

Central Administrative Tribunal

Lucknow Bench

OA No.323/2003

Lucknow this the 19th day of March, 2004.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. R.K. Upadhyaya, Member (A)

A.K. Rai, s/o late Sh. Mata Prasad Rai,
R/o D-1/346, Sector-F,
Jankipuram, Lucknow. -Applicant

(By Advocate Sh. Rajendra Singh, proxy for Sh. A. Moin, Advocate)

-Versus-

1. Union of India through the Secretary, Ministry of Public Grievances and Pensions, Deptt. of Personnel & Training, New Delhi.
2. Central Administrative Tribunal, Principal Bench, New Delhi through Principal Registrar. -Respondents

(By Advocate Shri Yogesh Kesharwani)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Applicant, a Junior Hindi Translator, working in the Lucknow Bench of the Central Administrative Tribunal, has impugned respondents' order dated 8.11.2002, wherein his request for re-designation of the post of Hindi Translator as Senior Translator has been regretted and for creation of promotional avenues matter has been referred to the Department of Personnel and Training (DoPT). In so far as his request for promotion as Section Officer is concerned it is rejected on the ground that ^{cadre cut} Hindi Translator is not a feeder ~~grade~~ for Section Officer.

2. By an interim order dated 13.8.2003 directions have been issued to the respondent No.1 (DoPT) to pass a speaking order.

3. Learned counsel for applicant contends that as per the settled position of law in a service tenure one must have a promotional avenue. Accordingly, applicant is entitled to be considered as a feeder category for the post of Section Officer and also that as he has been languishing on

the post of Hindi Translator since more than 10 years he is entitled for creation of promotional avenues keeping in view the recommendations of the Parliamentary Committee accepted by the Government.

4. On the other hand, learned counsel for respondents filed a reply praying for ^hdismissal of the OA. According to the respondents the post of Hindi Translator is not a feeder cadre for the post of Section officer with different set of rules and different nature of work, claim cannot be allowed.

5. It is further stated that for an isolated post like Hindi Translator where there is feeder or promotional channel Government has already promulgated in the year 1999 the assured career progression (ACP) Scheme for financial upgradation of which applicant may get the benefit.

6. In so far as claim of creation of promotional avenues it is stated that the Hon'ble Chairman of this Tribunal has already sent the aforesaid proposal to the DoPT where a decision is yet to be taken.

7. On careful consideration of the rival contentions of the parties we are of the considered view that creation of post/cadre is the exclusive domain of the executive and as a policy decision this Tribunal has no jurisdiction to interfere, as per the decision of the Apex Court in P.U. Joshi v. Accountant General, Ahmedabad, 2003 (1) SCSLJ 237. However, an exception to the above is when the action of the Government is malafide and violates principles of equality enshrined under Articles 14 and 16, there could be an interference. We find that Annexure A-4 Resolution issued on the part I of the report of Committee of Parliament on official language dated 30.12.98 a recommendation has been made to form separate cadres of officers/persons engaged on translation work in

subordinate offices, which has been accepted by the Government. A government employee must have at least one promotional avenue in his service tenure. This has not been provided for all the post by the Tribunal either in the service conditions or the recruitment rules. The Apex Court in Dr. (Mrs.) Hussain v. Union of India, 1990 Supp. SCC 688 in a case of non-medical Group 'A' Scientist in the health services keeping in view that the other counter parts have promotional avenues. Considering that the India being a Welfare State and to ensure efficiecy in public service directed disposal of the representation for providing promotional avenues.

8. In another case of CSIR v. K.G.S. Bhatt, 1989 (4) SCC 635 decision of the Tribunal as to creation of the promotional avenues was upheld.

9. Be that as it may, taking cognizance of the fact that proposal for creation of promotional avenues in the cadre of Hindi Translator has already been referred to the DoPT, which has not yet taken a decision, on our pointed query to the learned counsel for the respondents whether a time limit be framed for enabling the DoPT to take a final decision made, has not been objected to.

10. In the result, for the foregoing reasons, we dispose of this OA by directing respondent No.1 to take a decision on the proposal sent for creation of promotional aveues to Hindi Translator by respondent No.2, within a period of six months from the date of receipt of a copy of this order. However, respondents are at liberty, as admitted by them, to provide, during this interregnum, the

benefits of the ACP Scheme to applicant.

11. However, his request for promotion to the post of Section Officer is rejected. No costs.

R. K. Upadhyaya

(R.K. Upadhyaya)
Member (A)

S. Raju

(Shanker Raju)
Member (J)

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