

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 1ST DAY OF JULY, 2002

Original Application No.686 of 1995

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

I.P.Singh, Son of Shri Lal
Bahadur Singh, R/o 21-C, Moti Lal
Nehru Road, Allahabad.

... Applicant

(By Adv: Shri H.S.Srivastava)

Versus

1. Union of India through Secretary
Ministry of Welfare, Shastri
Bhawan, New Delhi.
2. Joint Secretary, Ministry
of Welfare-cum-Commissioner for
Linguistic Minorities in India,
Shastri Bhawan, New Delhi.
3. Deputy Commissioner for Linguistic
Minorities in India, 40 Amarnath
Jha Marg, Allahabad.
4. Shri G.D.Soni, S/o Sri B.D.
Soni, Research Officer, Office
of the Deputy Commissioner for
Linguistic Minorities in India, 40
Amarnath Jha Marg, Allahabad.

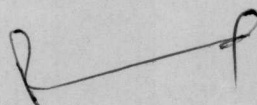
... Respondents

(By Adv: shri Amit Sthalekar)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has
prayed for a direction to the respondents to implement
the recommendations made by the DPC held in April 1994
for promotion to the post of Research officer. It has
further been prayed for a direction to the respondents
not to hold fresh DPC and in case fresh meeting of the
DPC has been held its recommendation may not be acted
upon.



The facts in short giving rise to this application are that applicant was serving under the Commissioner for Linguistic Minorities of India as Statistical Assistant, whereas respondent no.4 was serving as Research Assistant in the same department. The post of Research Officer was likely to fall^{en} vacant on 19.3.1994 on expiry of the extended period of deputation of one Shri Sinha. However, as the DPC could not be held the period of deputation was extended for a period of three months and the person on deputation ultimately, ^{was} repatriated on 18.6.1994. DPC held its meeting on 16.4.1994 and made its recommendation. Both the applicant and respondent no.4 were considered. The Commissioner, however, vide order dated 23.3.1995 directed to hold a fresh DPC. The relevant part of the order dated 23.3.1995 is being reproduced below:-

"I am to communicate to him on behalf of Shri M.S.Pandit, Joint Secretary and Commissioner for Linguistic Minorities of India that you hold a fresh DPC meeting to advice on the selection of an incumbent for the post of Research officer in view of the fact that the eligibility of one candidate on the relevant date in the context of the DPC meeting held earlier was not beyond doubt." In view of the aforesaid the applicant was not considered for promotion and appointment as Research Officer, aggrieved by which he has approached this tribunal for the reliefs mentioned above.

The learned counsel for the applicant has submitted that applicant shall be deemed to have acquired Master's degree on 27.9.1993 when he appeared in the last paper of the M.A. final examination. He has relied on the

judgment of Hon'ble High court in case of 'Sangam Lal Vs.State of U.P., (1990) 1 UPLBEC,pg-706(DB). It has been further submitted by the counsel for the applicant that in any case the result was declared on 25.2.1994 and the applicant immediately submitted his mark-sheet in the department showing that he has acquired Master's degree. It is submitted that the first meeting of the DPC was held on 16.4.1994 on which date the applicant was fully qualified for the post of Research Officer as provided in rules. The view expressed by Commissioner that eligibility was doubtful was not correct and on account of this illegal view applicant has suffered immensely.

Shri Amit Sthalekar learned counsel appearing for the respondents on the other hand submitted that the term of the person serving on deputation was to expire on 19.3.1994. However, as the DPC could not be held his term was extended for a period of three months and after the DPC meeting was held he was repatriated and the vacancy occurred on 18.6.1994. The submission of Shri Sthalekar is that the appointment was to be made in financial year ending on 31.3.1994. The cut off date for possessing the academic qualification would be 1.10.1993. Reliance has been placed on the circular of the DOPT dated 19.7.1989 filed as (Annexure CA-6). It is also submitted by the counsel for the respondents that the validity of the aforesaid circular has been upheld by the Principal Bench in case of 'M.C.Saxena and Others Vs.Union of India and Others(1993) 23 ATC pg 268. The submission is that as the applicant did not possess the academic qualification i.e. M.A. degree the order of the Commissioner was justified.

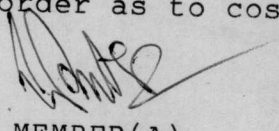
We have carefully considered the submissions of the counsel for the parties. In our opinion, for ~~dissolving~~^{free} the disputes in the present case it has to be sent as to on which date the vacancy of the post of Research Officer occurred. The appointment could be made only when vacancy was there. It is admitted case that the person who was serving on deputation was repatriated and he actually vacated the post on 18.6.1994. thus, the vacancy could occur on the aforesaid date and the appointment could also be made thereafter, ~~meaning~~^{it} thereby not in the financial year ending on 31.3.1994. ~~It~~^{It} could be at the most for purposes of the circular of the DOPT of 19.7.1989, ~~could be~~^{for a} year ending on 31.3.1995 and if that reasoning is applied, the cut off date for ~~determining~~^{for ascertaining} the qualification shall be 1.10.1991¹⁹⁹⁴. In the present case, it should not have been forgotten that the post of Research Officer could be filled by Direct recruitment , by promotion as well as on deputation under the rules. In the circumstances, the view taken by the Commissioner that eligibility of one of the candidates(applicant) was doubtful on the date of meeting of the DPC was not correct. The applicant had already acquired masters degree in February 1994 when the result was declared and when DPC held its meeting on 16.4.1994 he was fully qualified. In the circumstances, the applicant is entitled for relief.

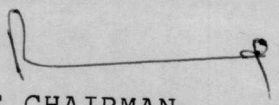
The OA is accordingly allowed. The respondents are directed to take into consideration the recommendation



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of the DPC held on 16.4.1994 and make selection for appointment by way of promotion as Research officer on the basis of the same. The steps taken in pursuance of the impugned order dated 23.3.1995 shall not in any way come in the way of the applicant. This order shall be implemented within a period of three months from the date a copy of this order is filed before the Competent Authority. No order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: 1st July, 2002

Uv/