

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

(b)

O.A. No. 2703 of 1993
T.A. No.

DATE OF DECISION 03-05-94

Srhi P.K. Mohanty Applicant(s)

Versus

U.O.I. & Others Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? 15
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

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(S.K. DHAON)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No.2703 of 1993

New Delhi this the 3rd day of May, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.K. Singh, Member

Shri P.K. Mohanty
Deputy Director
(Tribal Development Division),
Min. of Welfare,
Lok Nayak Bhawan,
New Delhi-110003.

...Applicant

By Advocate Shri C.L. Arya

Versus

1. Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi-110001.
2. Secretary,
Ministry of Welfare,
Shastri Bhawan,
New Delhi-110001.
3. Shri S.P. Rout,
Deputy Director,
National Commission for SC/ST,
Khan Market,
New Delhi-110003.

...Respondents

By Advocate Shri Vijay Mehta

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The controversy pertains to the appointment of a Joint Director (Tribal Development).

2. A counter-affidavit has been filed on behalf of respondent No.1. Counsel for the parties have been heard.
3. Though this application has not been formally admitted as yet, it has been heard with a view to dispose it of finally. Accordingly, we are doing so.
4. The material facts are these. The Union Public Service Commission issued an advertisement for the purpose of filling up a post of Joint Director (Tribal Development). The applicant applied. His case was processed. The

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Commission called certain candidates for interview but the applicant was not called for interview. At that stage, he came to this Tribunal by means of this O.A. On 27.12.93, the Tribunal passed an interim order. The material portion of the same runs as follows:-

" In the meantime, the respondent No.1 is directed to call Shri P.K. Mohanty provisionally for the personal talk on 28.12.93 along with other candidates. List the case on 07.01.94. Till then, the respondents are restrained from announcing the results of the interview".

It will be seen at once that the interview was fixed for 28.12.93 and an interim order was passed one day before the date fixed for the said purpose. We may note that the interim order continues to operate even now. We are informed at the Bar that the case of the applicant was considered in pursuance of the interim order passed by the Tribunal ^{him} and the recommendations of the DPC qua were kept in a sealed cover.

5. The stand taken by the respondent No.1 to defeat this O.A. is that the applicant was, in fact, not qualified on the relevant date.

6. On 10.12.1984 in the purported exercise of power under Article 309 of the Constitution, the President promulgated the Ministry of Home Affairs, Director (Tribal Development Division) and Joint Director (Tribal Development Division) Recruitment Rules, 1984. These Rules were duly published in the Gazette. Rule 3 provides that the method of recruitment, age limit, qualification and other matters relating thereto, shall be specified in columns (5) to (13) of the said schedule. We may, therefore, immediately go to the Schedule. The Schedule lays down separate ^{set} of rules for the post of Director (Tribal Development) and the post of Joint Director (Tribal Development). Column 11 of the rules relating to Joint Director (Tribal Development) is relevant.

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It deals with promotion/transfer on deputation. Paragraph 1 under the said column 11 relates to officers under the Central/State Government. For them, the qualification prescribed is that they should either be holding analogous post or with 5 years service in post in the scale of Rs.1500-1800/2000 or equivalent and possessing the educational qualifications and experience under Col.7. Then we come to paragraph 2, which is really relevant to extracting the present controversy. We are, therefore, the same:-

" the departmental Deputy Director (Tribal Development) with a 5 years regular service in the grade will also be considered and in case he is selected for appointment to the post, the same shall be deemed to have been filled by promotion".

7. In paragraph 4(f), the applicant has averred that he has rendered above 8 years service from November, 1985 till date in the pay scale of Rs.3000-4500 both in the Planning Commission as Senior Research Officer and as Deputy Director in the Tribunal Deveolpment Division of the Ministry of Welfare. We may note at this stage the crucial fact upon which the premise of the learned counsel for the applicant is based. That is, the grade of the Deputy Director (Tribal Development) was on the relevant time Rs.3000-4500. The argument is that since the applicant was in the grade of Rs.3000-4500 for more than 5 years, he fulfilled the qualification as laid down in the Schedule, aforementioned. Before we deal with this argument, we may turn to the letter of appointment issued to the applicant by the Planning Commission, a true copy of which has been placed before us in the form of Annexure-E to the O.A. This document is dated 02.07.86. It, inter alia, states that upon his appointment as Senior Research Officer in the Planning Commission on deputation basis, the pay of the applicant is fixed at Rs.1100/-per month in the pay scale of Rs.1100-50-1600 with effect from 08.11.1985(FN). It appears to be ^{an} admitted position that the said pay scale was later on revised to Rs.3000-4500.

8. Learned counsel for the applicant has admitted at the Bar that the applicant, for the first time, was appointed as Deputy Director (Tribal Development) in the year 1990. The question, therefore, to be answered is whether the services rendered by the applicant in the Planning Commission in the grade of Rs.3000-4500 should be taken into account for judging his eligibility under the said Schedule. For reasons given hereinafter, our answer is in the negative.

9. The Schedule may be read again. Paragraph 2 under Col.11 clearly provides that a candidate should be a departmental Deputy Director (Tribal Development). Admittedly, the applicant did not initially join the Department of Tribal Development. The simple reason, therefore, is that he having not put in 5 years of service in the Department of Tribal Development, his case is not attracted to paragraph 2 under Col.11.

10. Reliance has been placed by the learned counsel for the applicant on a decision of the Supreme Court in the case of **Hari Nandan Sharan Bhatnagar Vs. S.N. Dixit and Another**, AIR 1970 SC page 40. In that case, a particular Rule 7 came up for consideration. The said rule, *inter alia*, provided: that recruitment to the post of Superintendent should be made by promotion from the grade of superior service assistants in the Council Department. While due regard should be paid to seniority, no assistant should be appointed to the post of Superintendent unless he is considered in all respects to perform the duties of a Superintendent and full authority should be reserved to appoint the assistant most fitted for the post. If, however, no suitable assistant is available for promotion from amongst the grade of superior service assistants in the Council Department, recruitment may, as a special case, be made from outside.

11. While dealing with the submission as to what is the difference between the grade and the post, their Lordships

noted that the High Court had relied upon the dictionary meaning of "grade" and, according to the High Court, the said expression meant rank, position in scale, a class or position in a class according to the value. Their Lordships while upholding the judgment of the High Court observed:-

".....The Speaker had to take into consideration the claims of Senior Upper Division Assistants but under the rules his choice was not limited to the Upper Division Assistants. He could consider the claims of others who were in the same grade, that is to say, enjoying the same scales of pay and pick out the person considered by him to be qualified in all respects to perform the duties of a Superintendent. All officials of the Legislative Assembly Secretariat holding post in the same scale of pay as Upper Division Assistants were eligible for promotion to the post of Superintendent".

Rule 7 emphasised that recruitment to the post of Superintendent shall be made by promotion from the grade of superior service assistants in the Council Department. Their Lordships, as already noted, have emphasised that all those in the same grades in the Legislative Assembly Secretariat were eligible to be considered for promotion. Bhatnagar's case(Supra) instead of helping the applicant, really goes against him. It fully accords the view we have taken. We reiterate that the expression "departmental" in paragraph 2 of Col.11 of the Schedule excludes the applicant, as he has not completed 5 years of service in the Department of Tribal Development as a Deputy Director.

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12. This application fails and is dismissed. The interim order dated 27.12.93 is vacated. The Commission shall declare the results of the candidates who have been interviewed. They shall reject the candidature of the applicant.

No costs.

(B.K. SINGH)
MEMBER (A)

(S.K. DHAON)
VICE CHAIRMAN

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