

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

OA No. 684 of 1997 along with
MA No. 270 of 1997.

Present : HON'BLE DR. B.C. SARMA, ADMINISTRATIVE MEMBER.
HON'BLE MR. D. PURKAYASTHA, JUDICIAL MEMBER.

Sri Sona Sett,
S/o- Sri Bhupal Lal Sett,
working as Administrative Officer,
Office of the Geological Survey of
India,
Central Headquarter,
4, Chowringhee Lane,
Calcutta- 16.

... .. Applicant in the
OA.

Sri
P.R. Goswami,
Administrative Officer,
G.S.I, C.H.Q,
4, Chowringhee Road,
Calcutta- 16.

... .. Applicant in the
M.A.

Vrs.

1. Union of India,
through the Secretary,
Ministry of Mines,
Govt. of India,
New Delhi-1.
2. Director General,
G.S.I,
27, J.L. Nehru Road,
Calcutta- 16.
3. Dy. Director General (OP-III),
Chairman, Selection Committee,
GSI,
27, J.L. Nehru Road,
Calcutta- 16.

... .. Respondents
(official)

4. Sri P.R. Goswami,
Administrative Officer,
G.S.I,
C.H.Q,
Calcutta- 16.

... .. Respondent
(private)

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For applicant - Mr. P.K. Munsai, Counsel.

For respondents
(official) - Ms. Kanika Banerjee, Counsel.

For respondent
(private) - Mr. P. Chatterjee, Counsel leading
Mr. K.C. Saha, Counsel.

Heard on : 7.8.97.

Ordered on : 23/9/1997

O R D E R

B.C.Sarma, A.M.

1. In this application the applicant, who is functioning as an Administrative Officer under the Geological Survey of India Central Head Quarters, Calcutta, has challenged the alleged irregular order dated 11.6.1997 selecting the private-respondent Sri P.R. Goswami, to the post of Administrative Officer of Geological Survey of India in their Bhutan unit, which carries a special compensatory allowance of Rs. 25,000/- per month (approx).

2. The facts involved in this case are as follows :-

The applicant joined service under the Geological Survey of India (hereinafter referred to as 'GSI') as an Administrative Officer in the scale of pay of Rs. 2,000-3500/- some time in 1990 and he successfully completed the probationary period of 2 years on 10.7.92 and he was also confirmed in the said post w.e.f. 11.7.92 vide notification dated 22.7.96. The applicant joined on transfer from Nagpur and, since then, he has been functioning in Calcutta 7.3.96. The private-respondent similarly joined service in GSI on 12.1.90 and posted at Jaipur as Administrative Officer. and, thereafter, he went on deputation from Jaipur GSI Office to Jodhpur Bench of the Central Administrative Tribunal and joined there as Section Officer in the same grade and scale. He worked there for

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two years and repatriated to the GSI and joined the Calcutta Office on 27.10.96.

3. The post of Administrative Officer in the Bhutan Unit of G.S.I is a tenure post ^{for} 2 years. In addition to usual pay and allowance, ^{the} incumbent will ~~get~~ ^{be} ~~given~~ approximately Rs. 25,000/- per month as Bhutan Compensatory Allowance. A selection committee comprising 4 members, as mentioned at page 5 of the application, had considered the case of the applicant along with others including the private-respondent and selected the private-respondent only ignoring the claim of the applicant. The applicant's specific contention is that the said selection is illegal since he is more qualified than the private-respondent and successfully completed the period of probation long before the private-respondent. In fact, the private-respondent did not complete the period of probation at the time of making the selection. The applicant also contends that the C.R. of the private-respondent was ^{prepared} ~~written~~ in an irregular manner. The applicant had submitted a representation on 11.6.97 addressed to the Director General, through proper channel praying for cancellation of illegal selection. But the private-respondent was allowed to proceed. Being aggrieved thereby, the instant application has been filed with the prayer that the selection order dated 11.6.97 appointing the private-respondent no. 4 as an Administrative Officer in the G.S.I unit of Bhutan be quashed and set aside and a fresh selection be held.

Govt.
4. The case has been opposed by the/respondents. They contend that there was a D.P.C which met on 28.5.97 and the committee had examined the Bio-data and C.R. Dossiers pertaining to 8 Officers, who had earlier responded to an intimation from the Central Headquarter seeking option for the posting. The C.Rs of all the 8 officers were ^{/case} consistently graded as 'very good'. In the ^{case} of the private-respondent, appears at Sl. No. 1, the committee noted that although he was on

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deputation to the C.A.T, Jodhpur before transfer to Central Headquarters of GSI, the Tribunal had requested for extension of his deputation and he had also given consent but this was not agreed to by the deptt. As such, his transfer from Jodhpur to Calcutta within one year may not be considered as ~~xx~~ detrimental to his consideration for the present posting in Bhutan on transfer. Accordingly, taking into account the seniority and merit, the Committee recommended the private-respondent, the applicant and one T. Lokachari, who was also an Administrative Officer. The respondents contend that there is nothing wrong in the said selection which was done by a high-level committee. They have, therefore, prayed for dismissal of the application on the ground that it is devoid of merit. The respondents have also annexed the proceeding of the said B.P.C. meeting held on 28.5.97, which is appended as Annexure 'R1' to their reply.

6. A reply has been filed by the private-respondent as well. The applicant has filed a Rejoinder to the reply filed by the Govt. respondents. All these replies have been perused by us.

7. An Interim Order was passed by the Tribunal on 18.6.97 whereby, the impugned order dated 11.6.97 was stayed in case the private-respondent was not at all released.

8. During hearing, Mr. Munsif submitted that despite the Interim Order, which was communicated by him to the respondents, the private-respondent was released in a hurry on the alleged ground that the Interim Order was not communicated to them before his release. However, although the officer arrived in Bhutan, he was called back. Mr. Munsif also reiterated that the applicant is more qualified than the private-respondent and the C.R. of the private-respondent was not reviewed by the appropriate authority for one year. The order regarding the completion of the probationary period of the private-respondent was issued by the respondents only on



24.6.1997 after the Interim Order was passed although that Order was given retrospective effect. Therefore, at the time of selection made by the D.P.C the private-respondent was still on probation. Mr. Munsî further submitted that although the official-respondents had contended in their reply that it was a case of simple transfer, in the Office Order dated 4th July, 1991, copy of which has been annexed to the Rejoinder to the Reply filed by the official-respondents at page 15 (Annexure 'E') in respect of one Shri M.K. Chatterjee, Administrative Officer, GSI, Calcutta, it was stated as 'deputed on Foreign Service'. He, therefore, submits that this is a case of 'deputation' and not a case of ordinary 'transfer' of the pvt-respondent.

9. We have considered the submission made by the ld. Counsel for all the parties, perused records and considered the facts and circumstances of the case. The submission made by Mr. Munsî as regards higher qualification of the applicant and the alleged defect in the C.Re of the prvt-respondent are not relevant since all these matters were considered by the duly constituted high level committee. The only issues to be considered in this case are as follows :

- a) Whether the selection was made according to the guidelines, a copy of which has been annexed by the official-respondents in their reply at page 19 (Annexure 'R-II'), ~~which is~~ dated 13.5.97;
- b) Whether it was a case of deputation or a simple transfer;
- c) If it is a case of deputation, whether the impugned Order dt. 11.6.97 is justified when the pvt. respondent was a probationer at the relevant time of selection.

For facility we take up the issues on the 9(b) first.

10. As regards the issue whether it was a case of deputation or a simple transfer, the applicant has annexed a copy of the Order dated 4th July, 1991 (Annexure 'E' to the Rejoinder to the reply) issued in respect of one Shri M.K. Chatterjee, Administrative

Officer, GSI, Calcutta, wherein it has been stated that he has been deputed on Foreign service to Bhutan. However, the respondents have taken the plea that it was a case of simple transfer and not 'deputation'. We find that in the case of a simple transfer neither any D.P.C nor a Committee is required to be set up to select a person for transfer. But in this case, a D.P.C. was constituted to select a suitable candidate for the said posting at Bhutan for a period of 2 years. Moreover, the private-respondent, selected by the Committee for that post, shall be entitled to receive Bhutan Compensatory Allowance. In this connection, we have perused the Ministry of External Affairs Order No. E IV/235/5/95 dated 13 th November, 1996 setting out the terms and conditions regarding the Bhutan Compensatory Allowance. The subject given in that order itself states that- "Revision of Bhutan Compensatory Allowance for Officers of the Central and State Governments of India during service on deputation to Bhutan or on deputation with the Royal Government of Bhutan". We are, therefore, of the view that although the impugned Order has been couched in the language showing that the posting has been made on transfer, the said posting has the trappings of deputation. Moreover, no simple transfer is made for a fixed tenure.

11. As regards the issue at para 9(c) and (a) above, we find that private-respondent was probationer on the date when the impugned order was issued and, therefore, on the date when the D.P.C made recommendation, the Pvt-respdt. was a probationary Administrative Officer on 21.1.1992. Although his probationary period of 2 years ended on 21.1.1992, no order was passed as regards extending his period or declaring him that he had successfully completed the period of probation. Such an issue came up for adjudication before the Hon'ble Apex Court in the case of - State of Gujarat Vrs. Akhilesh C. Bhargav & Ors. (reported in (1987) 4 SCC 482). In that case, Their Lordships had held that guidelines contained in administrative instruction issued by the Ministry of Home Affairs, Government of

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India, on March, 16th, 1973 stating that no probationer should be kept on probation for more than double the normal period of two years were issued. In absence of provision for maximum period of probation in the concerned Rules, Rule 3(1) and (3) to be read with the administrative instruction, a probationer continuing in service for five years in that case without any written order would be deemed to have been confirmed.

12. This issue further came up before the Hon'ble Apex Court in an appeal case regarding the confirmation of ^{an officer} ~~an probationer~~ of Punjab State Co-operative Service in the post of Asstt. Registrar of Co-operative Service ^{- to which he was promoted,} reported in (1996) 9 SCC 190 (State of Punjab V. Baldev Singh Khosla). In this case, their Lordships had held that "The rule itself envisages a positive order of confirmation. So long as the order of confirmation is not made, even after expiry of probation, the probationer may continue and remain in service but by allowing him to remain in service it cannot be concluded that he must be deemed to have been confirmed."

13. In this case the period of probation of the applicant and confirmation etc. is guided by the various Circulars mentioned at page 190 under para (3) beginning at page 188 of Swamy's complete Manual on Estt. & Administration for Central Govt. Offices, 4th Edn '93, sub-para 2 & 3 runs as follows :

- " 2. On the expiry of the period of probation, steps should be taken to obtain the assessment reports on the probationer and to - (i) Confirm the probationer/issue orders regarding satisfactory termination of probation, as the case may be, if the probation has been completed to the satisfaction of the competent authority; or (ii) Extend the period of probation (in terms of para 1(viii) of the O.M. dt. the 15th April, 1959) or discharge the probationer or terminate the services of the probationer, as the case may be, in accordance with the relevant rules and orders, if the probationer has not completed the period of probation satisfactorily.
3. The date from which confirmation should be given effect to ~~is~~ is the date following the date of satisfactory completion of the prescribed period of probation or the extended period of probation, as the case may be. The decision to confirm the probationer or to extend the period of probation, as the case may be, should be communicated to the probationer normally within 6 to 8 weeks. Confirmation of the probationer after completion of the period of probation is not automatic but is to be followed by formal orders. As long as no specific orders of confirmation or satisfactory completion of probation are issued to a probationer, such probationer shall be deemed to have continued on probation."

14. In view of the specific rule enshrined in the O.M. as mentioned therein, we find that there is a specific provision for confirmation of probationer by a positive act and so long as no specific orders of confirmation or ^{about} ~~satisfactory~~ completion of probation

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are issued to a probationer, such probationer shall be deemed to have been continuing in the probation. On the basis of the law laid down by the Hon'ble Apex Court in the case of - State of Punjab Vrs. Baldev Singh Khosla, we have no hesitation to hold that the private respondent cannot be deemed to have been confirmed unless by a positive act there is a declaration that he had completed the period of probation successfully.

15. We find that by virtue of the said "transfer order" an officer on probation about whom there is uncertainty of tenure in service has been sought to be given such a transfer that he would get perquisites which are much more than those available to a confirmed person. Since the applicant was on probation on the date when the selection was made by the D.P.C. and the impugned order was passed, the respondents cannot justifiably pass the impugned order assuming that he will be on a tenure of 2 years. We also observe that the respondents are not justified in passing the order (transfer) ^{on} the private-respondent to a post in Bhutan which will have a tenure of 2 years. This is more so, when the status of the pvt-respdt. was inferior to that of the applicant, who was already confirmed in the promotional post after successful completion of the period of probation and both had similar gradings. Such a treatment meted out to the applicant is discriminatory.

Although the case

16. We note that although an Interim Order was passed on 18.6.97 by the Tribunal directing that till the next date, the impugned order dated 11.6.97, shall remain stayed in case the petitioner has not already been relieved, the pvt-respondent was released on the same date on the ground that the Interim Order was not received by the respondents. Mr. Munsri submits that the Interim Order was instantly communicated after it was passed at fore-noon on that date but even then the respondents have released the pvt-respdt. before 6 p.m. on that date. We also note that the pvt-respdt. who was released in a hurry by the respondents, was called

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back

back subsequently for reasons best known to the authorities. In this case, the respondents have suppressed vital information to the D.P.C regarding the pvt-respdt. being on probation. The respondents have issued the order of completion of the period of probation of the pvt-respdt. only after the Interim Order was passed, which has not been proper. The pvt-respdt. did not have any certainty about his tenure of service on the date on which the impugned order was passed since he was on probation whereas the impugned order was passed whereby he was posted for a period of 2 years. From the conduct of the respondents we have been given the impression that they have shown favouritism to the pvt-respdt. specially when he had returned from deputation on earlier even while on probation, about $7\frac{1}{2}$ months ago. We also note that although the case was not admitted, interim order was passed and copy was also served on the other side, it was not proper on the part of the respondents to take such an action on the point which have been raised by the applicant in the petition regarding the pvt-respdt. being on probation. For all these reasons and on the basis of the discussion made above, we are of the considered opinion that the impugned order dated 11.6.97 is not sustainable and has to be quashed. The guidelines at Annexure R-II might have been apparently followed by the D.P.C but the selection of the pvt-respdt. and the impugned order dt. 11.6.97 are not sustainable.

17. In view of the above, the impugned order dated 11.6.97 is hereby quashed and set aside. The respondents are directed to give appointment to the next person in the panel (who is the applicant in the OA) available prepared by the D.P.C to the post of Administrative Officer for Bhutan unit. Both O.A. and M.A. are thus disposed of without passing any order as to costs.

(D. Purkayastha)
Member (J)

(B.C. Sarma)
Member (A)

23/9/97