

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

I/8

O.A. No. 80/2003
~~xxxxx~~ No.

199

DATE OF DECISION 27.09.2003.

U.B. CHOUDHARY Petitioner

MR. S.K. MALIK Advocate for the Petitioner (s)

Versus

UNION OF INDIA & ORS. Respondent

MR. S.K. VYAS FOR RESPDTS No. 1 & Advocate for the Respondent (s)
MR. N.M. LODHA, FOR RESPONDENT NO. 3



CORAM :

The Hon'ble Mr. G.C. Srivastava, Administrative Member

The Hon'ble Mr. J.K. Kaushik, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *no*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

J. Kaushik
(J.K. Kaushik)
Judicial Member

G.C. Srivastava
(G.C. Srivastava)
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

Date of order: 22 Sep. 2003

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O.A. No. 80/2003

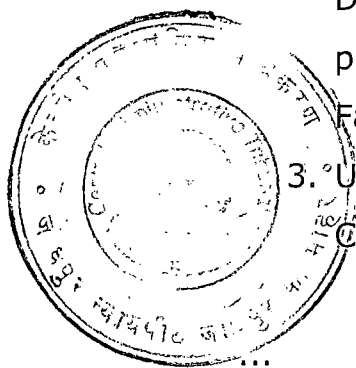
U.B. Choudhary S/o Late Shri Hari Ram Choudhary, aged about 49 years, R/o Qtr. Type D, Field Station for Investigation on Locust (FSIL) Complex, Naganiaji Road, Bikaner (Raj). Presently working on the post of Assistant Director (Entomology) at FSIL, Bikaner, (Rajasthan).

..... Applicant

Versus

1. Union of India through Secretary, Ministry of Agriculture, Department of Agriculture and Cooperation, Krishi Bhawan, New Delhi.
2. Under Secretary (Adm.), Ministry of Agriculture, Department of Agriculture and Cooperation, Directorate of plant Protection, Quarantine and Storage, N.H. - IV, Faridabad (Haryana).
3. Union Public Service Commission (UPSC), Through its Chairman, Dholpur House, Shahjah Road, New Delhi.

..... Respondents.



CORAM: Hon'ble Mr. G.C. Srivastava, Administrative Member
Hon'ble Mr. J. K. Kaushik, Judicial Member

Mr. S.K. Malik, counsel for the applicant.

Mr. S.K. Vyas, counsel for respondents No. 1 and 2.

Mr. N. M. Lodha, counsel for the respondent No. 3.

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ORDER

BY J. K. KAUSHIK, JUDICIAL MEMBER:

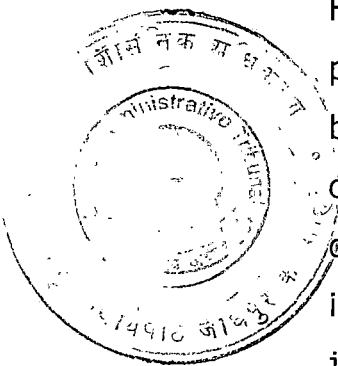
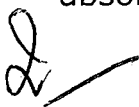
Shri U.B. Choudhary, has inter alia assailed the order dated 9.4.2002 whereby, his request for permanent absorption in the grade of Assistant Director, Entomology in the Directorate has been turned down and also has prayed for a direction to the

respondents to consider his case for the said post as has been done in the case of Dr. Jasvir Singh.

2. The material facts leading to filing of this case are that the applicant while working on the post of Plant Protection Officer in the scale of Rs. 10,000-15,200 in the State Farms Corporation of India at State Farm Bahraich (UP), had an occasion to apply for transfer on deputation on the post of Assistant Director (Ent.) in the Department of respondents. He was offered the said post on deputation where he joined on 15.4.1997, the initial period was for three years. The said period was time and again extended and lastly, it was extended up to 14.4.2003 without any deputation allowance.

3. In the year 1999, the applicant submitted a representation for permanent absorption on the post of Assistant Director. A case was taken up with the competent authority with full details. His parent department also gave their no objection for his proposed absorption. Finally, an order dated 9.4.2000 came to be issued and his request for permanent absorption in the grade of Assistant Director has been turned down. He submitted a detailed appeal on 22.9.2002 to the respondents clearly indicating that one of his colleague Dr. Jasvir Singh, who has joined on the said post much later than that of the applicant on deputation was being absorbed.

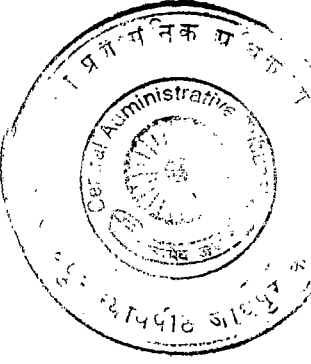
4. The O.A. has been filed on number of grounds. The main ground of attack is that the applicant has been denied the permanent absorption without any reason and his junior has been allowed such absorption and there has been infraction of Articles 14 and 16 of the Constitution of India. The case of the applicant has been turned down by passing a non-speaking order. As per the Department of Personnel and Training Guidelines, the case of person on deputation from an early date cannot be ignored and so long such senior is willing for absorption the case of junior cannot be considered. The case of



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the applicant was duly recommended and was in accordance with the Recruitment Rules and DOPTs Guidelines, but nothing of these have been considered by the respondents.

5. The respondents have contested the case and separate reply on behalf of respondent No. 3 and on behalf of respondent No. 1 and 2, have been filed. In the reply, it has been averred that the selection committee recommended the names of three candidates including that of the applicant. But, the OM dated 3.10.1989 does not allow permanent absorption of officers being pertinent to autonomous organisation, public sector undertaking etc. As per the previous O.M. only the officers working in other Central Government departments or State Government departments, were considered for appointment.



6. The ~~an~~ other ground of defence as set out in the reply is that in the Bio-data submitted by Shri Jasvir Singh, he has stated that he is an officer of Central Government and this fact was certified by his office and the Ministry of Agriculture. However, as soon as the fact that Dr. Jasvir Singh also belongs to autonomous organisation and is not eligible for permanent absorption to the post came to the notice of the respondents, the action has been initiated to investigate the discrepancy and after detailed investigation proper action shall be taken in the matter. The applicant has not filed any rejoinder to the reply.

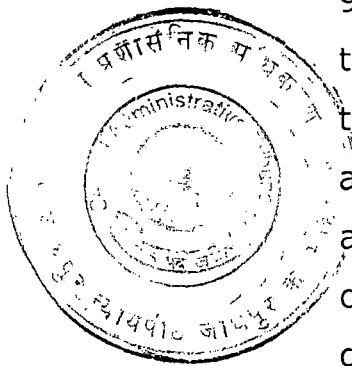
7. With the consent of the learned counsel for the parties, the case was heard for final disposal at the admission stage. Elaborate arguments were advanced by the learned counsel for the parties. We have given our anxious consideration to the arguments, pleadings and the relevant rules/instructions in this case.

8. The learned counsel for the applicant has reiterated the facts and grounds enunciated in the Original Application and has contended that the applicant fulfilled all the eligibility conditions

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as per recruitments rules for the post of Assistant Director (Ent) (hereinafter referred to as ' RRs' for brevity), issued in the years 1992. The OM dated 3.10.89 is only Guidelines and that too issued prior to the promulgation of statutory RR for the post in question and the same has no application after the statutory RRs have come in force. The case of applicant was also duly recommended for absorption accordingly. He has next contended that there is specific provision in the RRs for appointment to the said post by transfer which is by way of absorption and persons form autonomous bodies are also eligible for such appointment as well as for appointment by deputation. The applicant was allowed deputation as per the rules only. A similarly situated person Dr. Jasvir Singh has also been absorbed and the so-called investigation is only an eye wash to deny the said benefit and the applicant has not been give fair treatment; rather subjected to a hostile discrimination.



9. On the contrary, Mr. N. M. Lodha , the learned counsel for the respondents, in his usual persuasive manner, has contended that as per the OM 3.10.89, the employees belonging to Central and State Governments could be appointed by transfer i.e. absorption and not the one belonging to autonomous or other organisations. He has also contended that there is lot of difference between the appointment by deputation and appointment by transfer. He relied upon Para I of the OM dated 3.10.89 and drawn our attention to the said provision. It was contended by him that this OM shall hold the field to the extent its provisions are not inconsistent to the specific provisions made in the RRs, despite the fact that the RRs have been framed subsequently.

10. Mr. Lodha has next contended that even the RRs prescribe the mode of appointment by way of promotion and by way of deputation, the clause relating to appointment by way of deputation do permit such appointment from amongst the employees belonging to the Central/State Government, Public

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Sector Undertakings/Semi Government/Autonomous or Statutory Organisations/ Agricultural Universities/ Recognised Research Institutes or Councils; but that does not mean that it also covers the cases of appointment by transfer. Therefore, the OM dated 3.10.89 would come for rescue and cover the field and absorption i.e. appointment by transfer could be only from the employees of the Central and/or State Government. As regards the case of Dr. Jasvir Singh, the matter is still under investigation and sooner it is finalised, action as per law shall be taken. He has also stressed on the point that the applicant can not be given any benefits on the basis of discrimination, once the other similarly situated person has been wrongly extended the same and the court would not perpetuate the illegality. Therefore, the applicant has not even a prime facie case calling interference from this Tribunal and the OA deserves to be summarily dismissed with costs.

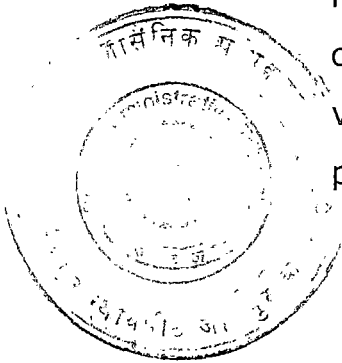
11. We have considered the rival contentions raised in the instant case. To appreciate the pleas and counter pleas canvassed in this case, it would be useful to re-produce the various provisions relied upon by the learned counsel for the parties. These provisions read as under: -

Extract from OM Dated 3.10.92

" Subject : Guidelines for prescribing transfer on deputation/transfer as a method of recruitment and the procedure to be followed in cases where appointment is to be made by Transfer on Deputation (including short term contract) on Transfer basis.

1. Introduction :

1.1 The Recruitment Rules for a number of posts provide for appointment by transfer on deputation (including short term contract) and transfer. "Transfer on Deputation" and "Transfer" are not synonymous terms. There is substantial difference between them. Under the provision "Transfer", the officer is regularly absorbed in the post/grade. Under "Transfer on Deputation (including short term contract)", an officer from outside is appointed for a limited period by the end of which he will have to revert to his parent cadre. Under Transfer on Deputation or Transfer, suitable officers having the requisite



qualifications and experience working in other Central Government Departments or State Governments are considered for appointment. 'Short term contract' also is in the nature of deputation and this method is followed when services of suitable officers belonging to non Government organisations e.g. Universities, recognised research institutions, public sector undertakings etc. are required for appointment to teaching, research, scientific or technical posts."

Extracts for RRs

"In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation transfer to be made :

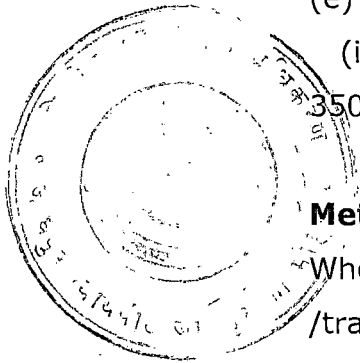
Promotion : xxxxx

Transfer on deputation (including short term contract) :

Officers under the Central/State Governments Public Sector Undertakings/Semi Government/Autonomous or Statutory Organisations/ Agricultural Universities/ Recognised Research Institutes or Councils ;

(e) (i) holding analogous posts on regular basis or

(ii) with 3 years regular service in posts in the scale of Rs.2000-3500 or equivalent,



Method of recruitment

Whether by direct recruitment or by promotion or by deputation /transfer and percentage of the vacancies to be filled by various methods :

(i) 50% by promotion, failing which by transfer on deputation (including short term contract).

(ii) 50% by transfer on deputation (including short term contract)/transfer failing which by direct recruitment."

12. Starting the factual score briefly at this juncture, there is no quarrel on the main facts of the case. It is admitted that the applicant had been on deputation to the Department of Agriculture and Cooperation, Directorate of Plant Protection, till 14.4.2003. His parent and well as borrowing department had no objection regarding his absorption on the post of Assistant Director (Entomology), and his case was duly considered and even he was found fit and selected for the same. The only

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hurdle was that he belongs to an autonomous body and cannot be appointed by transfer. Dr. Jasvir Singh also belongs to an autonomous body and his case is under investigation. The RRs issued in the year 1992 are in force.

13. Keeping in view the aforesaid factual position, the primary question which requires adjudication in this case is as to whether as per the rules in force the post of Asst Director (Ent) could be filled by transfer i.e. by absorption, of an employee employed in an autonomous body or Public Sector Undertakings/Semi Government/Autonomous or Statutory Organisations/Agricultural Universities/Recognised Research Institutes or Council. From the plain reading the RRs, it is clear that there is specific provision for filling up the said post by appointment by transfer. It also true that specific detail as indicated in respect of appointment by promotion or by deputation have been indicated. In any case, the employees belonging the Central Govt, State Government/Public Sector Undertakings/Semi Government/Autonomous or Statutory Organisations/Agricultural Universities/Recognised Research Institutes or Council are eligible for appointment by deputation. As per the OM dated 3.10.89, the appointment by deputation as well as by transfer could be made only from the employees belonging to Central or state Government. The one of major change in the RRs is that in addition to the employees of Central and state Government, employees belonging to Public Sector Undertakings/Semi Government/Autonomous or Statutory Organisations/Agricultural Universities/Recognised Research Institutes or Council can be employed on deputation.

14. The basic ^{argument} of the learned counsel for the respondents is that appointment by transfer/absorption could be done from the candidates belong^{may} to Central or state government only is contrary to the very guide lines referred to by him in as much as the same does not make any distinction as regards the employer in respect of the eligibility for appointment by

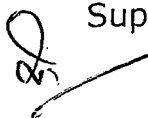
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deputation or by transfer. On the other hand we find there is specific provision for appointment by transfer with a / (i.e. oblique) with appointment by deputation. Merely because no further details are given in respect of appointment by transfer could not lead to infer that that only the employees belonging to central or state Government could be appointed by transfer since such details are also not indicates. If the arguments of the learned counsel for the respondents are accepted, it would lead to incongruity and would baffle all logic in as much there was no distinction in respect of employees earlier in respect of eligibility conditions of appointment by deputation or by transfer and if the central or state Government employees could still be eligible for absorption despite there being no specific provision, we find no reason for ignoring the candidature of the employees from the other organisation who are eligible for appointment by deputation.



15. Now examining the controversy from yet another angle, the argument of the learned counsel for the respondents can not be accepted in part and if employees who belongs to autonomous bodies or other organisation can not be appointed by transfer for want of specific provision, the employees from Central/State Government can also not be appointed/absorbed by transfer. And if that be so considered, the word appointment by transfer in the RRs would become redundant. Otherwise also such classification can not be said to be based on any intelligible differentia or having any nexus with the object sought to be achieved. It is well settled principle of law that the Tribunal cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute or any statutory provision is the determinative factor of legislative intent of policy makers. The law on the interpretation has been elucidated by the Supreme Court in case of 2003(5)SCC 208

Supreme and para 9 which is relevant is extracted as under :



"9. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute or any statutory provision is to ascertain the intention of the Legislature or the Authority enacting it (See Institute of Chartered Accountants of India Vs. M/s Price Waterhouse and Anr. AIR 1998 SC 74). The intention of the maker is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford vs. Spooner (1846 (6) Moore PC 1). Courts cannot aid the Legislatures, defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. [Also See The State of Gujarat & Ors. Vs. Dilipbhai Nathjibhai Patel and Anr. (JT 1998 (2) SC 253)]. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so (See Stock vs. Frank Jones (Tiptan) Ltd. (1978 1 All ER 948 (HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. Vs. Evans (1910) AC 445 (HL), quoted in AIR 1962 SC 847)."


16. We do not ^{See} any reason to neglect the mode of appointment by transfer which has been provided in the RRs. The applicant possesses the requisite qualification and has been satisfactorily discharging his duties and he has also been selected for appointment by transfer. In our opinion he ought to have been absorbed on the post in question and we are not impressed with submissions made on behalf of the respondents.

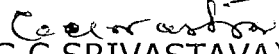
17. The residual and crucial question that remains to be adjudicated is regarding appointment of a similarly situated person and giving differential treatment to the applicant, it has been submitted on behalf of the respondents that Dr. Jasvir Singh was wrongly allowed the absorption on the said post and

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the matter is said to be under investigation. The respondents themselves seem to be under confusion in as much the issue is related to interpretation of Rules and it is difficult to understand as to what investigation is being done for the last about one year. However, in view of our aforesaid findings, nothing remains to be adjudicated on this issue now.

18. In view of what has been said and discussed above, we find force and substance in this OA and the same stands allowed. The impugned order dated 9.4.2002 is hereby quashed and the respondents are directed to appoint the applicant by transfer on the post of Assistant Director (Ent) within a period of three months from the date of receipt of copy of this order. This order shall be complied within ^{this} ~~a~~ period. No costs.


(J K KAUSHIK)
Judicial Member


(G C SRIVASTAVA)
Administrative Member

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Received Copy
Sunderland
for N. M. Leptha
(d.c.o.p.)

R/c
on 24/9/2003
D. YORAM
del.

Part II and III destroyed
in my presence on 24-7-09
under the supervision of
section officer as per
order dated 13/7/09

Section Officer (Records)