

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 94/2009

This, the 4th day of November, 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)

J.S. Manral
Aged about 42 years
S/o Late H.S. Manral
R/o A-20, Nehru Vihar,
Kalyanpur Lucknow.

Applicant

By Advocate Sri A. Moin

Versus

1. Union of India through
Ministry of Finance,
Department of Financial Services,
New Delhi.
2. Joint Secretary,
Ministry of Finance,
Department of Financial Services,
New Delhi.
3. Narayanan Sundaram
R/o J-204, Opposite Sector 'J'
Water Tank Road, Ashiana Colony,
Lucknow.

Respondents

By Advocate Sri S. K. Tiwari
Sri Tushar Verma

Order

By Hon'ble Dr. A. K. Mishra, Member (A)

Aggrieved by the order dated 14.11.2008 of Respondent No. 2 appointing Respondent No. 3 as a Recovery Officer on deputation basis for three years, this application has been filed with a prayer to quash the impugned order dated 14.11.2008 and to direct the respondents to promote the applicant as Recovery Officer with all consequential benefits; alternatively to direct the respondents No. 1 and 2 to fill up the post of Recovery Officer at Debt Recovery Tribunal (DRT), Lucknow by strictly following the provisions of recruitment rules.

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2. The applicant was appointed as Assistant in the Central Secretariat Services. He joined on deputation at Central Administrative Tribunal, Lucknow as Section Officer on 11.10.2000. He went on deputation to DRT and was absorbed as a Section Officer on 4.6.2004. He was selected as Recovery Officer at DRT Patna on deputation basis and is continuing as such since 15.10.2007. A notification was published on 23.5.2008 by DRT, Lucknow inviting applications for appointment to the post of Recovery Officer at Lucknow. The applicant along with others applied for the post. However, opposite party No. 3 was selected and impugned appointment order was issued in his favour. The applicant has challenged this order in the present application.

3. The main ground taken in the application is that the appointment order had been issued de hors the rules. The recruitment rules for appointment of Group 'A' and 'B' (Gazetted) and Group 'B' Non-Gazetted posts for DRT Lucknow were published on 24th February 2003. Item No. 11 of the Rules deals with promotion/deputation to the post of recovery Officer. There are two posts out of which one post has been filled up by a deputationist and the notification inviting application was meant for the second post. Item 11 of the Rules which is relevant for our purpose is extracted below:-

By Promotion/deputation

Deputation:-

(i) Officers holding analogous posts in the Central, State Government or Judicial and Revenue Services, or having eight years' regular service as Section Officer or equivalent post in the scale of Rs. 6,500-10,500;or

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- (ii) Scale IV Officers of the public sector bank holding analogous post; or
- (iii) Scale III Officers of public sector banks with five years' service; or
- (iv) Officers in the public sector banks who have already held that post of Recovery Officer or equivalent post in a tribunal for a period of three years.

Desirable:-

Preference will be given to persons having legal experience or experience in judicial or recovery matters.

Note 1:- Period of deputation including period of deputation in ex-cadre post held immediately preceding the appointment in the same or any other Organization/Department of Central Government should ordinarily not exceed three years.

(The maximum age limit for deputation shall be 56 years on the last date of receipt of application.)

Note 2:- Departmental Section Officers with eight years' regular service shall also be considered along with outsiders and in case the Departmental candidate is selected, the post will be treated to have been filled up by promotion.

4. We have seen from the rules that the post can be filled up either by promotion or by deputation: in case of deputation, the eligibility criteria have been given in details and as regards promotion, Note -2 says that Departmental Section Officers with eight years' service shall also be considered along with outsiders and in case a Departmental candidate is selected, the post will be treated to have been filled up by promotion.

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5. It is contended by the learned counsel for the applicant that the mention of the word promotion/deputation means that the post should be filled up by promotion or deputation. The correct interpretation would be that efforts should be made to fill up the post by promotion, failing which resort to deputation could be made. In this connection he cited the judgment of the High Court of Rajasthan dated 22.5.2008 in Civil Writ Petition No. 1416/2008 Dharam Chand Jain Versus Union of India and Others in which, the petitioner who was selected on the post of Recovery Officer at DRT Jaipur but posted at Ahmadabad was permitted by the High Court to be posted at Jaipur itself on the ground that he fulfilled the eligibility criteria and was, in fact, selected for the vacant post at Jaipur.

6. As regards eligibility for promotion to the post of Recovery Officer, it is stated by the applicant that he has already been selected for that post at Patna DRT and he is functioning as such since 15.10.2007. Therefore, it could be presumed that he was eligible for promotion to the post at Lucknow. The learned counsel for the applicant cited the case of **Sub-Inspector Roopalal and Another Versus Lt. Governor through Chief Secretary, Delhi and Others reported at (2000) 1 SCC 644** to contend that the length of previous service of a transferred official is to be counted for seniority in the transferred post in case both the posts are equivalent in status. He also cites the decision of the Supreme Court in **Gujrat Housing Board Engineers Association and Another Versus State of Gujarat and Others reported at (1994) 2 SCC 24** to support his contention that deputationist could be appointed only in the event of non-availability of



suitable departmental candidates. He drew our attention to judgment of the Supreme Court in ***Council of Scientific and Industrial Research and Another Versus K.G.S. Bhatt and Another reported at (1989) 4 SCC 635*** in which the fact of stagnation of an employee for many years was taken note of and the promotion granted to the respondent civil engineer stagnating for 20 years even though it was granted by an erroneous judgment of the CAT, was not interfered with.

7. It is argued that the registry of the DRT has a pyramedical structure in which Assistants are promoted to the post of Section Officer (SO) and from SO promotion is given to the post of Recovery Officer and then onwards to the post of Registrar. In case, all the posts of Recovery Officer are filled up by way of deputation, there would be no room for promotion of regular Section Officers and, in turn, for the Assistants. Therefore, preference should be given for promotion of the departmental candidates rather than bringing in deputationist. He referred to the submission in the Counter Affidavit of official respondents in which, it has been stated that since Recovery Officer has been given substantial quasi-judicial powers for execution of the decrees of the Tribunals involving high value amounts, it is essential that persons holding such sensitive posts should not be allowed to work in the same place continuously for years together. Therefore, for the time being, vacancies of Recovery Officers in all the DRTs are being filled up on deputation basis. According to the counsel for the applicant, this policy would result in stagnation for the employees of the DRT Lucknow. The Respondent No. 3 has submitted that all the DRTs have been constituted recently. The regular Sections Officers of the DRTs including the

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applicant will not have minimum eight years' of experience as prescribed in the rules to claim the right of promotion. Therefore, the rules provide both for promotion and deputation in order to fill up the vacant post of Recovery Officers. It clearly states that departmental candidates having eight years' of experience if selected would be treated as promoted to the post. Further, they have contended that the applicant would get a right to be promoted if he would have been selected but denied the promotion because of the policy decision. Firstly, the applicant did not have eight years' of experience as a regular Section Officer in DRT Lucknow and secondly having participated in the selection process and failed, he could not challenge the selection at a later point of time. Since he was not selected by the Selection Board, he does not have any right to be promoted.

8. The learned counsel for the applicant rebutted by saying that the applicant had earlier made a representation to the authorities for considering him for promotion and has participated in the selection process under protest.

9. The official respondents have submitted that the notification for selection to fill up the post of Recovery Officer on a deputation basis was issued and the applicant was one of the candidates. According to the rules, both departmental candidates and outsiders are considered at the time of selection and in case, a departmental Section Officer with 8 years of experience is found suitable, his selection is treated as one of promotion. In other words, it is a case of composite selection. Consideration of departmental candidates are not precluded. The applicant was one of the candidates who was considered.



But respondent No. 3 was selected as most suitable among all the participating candidates. Therefore, there was no irregularity in the selection process, neither is there any allegation of malafide.

10. We find that the DRTs have been recently established. Therefore, the ground of stagnation at the present moment is hypothetical. In any case, the applicant who was a Section Officer at Lucknow, has been appointed as Recovery Officer at Patna DRT. As a result, the vacant post of Section Officer has been filled up on promotion from the feeder cadre. So in reality, there is no stagnation. The candidature of the applicant has not been rejected on eligibility ground. Therefore, the applicability of Sub-Inspector Rooplal case (Supra) does not arise. It is a case where the applicant was considered along with others and was not found as the most suitable. The fact that he was found suitable at Patna would not necessarily mean that he was the most suitable candidate at Lucknow. It only means that he was the most suitable among the candidates who were considered for selection at Patna, DRT. In a number of cases (*i) Madan Lal Vs. State of J&K (1995) 3 SCC 486, (ii) Chandra Prakash Tiwari Vs. Shakuntala Shukla (2002) 6 SCC 127, (iii) K.A. Nagamani Vs. Indian Airlines (2009) 2 SCC (L&S) 57 and Dhananjay Malik and Others Vs. State of Uttarakhand and others (2008) 4 SCC 17*, the Supreme Court has consistently held that a candidate who has participated in selection process will be estopped from complaining that the selection process was not in accordance with rules. If a candidate thought that the selection process was not in accordance with rules, he could have challenged the advertisement without participating in the selection process.



Paragraph 9 of the judgment of the Supreme Court in Dhananjay Malik (Supra) which is relevant for our purposes is extracted below:-

"In the present case, as already pointed out, the respondent writ petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done."

11. Per contra, the learned counsel for the applicant has cited the case of ***Mohan Lal Agarwal & others Vs. Bhubaneshwari Prasad Mishra and Others (2002) 1 UPLBEC-148*** in which, the Supreme Court has held, "Further, when the conditions of policy were such that if he did not participate in the selection process, he forfeits his right to promotion permanently, there is hardly any choice for him except to participate in the selection process. However, it is contended that he need not have participated in the selection process but taken the matter to the Court. As the time gap between declaration of the policy, the protest made by the officers' association of the bank and the selection process being too short, there was hardly any time left to him to approach even the High Court." In this case, the officers association had objected to the selection process as not being consistent with the provisions of relevant rules, a contention which was



upheld by the Supreme Court in the case of B.V. Sivaiah & ors. Vs. K. Addanki Babu & Ors., JT 1998 (5) SC 96. The factual matrix of this case are different: the rules had been interpreted in a particular manner by the Supreme Court of India; there was no choice for the petitioners except to participate in the selection process on pain of permanent forfeiture of his right to promotion, non-availability of time to file a case in the High Court. Because of these distinguishing features, this case is not applicable to the present applicant.

12. The learned counsel also cited the case of **K.K. Parmar & Ors. Vs. High Court of Gujarat, (2006) SCC 789** in which, the Supreme Court was looking at the provisions of Rule 47 of the High court of Gujarat (Recruitment and Conditions of Service of Staff) Rules, 1992 which prescribes the mode of selection of ministerial officers keeping in view the past performance of the candidates, the results of written examination and oral test to be made by the selection committee. In this case, the selection committee ignored assigning marks towards past performance of the candidates. Therefore, the Supreme Court held that the High Court, for that matter, the selection committee, could not have totally ignored the past performance of the candidates. In such a view of the matter, their participation in the selection process was not held against them in challenging the selection.

13. Here again, the facts were different. The selection committee did not take into account the past performance of the candidates ignoring the express provisions of the recruitment rules. The procedure adopted by the selection committee was de hors the rules, hence was the subject matter

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of challenge. whereas in the case before us the rules expressly provide for combined selection of deputationists and departmental candidates.

14. We find that the rules prescribe for a composite selection of both departmental candidates and the deputationist and in the present case, Respondent No. 3 who was not a departmental candidate has been selected in preference to the applicant who was a departmental candidate now working as Recovery Officer on deputation at Patna. Since the selection has been decided on merit, we do not find any justification to interfere with the selection process.

15. In the result, the application is dismissed. No costs.

Ally 25/11/09
(Dr. A.K. Mishra)
Member (A)

Sadhna Srivastava
(Ms. Sadhna Srivastava)
Member (J)

Vidya