

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 935 of 1996

Date of order : 22.11.04

Present : Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr. M.K. Mishra, Administrative Member

VIDYA BHARATI REWAT

VS

UNION OF INDIA & ORS.

For the applicant : Mr. S.K. Dutta, counsel

For the respondents: Ms. K. Banerjee, counsel

O R D E R (O R A L)

Mukesh Kumar Gupta, J.M.

The prayers sought for in this application are as follows :

- a) for a declaration to the effect that the decision of the respondents to fill up the vacancy in the post of Technical Assistant under the control of Deputy Drugs Controller (India), East Zone, Calcutta vide letter No.EZ/2-32/96/ConTA1280 dated 11.6.96 is bad in law.
- b) an order directing the respondent to consider the case of the applicant for her appointment to the post of Technical Assistant.
- c) an order directing the respondents not to resort to the method of direct recruitment in the matter of filling up of the vacancy under the control of Deputy Drugs Controller (India), East Zone, Calcutta which fallen vacant due to promotion of Dr. S.C. Banerjee.
- d) any other order or further orders as to this Hon'ble Tribunal seem fit and proper.

2. The admitted facts of the case are as follows. As per the Recruitment Rules known as Director General of Health Services (Recruitment to certain Class III posts in the Drugs Standard Control Organisation) Rules, 1960 notified on 25.10.60, Assistant Chemists (Headquarters and Ports) were having 7 sanctioned posts in total out of which one at Headquarter and 6 at Ports and the same were required to be filled 50% by Direct Recruitment and 50 % by promotion. The first post was to be filled by direct recruitment. We are concerned with the post at Headquarter. Subsequently the said post of Assistant Chemist was redesignated as Technical Assistant and one more post at the Headquarter was created meaning thereby 2 posts were available in the said cadre at Headquarter. Prior to the year 1988 the method for

promotion to the said post was All India basis and not the city wise which was made the basis in 1988. Both the said vacancies were filled by direct recruitment as none was available from the promotion category. The third post was created at Headquarter vide order dated 22.4.88. Immediately thereafer the rules were amended vide notification dated 3.1.90.

3. As per the said rules, the post of Technical Assistant was a non-selection post to be filled 50% by promotion failing which by direct recruitment and 50% by direct recruitment. Upper Division Clerks & Computers with 5 years regular service in the respective grade working in the offices of the Deputy Drugs Controller (India) East Zone, Calcutta, West Zone, Bombay and North Zone, Ghaziabad and Asstt. Drugs Controllers (India) at Bombay, Calcutta, Madras and Technical Officers at Cochin, on city-wise basis were made feeder category. The applicant was initially appointed as LDC on 2.11.81 and promoted as UDC on 3.1.89. Therefore on the face of it, 5 years service as required under the rules was satisfied by the applicant only in the year 1994. It is the case of the applicant that the third post was initially stated to be filled by direct recruitment basis, which was later on changed by promotion quota and Sri Pradip Chatterjee was promoted to the said post. The fourth vacancy, which arose on promotion of Dr.S.C.Banerjee in October, 1994 ought to have been filled by promotion of the applicant, being the seniormost candidate in the list, contended 1d.counsel for the applicant. According to the applicant this was not done and fourth vacancy was sought to be filled by direct recruitment, which is violative of rules as well as roster, contended 1d.counsel for the applicant.

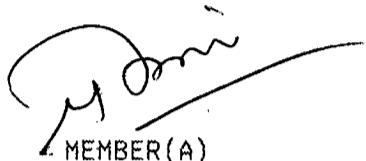
4. Ms.K.Banerjee, 1d.counsel for the respondents on the other hand vehemently contested the applicant's claims and stated that prior to the year 1988, 2 vacancies in the said cadre were filled by direct recruitment basis and the third vacancy, which was filled in 1994 by promoting Pradip Chatterjee for which DPC was held on 6.12.84. The said DPC also considered the applicant, who was Sl.No.2 in the feeder

category. Pradip Chatterjee being the seniormost was promoted. The fourth vacancy which arose on promotion of Dr.S.C.Banerjee in the year 1994 was required to be filled based on city wise roster by direct recruitment, contended the 1d.counsel for the respondents. This being the second vacancy, which arose in 1994, and as per roster ought to have been filled by direct recruitment as the first vacancy was already filled on promotion basis as the method of recruitment was 50% by direct recruitment and 50% promotion. As soon as the first vacancy which became third post was filled by promoting Pradip Chatterjee vide order dated 8.12.94, the next vacancy was required to be filled based on direct recruitment. It is vehemently contended that it was the first vacancy, which arose after the rules were amended from All India basis to city wise list and therefore the next i.e. fourth vacancy, was required to be filled only by direct recruitment.

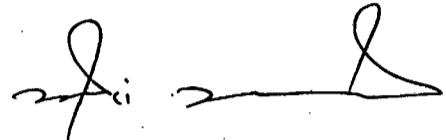
5. We heard the 1d.counsel for the parties and perused the pleadings carefully. It is an admitted fact that Pradip Chatterjee was senior to the applicant in the feeder grade of UDC/Computers. It is further undisputed fact that applicant was considered for promotion to the said post by OPC held on 6.12.94 and she being not the seniormost at that point of time was not promoted. The first vacancy which arose after the rules were amended and the city wise seniority list was made the basis, was filled by promotion of Shri Pradip Chatterjee. Once the Recruitment Rules provided the method of recruitment as 50% by direct recruitment and 50% by promotion its mandate had to be adhered to. The contention of the 1d.counsel for the applicant ^{that} the post which was to be filled by 50% direct recruitment and 50% by promotion, was not adhered to, in our considered view, cannot be accepted for the simple reason that the Recruitment Rules, 1990 in specific statuted that 50% promotion failing which by direct recruitment and 50% direct recruitment. It is not the case in pleading in specific, whether these 2 vacancies filled prior to year 1990, precisely on 3.1.90, were filled in exercise of relaxation of rules or otherwise. Accordingly in our considered view,

no injustice has been done to the applicant. It was also pointed out by the ld.counsel for the respondents that new Recruitment Rules dated 25.1.03 for the post in question has been promulgated.

6. In view of the above, we find no merit in this application, and, accordingly the same is dismissed. No order as to costs.



MEMBER(A)



MEMBER(J)

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