

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 464 of 2003

Jabalpur, this the 2nd day of September, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

H.K. Shrivastava,
Son of late M.B. Lal Shrivastava
aged about 45 years,
Deputy Director, Employment,
District Employment Exchange,
Sagar (MP)

APPLICANT

(By Advocate - Shri R.K. Verma)

VERSUS

1. Union of India,
through the Secretary,
Ministry of Finance, Department of
Economic Affairs(Banking Division),
Jeevan Deep, Parliament Street,
New Delhi.
2. State of Madhya Pradesh,
through the Secretary,
Technical Education, Man Power
Planning Department, Vallabh
Bhawan, Mantralaya, Bhopal (MP)
3. State of Madhya Pradesh
through the Secretary,
Department of Commerce & industries,
Vallabh Bhawan, Mantralaya,
Bhopal (MP)
4. State of Chhattisgarh,
through the Secretary,
Higher Education, Technical Education,
Man Power Planning, Science &
Technology, D.K. Bhawan,
Raipur (C.G.).
5. Debts Recovery Tribunal,
through its Registrar,
58 Sardar Patel Timber Market,
Near Shiv Mandir, Ghat Road,
Nagpur (M.S.).

RESPONDENTS

(By Advocate - Shri K.N. Pethia)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the
following main reliefs :-

"1. that an order in the appropriate nature may
kindly be issued to quash the order dt. 3.10.2002
contained in Annexur-A/12 passed by the respondent



no.1 repatriating the petitioner to his parent department.

ii. an order in the appropriate nature may also be passed directing the respondents to consider the case of the petitioner for his regularisation/ absorption on the post of Assistant Registrar w.e.f. 17.10.2000, the day initially when the petitioner joined as Assistant Registrar on deputation at Debt Recovery Tribunal, Bombay in pursuance of the Recruitment Rules, executive instructions as referred above and in case if he is found fit, a direction for his appointment on regular basis to the effect may also be passed with all consequential benefits".

2. The brief facts of the case, as stated by the applicant, are that he is at present working as Deputy Director Employment and posted at District Employment Exchange, Sagar. He was initially appointed as Employment Officer in the pay scale (revised) of Rs.8000-13500 in the year 1982. He was appointed as Deputy Registrar on deputation in the Central Administrative Tribunal and worked there from 23.7.1990 to 21.4.1993. Thereafter he was repatriated to his parent department. He was again appointed on deputation as Dy. Registrar in the Central Administrative Tribunal and he worked as such from 10.2.1995 to 9.2.1998. Thereafter he was repatriated to his parent department and was posted as Deputy Director Employment in the pay scale of Rs.10000-15200. He was appointed as Assistant Registrar on deputation basis in the Debts Recovery Tribunal (for short 'DRT') in the pay scale of Rs.10000-15200. His deputation was initially for a period of one year which was further extendable by another year. The applicant has submitted that in spite of concurrence given by the department, no orders for extending the period of deputation as Assistant Registrar was issued. He remained posted at DRT Bombay from 17.10.2000 to 16.10.2002. The applicant has submitted that while he was working as Assistant Registrar in the DRT, the Debts Recovery Tribunal, Nagpur, Group 'A' and 'B' (Gazetted) and Group 'B' (Non-Gazetted) posts Recruitment Rules, 2001 came into force vide Gazette Notification dated 1.12.2001. As per Ministry of Finance letter No.1/3/2000-DRT dated 22.1.2002 following instructions



were issued - "If any employee who is presently working on deputation in DRT/DRAT and is considered fit for absorption in the tribunal in accordance with the provisions of these RRs, his case may be examined and information in this regard may be furnished to this Division".

2.1 As per the Recruitment Rules, the applicant was eligible for being absorbed in the DRT but the respondent no.4 did not send the proposal of the applicant for his regularisation/absorption on the post of Assistant Registrar. Before his case could be considered finally by respondent no.1 for the post of Assistant Registrar, an order dated 3.10.2002 (Annexure-A-12) was issued whereby he was repatriated to his parent department. Aggrieved by this, he has filed this OA.

3. The respondents in their reply have stated that the applicant is not eligible to get absorbed as the Assistant Registrar in DRT under the Recruitment Rules. Moreover, it is settled law that regularisation/absorption in a particular post cannot be demanded as a matter of right. The respondent no.1 considered it fit and proper that some of the posts of the DRT and Debts Recovery Appellate Tribunals (for short 'DRAT') ought not to be filled by regularisation/absorption. The post of Assistant Registrar is one among them. Therefore, they have not constituted the Departmental Promotion Committee to consider the suitability or otherwise of the Assistant Registrar for being regularised/absorbed. According to them as per the recruitment rules, the post in question can be filled up only by one mode of selection i.e. deputation and not otherwise. The post vacated by the applicant has been filled up by selecting an incumbent to the post w.e.f. 13.5.2003. In view of the aforesaid submissions, the OA is liable to be dismissed.

4. Heard the learned counsel of both the parties.

5. The learned counsel for the applicant has stated that the present case is covered by a decision of Ahmedabad Bench



of this Tribunal in the case of Mr.B.P.Joshi Vs.Union of India and another, O.A.No.340 of 2003 & 3 other connected cases decided by a common order dated 23.4.2004. On the other hand, the learned counsel for the respondents has stated that the said decision is distinguishable and the present case is not covered by the said decision.

6. Before we may examine, whether the decision of Ahmedabad Bench of the Tribunal in the case of Mr.B.P.Joshi (supra) is applicable to the instant case or not, we may state a few facts. The admitted facts are that the applicant was appointed as Assistant Registrar in DRT.Bombay in October,2000 on deputation and he continued as such till he repatriated on 16.10.2002. In the meantime, the recruitment rules of DRT,Nagpur for Group 'A' & 'B' posts have been notified on 1.12.2001. The DRT,Nagpur vide its letter dated 10.1.2002 (Annexure-A-8) has sought concurrence of the parent department of the applicant for extension of his deputation period for another one year beyond 17.10.2001. While seeking the consent of the parent department, the Presiding Officer of the DRT has stated as under-

"Shri Srivastava has since worked in the Central Administrative Tribunal as Dy.Registrar for about six years prior to his present assignment of Asstt.Registrar, he has thus earned adequate experience of the functioning of the registry. Here in the Debts Recovery Tribunal,Nagpur too, due to non-posting of the officers and staff,Shri Srivastava has worked single-handedly for about nine months and has familiarized himself with the functioning of the Registry of the Tribunal. The services of Shri Srivastava are therefore most essential in this Tribunal in Public interest, particularly in the present circumstances when there are many posts are lying vacant in this Tribunal.".

Thereafter, the Department of Economic Affairs,Ministry of Finance vide letter No.1/3/2000-DRT dated 22.1.2002 have written to all the Chairperson/Presiding Officers of the DRT/DRAT that "if any employee who is presently working on deputation in DRT/DRAT and is considered fit for absorption in the tribunal in accordance with the provisions

 of these RRs, his case may be examined and information in

this regard may be furnished to this Division". Thereafter, the Presiding Officer of DRT, Nagpur vide its letter dated 6.2.2002 has sought willingness of the applicant for his absorption, in writing, as Assistant Registrar, and the applicant has given his willingness on 19.2.2002 for absorption. However, the respondents after a few months instead of considering the applicant for absorption have suddenly repatriated him. As per the rules, the recruitment to the post of Assistant Registrar in the DRT is done by deputation. Similarly, in the case of Mr. B.P. Joshi (supra) and connected OAs, the post of Account Assistant is also required to be filled by deputation which is in the pay scale of Rs.5500-9000. However, the recruitment rules provide for absorption. Rules 5 and 7 of the Recruitment Rules provides as under-

"5. Initial Constitution.- All persons appointed at the commencement of these rules holding the posts of Secretary/Registrar, Recovery Officer, Private Secretary, Section Officer, Stenographer Grade 'C', Assistant, Recovery Inspector on regular basis shall be deemed to have been appointed as such under these rules, if such persons opt for such posts within 30 days of the commencement of these rules. The service rendered by them before the commencement of these rules shall be taken into account for deciding the eligibility for promotion, etc. to the next higher grade.

7. Regularisation/Absorption.-(1) Notwithstanding contained in the provisions of these rules, the persons holding the posts in the Debts Recovery Tribunal, Nagpur on the date of commencement of these rules either on transfer or on deputation basis and who fulfil the qualifications and experience laid down in these rules and who are considered suitable by the Departmental Promotion Committee shall be eligible for regularisation or absorption in the respective grade subject to the condition that such persons exercise their option for the absorption and that their parent Departments do not have any objection to their being absorbed in the Tribunal.

(2)...

(3) The suitability of persons for absorption may be considered by a Departmental Promotion Committee".

7. On a perusal of para 5 of the judgment in the case of Mr. B.P. Joshi (supra) we find that the case of the present applicant is similar to that of applicant Mr. R.N. Dave, Accounts Assistant in OA 418/2003. The Ahmedabad Bench of the Tribunal in the said case has held as under-

"12. It is quite obvious from the above table that



these posts are to be filled up only by way of promotion or deputation and that the deputationists should be from the offices of Central Govt., State Govt. or Courts, etc. It appears that relying on the column 12 of the table the Ministry without bothering to consider the impact of the Rule-7 refused the application for regularisation or absorption in DRT of the present applicants. It is quite obvious that the decision of the Ministry is without application of mind and without considering the effect of Rule 7. It appears that the concerned authorities had lost sight of the fact that these rules are framed after the DRT came into existence and so far the staff already holding the post in DRT on the date of the commencement of these rules, the schedule has no application and only Rules 5 & 7 apply to their cases. The schedule has application only to the cases of the employee recruited or brought on deputation after the commencement of these rules and not prior to that and hence, no recourse of column 12 of the table given in the schedule can be taken by the concerned authorities for rejecting the claim of the persons already holding the posts in the DRT either on deputation basis or on transfer. Their cases were required to be considered only on the basis of provisions of Rules 5 & 7, as the case may be. The respondents have unfortunately not adopted that course and their approach to this issue has been clearly illegal, unjust and callous.".

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16.....We are therefore unable to appreciate the rigid and untenable stand taken by the respondent no.1 to reject their claim of absorption in DRT. In fact the rejection has been on grounds not available to the respondent no.1 and not in consonance with the recruitment rules. The rejection order, therefore, requires to be quashed and set aside.

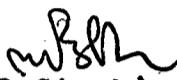
17. In view of the above discussions, we have no hesitation in holding that the action of the respondents to deny absorption to the applicants in their respective posts in DRT has been illegal, unjustified, arbitrary and discriminatory.....Since, we are not aware as to the assessment of suitability of the cases of Mr. R.N. Dave, and Mr. G.J. Dave applicants of OA 418/2003 and OA 419/2003, we direct the respondent No.2 to convene a DPC for assessing their suitability if not already convened, for absorption in DRT, and if they are found suitable for absorption by the DPC, they shall also be considered for absorption in DRT, Ahmedabad in terms of the provisions of Rule-7 of the Debts Recovery Tribunal, Ahmedabad Group 'A' & 'B' (Gazetted) and Group 'B' (Non-Gazetted) posts Recruitment Rules 2001. This exercise be carried out within three months from the date of receipt of a copy of this order...."

8. We have very carefully gone through the decision of the Ahmedabad Bench of the Tribunal in the case of Mr. B.P. Joshi (supra) and we find that the present case is squarely covered by the said decision, and we are in respectful agreement with the said decision.



9. In the result, the OA is allowed with a direction to the respondents to obtain the consent of the parent department of the applicant for his absorption as Assistant Registrar in DRT, Nagpur. In case such consent is given by his parent department, they are further directed to consider the case of the applicant for absorption as Assistant Registrar, within a period of three months from the date of receipt of the consent of the parent department. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv.

पृष्ठांकन सं. औ/न्या.....जललपुर. दि.....
परिस्थिति आवश्यकता :-

- (1) सदिर, एवा व्यापारी, वा एकेडमिक, जललपुर
- (2) आव्ययक वी/वीजिसी/प्रू.....के काउंसल
- (3) प्रदर्शी वी/वीजिसी/व्हु.....के काउंसल
- (4) व्यापाल, कंपनी, जललपुर व्यापारित
सूचना एवं आवश्यक कार्यवाही देतु

RK Vachas
KVN Pethna

उप रजिस्ट्रर


on 6/9/04