4.)

None for respondents 5 & 6.

ORDER(ORAL)

Mr. N.V. Krishnan:

The applicant is aggrieved by the fact that though he has been selected by the Union Public Service Commission (UPSC) for appointment to the post of Small Industry Promotion Officer (Industrial Management and Training) under the 5th respondent, i.e., Development Commissioner, Small Scale Industries, Nirman Bhavan. he has not been relieved.

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2. In the circumstances, he has prayed for suitable direction to the respondents, other than respondent No.5, to forward the reports on his character and antecedents verification and medical examination to the respondent No.5 and to release him immediately for taking up his appointment under respondent No.5. He has also sought for a direction to respondent No.5 to issue to the applicant his order of appointment and to fix his pay at a higher level for compensating him due to the delay in the matter of finance.

3. A reply has been filed, stated to be on behalf of the respondents, opposing the application.

4. We have heard the applicant and the learned counsel for respondents 1-4. The dispute falls in a narrow range, as there is not much dispute about the facts. Admittedly, there was an advertisement by the UPSC calling for the applications before 16.5.91 for the posts of Small Industry Promotion Officer (Industrial Management and Training). The applicant sent his application directly to the UPSC and immediately intimated the fourth respondent that he has applied for the aforesaid post and requested him to take necessary action for accepting his application by the UPSC. Admittedly, the respondents did not take action on this letter dated 4.5.91 (Annexure A-3) until the applicant was informed by the UPSC by its letter dated 4.2.92 (Annexure A-6) that he has been recommended to the 5th respondent for appointment to the aforesaid post. It would appear that the 5th respondent had taken up the matter with the respondents <sup>1-4</sup> and

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by the letter dated 17.12.92 the 5th respondent was informed that the case of the applicant was considered and it has been rejected at the highest level, meaning thereby that the Ministry of Defence has taken the decision not to relieve the applicant for taking up his appointment under the 5th and respondent. Therefore, the character/ antecedents verification report, it was stated, could not be sent to the 5th respondent (Ann. A-2). The applicant has also been informed on 19.11.92 (Ann. A1) that his representation for relief has been rejected due to shortage of Supervisory staff and ban on recruitment.

5. It is admitted that the Ministry of Home Affairs had issued standing instructions dated 1.1.79 which have been circulated by the Ministry of Defence to all authorities concerned (Annexure A-24) which contains instructions regarding forwarding of applications to the UPSC from candidates serving under Government. These contemplate that a Government servant may apply directly to the UPSC in respect of an advertised post. He should immediately inform the head of the office. In case the head of the office considers it necessary to withhold the requisite permission he should inform the UPSC within 30 days of the closing date for the receipt of the applications.

6. Admittedly, none of the respondents 1-4 have followed this procedure. The applicant, therefore, contends that the respondents have no right to issue the impugned Annexures A-1 and A-2 letters.

7. On the contrary, the respondents drew our attention to ROI 51/82 issued on 29.9.82 (Annexure-II) which contains instructions on the subject of employment elsewhere in respect of centrally

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controlled industrial personnel. These instructions require that the application should be routed to the EME Records for onward transmission. It is contended that the applicant did not follow this procedure. It is also stated that in accordance with the provisions of Article 76 of the Civil Service Regulations and more particularly <sup>in</sup> ~~to~~ the Ministry of Home Affairs memorandum dated 28.2.85 referred to in the note thereunder, <sup>it</sup> ~~it~~ is clarified that if there are compelling grounds of public interest the application may not be forwarded. The respondents have stated in their reply that the question of relieving the applicant was considered but as he is a member of the supervisory cadre and as against 800 posts in the grade of EME, only 500 Supervisors are available, in public interest, it was decided not to forward the application of the applicant.

8. The applicant, however, draws our attention to the Annexure-III of the reply dated 6.8.92 which is a letter from the 4th respondent to the EME Records, Secundrabad, i.e., the third respondent, in which it is admitted that the applicant was permitted to register his name in the Employment Exchange in the light of an earlier letter of the third respondent dated 16.4.91. This, by itself would mean that the applicant was given an opportunity to apply elsewhere for improving his career. He, therefore, contends that the respondents cannot have a case that the applicant cannot be relieved.

9. The question is whether the Ministry of Defence can take unilateral action in this regard either under ROI 51/82 or under the instructions under

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Article 67 C.S.R. ignoring the Annexure A-24 instruction on this specific subject issued by the nodal Ministry.

10. We are of the view that the 1979 instructions issued by the Ministry of Home Affairs (Ann. A-24) have been issued by the nodal Ministry concerned with service matters and they are binding on all departments. If any department seeks a modification thereof it should have been done in consultation with the nodal Ministry. ROI 51/82 on which respondents rely, on the face of it, shows that this has been issued without consulting the nodal Ministry.

11. In the circumstances, we are of the view that the 1979 instructions would prevail. The respondents have been given sufficient time to inform the UPSC that they would not be in a position to forward the application of the applicant. Obviously, the respondents did not avail themselves of this opportunity.

12. Now that the applicant has been selected it does not lie in the mouth of the respondents 1-4 to state that for the reasons mentioned in Annexure A-1 they are unable to relieve the applicant. In the circumstance, we are of the view that the grievance of the applicant is genuine and he is entitled to relief.

13. Though the 5th respondent is the new employer, we find from the reply filed by the respondents, stated to be on behalf of all the respondents, no submission has been made specially by the 5th respondent as to why a direction should not be issued to the 5th respondent in this regard.

14. In this view of the matter we dispose of this application with the following directions and orders;-

- i) The impugned Annexure A-1 letter dated 19.11.92 to the applicant and the Annexure A-2 letter dated 17.12.92 to the 5th respondent are quashed.
- ii) The respondents 1-4 - and more particularly the 4th respondent <sup>are</sup> ~~is~~ directed to relieve the applicant within a period of one month from the date of receipt of this order for taking up his employment under the 5th respondent. <sup>he</sup> ~~That~~ respondent is also directed to furnish to the 5th respondent all other certificates and records originally sought from him by the 5th respondent.
- iii) The 5th respondent is directed to employ the applicant on the post for which he has been selected, i.e., the post of Small Industry Promotion Officer (Industrial Management and Training) in the Small Industries Development Organisation as soon as the applicant presents himself for appointment.
- iv) In this connection, we note that we had issued a direction on 20.9.93 to the 5th respondent to keep one post of Small Industry Promotion Officer vacant which is still continuing. We make it clear that in case that post had already been filled up prior to that date, the 5th respondent is, nevertheless, directed to create a supernumerary post and accommodate the applicant until a regular

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post falls vacant, as we are of the view that the delay in not relieving the 5th respondent is attributable to the action of the respondents 1-4.

15. The O.A. is allowed, as above, with no order as to costs.

*C.J. Roy*  
(C.J. ROY)  
MEMBER(J)

Sanju.

*N.V. Krishnan*  
2.5.94  
(N.V. KRISHNAN)  
VICE-CHAIRMAN