

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA NO. 953 OF 1996

Present : Hon'ble Mr. Justice S.N.Mallick, Vice-Chairman
Hon'ble Mr. S. Dasgupta, Member (A)

AJIT KUMAR DAS

VS

1. Union of India through the Secretary, Ministry of Labour, Deptt. of Employment & Training, 2 & 4, Rafi Marg, Shrama Shakati Bhavan, New Delhi- 110 001
2. Director General of Employment & Training (DGE & T) 2 & 4, Rafi Marg, Shrama Shakati Bhavan, New Delhi- 110 001.
3. Director, Central Staff Training & Research Institute (CSTAR), EN Block, Sector-V Salt Lake, Calcutta-91.

..... Respondents

For the applicant :Mr. M.M.Roychowdhury, Counsel

For the respondents : Mr. S.K.Dutta, Counsel

Heard on : 12.8.98 , 17.2.98 & 18.2.98

Order on : 20.2.98

O R D E R

S.Dasgupta, A.M.:

This application has been filed under section 19 of the Administrative Tribunals Act, 1985, seeking a direction on the respondents to treat the applicant having a right to hold the promotional post of Printing Machine Operator by virtue of his continuous service for about 8 years.

2. The applicant's case is that he was working as a Book Binder in the office of respondent No. 3 i.e. the Director, Central Staff Training & Research Institute. He was promoted to the post of Printing Machine Operator in the pay scale of Rs. 950-1400/- initially on an ad hoc basis. He claims that the post of Printing Machine Operator was in his channel of

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promotion and that this promotion was subsequently made substantive by an order dated 17.7.91 and thus he had been working on this post right from 31.1.89 without any break. It is alleged that sometime in 1993, there was a proposal to revert him. But an application filed by him against the proposed reversion before this Tribunal was numbered as OA 1355 of 1993 and this was decided in his favour as a result of which his reversion could not take place. It is further stated that he submitted a representation on 7.9.94 for relaxing the technical qualification required under rule 7 of the Recruitment Rules for promotion to the post of Printing Machine Operator. Having not received any reply, he submitted a reminder. Even then no action was taken on his representation. Hence this application seeking the relief aforementioned.

3. The respondents have contested the case by appearing and filing a reply in which it has been stated that there is no channel of promotion from the post of Book Binder to the post of Printing Machine Operator. The applicant was placed in the post of Printing Machine Operator only on ad hoc basis pending relaxation of the recruitment rules. The Department, however, did not agree to relaxation of the requisite provision of the recruitment rules and therefore, the applicant could not be promoted to the post of Printing Machine Operator on a regular basis. The applicant was accordingly reverted to his original post of Book Binder. It has been specifically denied that by the order dated 17.7.91, the applicant was made substantive on the post of Printing Machine Operator and in fact by that order the ad hoc promotion of the applicant was extended with effect from 14.10.90 till the filling up of the post on a regular basis. It has been reiterated that since the applicant does not possess the requisite educational/technical qualificat

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required for the post of Printing Machine Operator, he cannot be given a regular promotion on this post and he would have no right to hold the post indefinitely on an ad hoc basis.

4. The applicant has not filed any rejoinder. However, at the time of hearing, the learned counsel for the applicant advanced oral arguments. We also heard the learned counsel for the respondents and perused the pleadings on record.

5. The learned counsel for the respondents have shown us a copy of the relevant recruitment rules in respect of the post of Printing Machine Operator. These rules clearly indicate that to be appointed on this post, the minimum educational qualification is Middle Class pass and also a certificate in printing machine operation from the Industrial Training Institute. It is seen from the copy of the letter dated 22.2.90 (Annexure-R1 to the reply) that the applicant did not possess the requisite qualification. That the applicant did not possess such qualification is also apparent from a perusal of the applicant's representation dated 7.9.94, a copy of which has been placed as Annexure-A/1 to the application. In this representation, the applicant has sought relaxation of the qualification enumerated in the recruitment rules.

6. It is settled law that appointment to a post de-hors the recruitment rules does not confer any right on the appointee to hold the post indefinitely. Reference in this connection may be made to the decision of the Full Bench of this Tribunal in the case ^{of} _h Jethanand & Ors -vs- UOI & Ors, (1990) 13 ATC 212. This principle of the law has been enunciated by the Hon'ble Supreme Court in a catena of decisions. The learned counsel for the respondents referred to two decisions in this regard. These are -

i) Dr. Kishore -vs- State of Maharashtra

..... 1997(1) ATJ 256

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ii) Soudagar Singh -vs- State of Punjab & Ors

..... 1997(1) ATJ 400

7. In Dr. Kishore, the petitioner was appointed on a temporary basis de hors the rules as a Medical Officer for a period of 3 months which was extended from time to time. The Hon'ble Supreme Court held that such ad hoc appointee has to give place to a candidate who is duly selected.

8. In Sodagar Singh, the applicant was appointed on ad hoc basis to the post of Legal Assistant in the direct recruitment quota. However, the conditions of recruitment were not fulfilled in this case. The Hon'ble Supreme Court confirmed the decision given by the High Court that the applicant having been appointed on an ad hoc basis, could not continue any longer unless a regular recruitment was made.

9. There is no doubt in the case before us that the applicant does not possess the requisite qualification prescribed in the recruitment rules for the post of Printing Machine Operator. His appointment to the said post of Printing Machine Operator was de hors the rules. Such an appointment cannot confer any right on the applicant to continue on that post. We have seen that the applicant's contention that he was given a substantive appointment by the order dated 17.7.91 is wholly misconceived. As the respondents have correctly pointed out, this order was only for continuance of his ad hoc promotion.

10. The learned counsel for the applicant relied on 2 decisions of the Hon'ble Supreme Court in support of his contention that since the applicant has continued on the promotional post even on ad hoc basis for several years, he cannot be reverted to his lower post. These are :

i) D.R.Nim -vs- UOI AIR 1967 SC 1301

ii) G.S.Lamba -vs- UOI & Ors ... AIR 1985 SC 1019

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11. We have carefully perused the aforesaid decisions. Both the decisions ~~are~~, however, turn on entirely different points. In the case of D.R.Nim, the controversy was regarding promotion of the applicant on officiating basis to the senior scale of the IPS. In view of the fact that the stop gap promotion had lasted for several years, and it had been shown that the appellant was appointed temporarily in the IPS and subsequently he had never been reverted, the Hon'ble Supreme Court directed that his seniority be counted from the date of his officiating promotion. In this case, it was not the case of the respondents that the appellant's promotion was de hors the rule or that he did not have the necessary qualifications for promotion to the IPS cadre.

12. Similarly, in the case of G.S.Lamba, the recruitment of the appellant was made in excess of the quota for promotion as no direct recruitment had taken place for several years. In the circumstances, the Hon'ble Supreme Court held that it would be unjust and unfair to give effect to the rota-quota rule while fixing the seniority of the promotees. Here again, it was not the case where the promotion had been made of persons who did not have the necessary qualifications for promotion.

13. The learned counsel for the applicant argued that the applicant had made a representation to the Secretary, Govt. of India through the D.G. E & T., Ministry of Labour on 7.9.94 (Annexure-A1 to the petition) seeking relaxation of the recruitment rules, But the same has not been acted upon. He pointed out that the order dated 22.2.90 annexed as annexure-R1 to the reply, which purports to be a rejection of his request for relaxation of the recruitment rules, was issued much earlier than the date of the order in OA 1355 of 93. He stated that the aforesaid OA was filed by the applicant challenging his proposed reversion to the post of

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Book Binder and the same was allowed in his favour. The ld. counsel for the applicant, therefore, submitted that the representation dt. 7.9.94 cannot be said to have been disposed of by the earlier order dt. 22.2.90 and this representation ought to be considered by the appropriate authority to whom it is addressed and appropriate decision ought to be taken on the same.

14. We have seen that the OA referred to above was allowed on entirely different consideration having no relation to the applicant's lack of possessing the requisite qualifications. The fact that the applicant did not possess such qualification was noted by the Tribunal. But his proposed reversion was set aside on the ground that another person who also did not have the requisite qualification was sought to be adjusted against the post of Printing Machine Operator by reverting the applicant. This does not, therefore, have any relation to the applicant's prayer for relaxation of the recruitment qualification. The learned counsel for the respondents also pointed out that Rule 7 of the recruitment rules clearly provides that any of the provisions of the recruitment rules can be relaxed only with respect to any class or category of persons or posts and therefore such relaxation cannot be granted in any individual case.

15. We have given anxious consideration to the aforesaid submissions of the applicant. We are, however, of the view that relaxation of the rules is a matter which is entirely within the domain of discretion of the authorities concerned and the applicant certainly does not have a right to demand that the recruitment rules be relaxed in his favour. The law does not recognise such a right, and, therefore, there is nothing for us to adjudicate in so far as the question of relaxation of the recruitment rules is concerned.

16. It is clear from the order dt. 22.2.90 (Annexure-R1)

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that on an earlier occasion the applicant's prayer for relaxation of the recruitment rules had been rejected. No doubt, he has submitted a subsequent representation, a copy of which is at Annexure-A1 to the petition. There is no denial that this representation has not been acted upon by the respondents so far. It would, therefore, be only fair that the aforesaid representation be considered in the light of the existing provisions of the rules and appropriate action taken on the same.

17. In view of the foregoing, we find no merit in the application and dismiss the same without ordering any costs. We, however, observe that since the representation of the applicant is pending, it would be appropriate for the respondents to dispose of the same preferably by a speaking order to be communicated to the applicant. We, however, refrain from giving any direction in this regard ^{for reasons} _{aforementioned}


(S. DASGUPTA),

MEMBER (A)


(S.N. MALLICK)

VICE CHAIRMAN