

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.796/2001

Date of Decision: 19.04.2002

Shri Panote Kumaran.

Applicant(s)

Shri G.K. Masand.

Advocate for applicant

Versus

Union of India & others

.. Respondents

Shri R.R. Shetty.

Advocate for Respondents

CORAM: HON'BLE SHRI BIRENDRA DIKSHIT. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library |

Shanta Shastri
(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 796/2001

THIS THE 19TH DAY OF APRIL, 2001

CORAM: SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN
SMT. SHANTA SHASTRY . MEMBER (A)

Panote Kumaran, working as
Assistang Director General of
Shipping, Directorate
General of Shipping, 'Jahar Bhavan'
Walchand Hirachand Marg,
Mumbai-400 038.

.. Applicant

By Advocate Shri G.K. Masand for applicant

Versus

1. Union of India, through
the Secretary, Ministry of
Shipping, Paryavaran Bhavan,
1, Parliament Street,
New Delhi-110 001.

2. Secretary, Department of
Personnel & Training,
Ministry of Home Affairs,
North Block, New Delhi.

3. Secretary, Union Public Service
Commission, Dholpur House,
Shahjahan Road,
New Delhi-110 011.

4. Directorate General of
Shipping, 'Jahaz Bhavan'
Walchand Hirachand Marg,
Mumbai-400 038.

... Respondents

By Advocate Shri R.R. Shetty.

O R D E R

Hon'ble Smt. Shanta Shastri. Member (A)

The applicant is aggrieved on account of not
being considered for promotion to the post of Deputy
Director General of Shipping (DDGS for short) and on

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account of the vacancy now being sought to be filled by way of deputation. He is also challenging the newly promulgated amended recruitment rules dated 22.5.2001 on the ground that they provide for filling up of 66.66% of posts of DDGS by deputation and only 33.34% by promotion.

2. The applicant was appointed through Union Public Service Commission (UPSC for short) with effect from 24.10.1995 to the post of Assistant Director General of Shipping (ADGS). As per the rules, he has become eligible upon completion of qualifying service of five years for promotion to the post of DDGS.

3. According to the applicant, the earlier recruitment rules of 1996 for the post of DDGS provided for filling up of the post 50% by promotion failing which by transfer on deputation and 50% by transfer on deputation. However, the present recruitment rules were amended by Notificiation dated 22nd May, 2001 as already mentioned above. The post of DDGS fell vacant on 14.7.2001. According to the applicant, the department is required to maintain a recruitment roster in accordance with OM dated 07.02.1986 of the DOP&T. The register provides for carrying forward of the vacancy slot in each method of recruitment. This register has not been maintained by the department. Had it been maintained as mandated, the situation would not have

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arisen resulting in the filling up the post of DDGS on seven occasions on deputation as against four occasions by promotional method. Even after coming into force of recruitment rules of 1996, on two occasions, the vacancies were filled by deputationists, while promotion was resorted to only on one occasion. Thus, disregarding the ratio of 50:50 laid down in the recruitment rules.

4. The learned counsel for the applicant submits that after the judgment of the Apex Court in the case of R.K. Sabharwal (1995 (2) SCC 745) the DOP&T had issued OM dated 25.5.1998 advising a review of recruitment rules by providing for post based reservation as against the earlier reservation based on vacancies. According to the applicant, in so far as the post of DDGS is concerned, there is no reservation and therefore, the judgment of the Apex Court referred to by the DOP&T in their OM dated 25.5.1998 would have no application as far as the recruitment rules pertaining to the post of DDGS are concerned. In fact, according to the applicant, there was no need to change the method of recruitment for the post of DDGS. The learned counsel also argued that the emphasis of the Government was for providing better prospects for departmental candidates. Therefore, the recruitment rules notified vide Notification dated 22nd May, 2001 are against the interest of the promotees. Also these recruitment rules

do not prescribe any experience in shipping at least as a desirable qualification for selection on deputation basis. Whereas for direct recruitment to the grade of ADGS which is a feeder grade for promotion to the post of DDGS it does prescribe this experience in shipping as desirable qualification. Thus, the new recruitment rules are weighed heavily against the departmental candidates leading to hostile discrimination.

5. The learned counsel for the applicant further contends that even assuming that the amended recruitment rules are in force, and need to be adhered to, the respondents are obliged to first explore possibility of filling the existing post through the method of promotion, as has been prescribed in the recruitment rules. Since the applicant is fulfilling all the requirement under the recruitment rules, he ought to be considered for promotion first.

6. The applicant submits further that he had represented on 25th July, 2001 though there is no statutory revision available. Reminder was also submitted on 29.8.2001. He submitted representations dated 11.9.2001 and 13th September, 2001 to Respondent No.1 as well as to the UPSC respectively. He had not received any response.

7. The learned counsel for othe applicant also

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presses that the applicant is the only eligible candidate in the feeder grade for promotion to the vacant post as per the recruitment rules in force. Therefore, the DDGS had submitted a proposal to the Ministry of Shipping vide letter dated 05.6.2001 suggesting promoting the applicant on adhoc basis pending regular filling up of vacancy. However, it was not agreed to. The letter shows that the Director General Shipping was in favour of promoting the applicant. This is also clear from the letter dated 06.11.2001 from the Ministry of Shipping also. The learned counsel for the respondents has produced a copy of the letter dated 06th November, 2001 from the Ministry of Shipping addressed to DDGS intimating that the representation of the applicant regarding his promotion to the post of DDGS was considered. While conveying approval for the revised recruitment rules for Group 'A' & 'B' (Non-technical), the UPSC have revised the method of recruitment vide recruitment rules of 22.5.2001 and the Commission is of the view that for promotion, the ratio of vacancy to the officers available in the feeder grade should be at least 1:3. The number of sanctioned posts of DDGS is three and the total number of post in the feeder grade of ADGS is five. Out of these five posts, only three posts of ADGS (two by directg recruitment and one by promotion) are available for promotion to the post of DDGS. Hence,

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as per the prescribed ratio, one post of DDGS can be filled up by promotion and therefore, the applicant, although eligible for promotion to the post of DDG, cannot be considered for promotion for the present in view of the revised method of recruitment for the post. It has been further stated in this letter that Shri A. Kannan, DDGS is due to retire in June, 2002. Therefore, the DGS has been advised to consider whether the applicant can be considered against forthcoming vacancy.

8. The respondents submit that at present, there are three posts of DDGS and as per the new recruitment rules two posts have to be filled by deputationists and one by promotion, failing which by deputation. At present, two DDGS are working, both of them are promotees. Shri A. Kannan was promoted on 22.01.1991 and Shri Anantha Prasad was promoted on 30.5.2001. Therefore, as per the present recruitment rules, the question of filling up of the third vacancy which has arisen on 14.7.2001 i.e. after the promulgation of the amended recruitment rules, by way of promotion does not arise. It would only mean exceeding the promotion quota and would defeat the very recruitment rules.

9. The learned counsel for the respondents also submits that the recruitment rules had to be amended in pursuance of DOP&T guidelines dated 25.5.1998. In the

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guidelines of the DOP&T dated 18.3.1998 under para 3.12.2 it has been indicated that promotion may be kept as a method of recruitment depending upon availability of the field of consideration. These recruitment rules have been approved by the Ministry in consultation with DOP&T and UPSC. Since there are only three sanctioned posts of DDGS, no separate vacancy register has been maintained. However, care has been taken to fill up the post either by promotion or by deputationists in accordance with the recruitment rules. In regard to the prescribing of experience in Shipping as a desirable qualification for deputationists to the post of DDGS, the respondents submit that even under the recruitment rules of 1996 which have been superseded by the present recruitment rules it had not prescribed as desirable qualification for the officers appointed to the post on transfer on deputation. Non possession of desirable qualification does not render any officer ineligible for appointment.

10. We have heard the learned counsel for both the sides and have given our careful consideration to the arguments advanced.

11. For filling up of the post, one has to go by the recruitment rules, if any, prescribed for the post. In the present case, recruitment rules are available, they were amended on 22.5.2001. Since the vacancy has

arisen after that date i.e. 14.7.2001 we cannot go back to the old recruitment rules of 1996. The present vacancy will have to be filled according to the new recruitment rules. The learned counsel for the respondents has cited a judgment in the case of Y.V. Rangiah & Ors wherein it was held that the vacancies in the promotion post had to be filled in accordance with the recruitment rules prevalent at the relevant time. There is therefore, no doubt that the vacancy which has now arisen has to be filled in the ratio of 33.34% by promotion and 66.66% by deputation. If the promotion quota is available, no doubt, the post would have to be filled in by promotion. But since already the promotion quota has been exceeded as has been pointed out by the respondents and not denied by the applicant, there is no scope for filling up of the present post by promotion. The applicant has argued that in the past, the promotion quota had not been adhered to and deputationists were appointed in excess of deputation quota. It has already been explained by the respondents that at the relevant time, in the past deputationists were taken, because promotees fulfilling the requirement were not available. But this cannot be a ground for filling up the post now by promotion knowing fully well that the promotion quota has exceeded. We cannot go beyond the recruitment rules.

12. The applicant has also challenged the amendment

to the recruitment rules. According to him, the recruitment rules in so far as the method of recruitment is concerned are contrary to the policy of the Government to provide for more avenue for promotion to the departmental candidates. The recruitment rules have been framed in exercise of the powers conferred under proviso to Article 309 of the Constitution. They are within the domain of the Legislature. It is not for the Tribunal to interfere in the matter of recruitment rules. More over we cannot also give any direction in regard to the framing of recruitment rules or for creating channels for promotion. It has been so held by the Supreme Court in the matter of Technical Executive (Anti Pollution) Welfare Association Vs. Commissioner, Transport Department & another reported in 1997 SCC (L&S) 1186. The Supreme Court observed that it would be for the appropriate Government to take policy decision. The Tribunal is not competent to give direction to lay down policy or to issue direction to create promotional avenues. Such a direction would mean entrenching upon the area of policy making, which is exclusively within the purview of the appropriate Government. This being so, we are unable to interfere in regard to the method of recruitment laid down in column XI of the recruitment rules for the post of DDGS as amended by notification dated 22.5.2001. The vacancy of DDGS which has arisen on 14.7.2001 needs to be filled by deputation as per prevalent recruitment rules. Therefore, respondents'

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action in calling for applications for filling up the post by deputation cannot be faulted. In our considered view, therefore, the OA is devoid of merit and is accordingly dismissed without any order as costs.

Shanta F

(SMT. SHANTA SHASTRY)
MEMBER (A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN.

Gajan

dt 19/4/01
Order made
to Applicant dependent (s)
on 30/4/01

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