

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 212 of 1999

Jabalpur, this the 13th day of August 2003

Hon'ble Shri J.K. Kaushik, Judicial Member
Hon'ble Shri Anand Kumar Bhatt, Administrative Member

N.K. Maran, aged about 39 years,
S/o. Shri Leela Kishan Maran,
r/o F-119/5, Shivaji Nagar, Bhopal,
Presently working as Investigator
in the Office of Director, National
Commission for Schedule Caste &
Schedule Tribe, Bhopal (M.P.).

... Applicant

(By Advocate - Shri M.K. Verma)

V e r s u s

1. Union of India,
Through Secretary,
Ministry of Social Justice
and Empowerment, Shastri
Bhawan, New Delhi.
2. National Commission for
Schedule Caste & Schedule
Tribe, Through Secretary,
Floor-V, Lok Nayak Bhawan,
New Delhi.
3. Director, National Commission
for Schedule Caste & Schedule
Tribe, E2/38, Arera Colony,
Bhopal (M.P.).
4. The Secretary, Department of
Personnel & Training,
New Delhi - 01.

... Respondents

(By Advocate - Shri B.da.Silva)

O R D E R

By J.K. Kaushik, Judicial Member -

Shri N.K. Maran has filed this original Application with a prayer that the respondents may be directed to regularise the services of the applicant with effect from 08.10.1984 on the post of Investigator and grant him the notional seniority with all consequential service benefits including promotions.

2. Skipping the variances, the indubitable facts, necessary

for resolving the controversy involved in this case are that a notification was issued on dated 10.09.1984, whereby a requisition was placed before the Employment Exchange for filling up one post of Investigator on temporary basis for a period between three months and one year. In pursuance with the said notification six names were sponsored including that of the applicant from the Employment Exchange. A selection was held which consisted of a written test and interview and the applicant was found most meritorious candidate and was selected and appointed on the post of Investigator on adhoc basis on 08.10.1984 (Annexure A-4). In the year 1985 his services were continued in the Department until further orders. Since then he is continuing to work on the post of Investigator. Necessary deductions on account of G.P.F. like that of regular employees are being made from his monthly salary. He has been allowed his due increments. He also underwent the training/course of Planning and Management of Development Programmes for SC & ST which was held in National Institute of Rural Development, Hyderabad. He was also allowed to cross the efficiency bar which is compulsory requirement for regular employees for getting further increments. The further case of the applicant is that his name was recommended by respondent No. 3 for regularisation and the matter was referred to respondent No. 2. The matter was further taken up through a DO letter on dated 02.09.1996 with the Deputy Secretary, National Commission for Scheduled Caste and Scheduled Tribe for regularisation of the services of the applicant but no action seems to have been taken inspite of the fact that at number of times his case was recommended for regularisation by the respondent No. 3. The respondent No. 2 directed the applicant in the year 1998 to appear in the examination which was to be conducted by Staff Selection Commission for regular selection to the post of Investigator and he was asked to apply in pursuance to the advertisement for the same. The

applicant protested against the same and submitted a representation to the competent authority for his regularisation on the post of Investigator clearly indicating that his case may be considered like that of similarly situated persons who were regularised in the year 1985 with effect from their initial appointment.

3. Number of persons were engaged on adhoc basis on the post of Investigator prior to the appointment of the applicant and 7 persons have already been regularised on the post of Investigator without subjecting them to undertake the examination conducted by the Staff Selection Commission.

4. Before going to the crux of the matter we would narrate the variances in pleadings. It has been averred on behalf of the respondents that the adhoc Investigators recruited at the Head Quarter and in the various offices under it during the year 1980 to 1982 were regularised by respondent No. 2 as the competent recruiting agency had expressed their inability to recruit suitable persons as per the requirement of respondent No. 2 at that point of time and it was a one time measure. Since the applicant was appointed on 08.10.1984 and not ^{during} the year 1980 to 1982 it was not possible to regularise him. It has also been submitted that the applicant was granted age relaxation and was required to take part and qualify the selection examination but he has not chosen to appear in the selection conducted by the Staff Selection Commission. Since his appointment was not in accordance with the rules the rendering of service for 14 years and a half year is not material and his regularisation has been rightly refused.

5. Now ^{grapp}ing to the crux of the matter, the learned counsel for the applicant has strived hard and has endeavoured to persuade us that in case of the applicant also the Staff

Selection Commission has expressed their inability and the applicant is a similarly situated person as that of the persons who were regularised without subjecting them to undertake the examination conducted by the Staff Selection Commission. In support of his contention he has invited our attention to the letter dated 23rd July, 1980 (Annexure R-III) and Annexure R-IV dated 4th September, 1980, wherein the Staff Selection Commission has informed the Secretary, Commission for Scheduled Castes and Scheduled Tribes in the following terms :


"3. I, therefore, suggest that, in view of the reasons mentioned above, you may kindly agree to the recruitment being made through the combined advertisement No. 5/80 for the 11 posts of Investigator in your Commission. As soon as the interviews for advt. No. 5/80 are over, the Commission will nominate candidates who possess Master's Degree in Economics or Statistics. In case this is not acceptable to you, we will advertise the posts for your Commission separately on regional basis for which you may furnish the initial place of posting of a candidate to be appointed in each post. As stated in para 2(v) above, the posts can be advertised only after five or six categories of posts in each region accumulate.

4. In case you are not satisfied with the above options, you may consider making recruitment to these posts through other permissible channels."

Thereafter in reply to the above the following communication was forwarded vide letter dated 4th September, 1980, which is extracted as under :

" I am desired to refer to your d.o. letter No. 2/12/80-CDN. I dated the 23rd July, 1980 on the subject noted above and to say that the qualifications both essential and desirable for the posts of Investigators sent to you vide my d.o. letter of even number dated the 15th July, 1980 are based on the recruitment rules as approved by the Department of Personnel & A.R., the Union Public Service Commission and the Ministry of Home Affairs and it is, therefore, not possible for this Commission to relax these qualifications for the purposes of advertisement. Besides, this Commission do not have 5 or 6 posts in each region as per your specification.

2. In view of the position stated above, the advertisement No. 5/80 for 11 posts of Investigators may kindly be treated as cancelled. As already permitted by you vide para 4 of your d.o. letter under reference, we are taking steps to fill up the above mentioned posts through other permissible channels."



6. From perusal of the aforesaid communications as has been submitted by the learned counsel for the applicant it would be clear that the vacancies for which the recruitment was made were eleven, but the recruitment was to be done on region-wise and only 7 persons were regularised against these posts as per letter dated 5th January, 1985 (Annexure A/5). It has been contended that subsequently against the left out 4 posts the applicant was appointed. In this way he has contended that the defence of the respondents that the case of the applicant is different from the one who have been regularised in the year 1985 is contrary to their own records. Thus the applicant is also entitled to the same treatment and should have been regularised on the post of Investigator from the very date of his appointment, without subjecting to undergo any selection through the Staff Selection Commission.

7. On the contrary the learned counsel for the respondents has submitted that the applicant was appointed on adhoc basis and until he clears the examination conducted by the Staff Selection Commission he cannot be regularised on the post of Investigator and since he has not passed the requisite examination there is no question of his regularisation until his appointment is made according to the rules. The learned counsel for the respondents has submitted number of authorities in support of his proposition and as far as the question of law is concerned there is unanimity of decision on this point that the regularisation can be done only when one is appointed and is qualified according to the rules.

8. The learned counsel for the applicant has also relied upon a judgment of the Hon'ble Supreme Court in the case of Vijay Goel (Smt.) and others Versus Union of India and another reported in (1998) 1 SCC 376, wherein it has been held that when a Subordinate Services Commission expressed

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its inability to provide candidates for some more time and the SSC itself suggested filling up of vacancies through other authorised channels, thereafter selection committee was constituted and recruitment was done consistent with the eligibility conditions of age, educational qualifications and typewriting speed prescribed in the Recruitment Rules. The learned counsel for the applicant has submitted that similar is the position of the applicant.

9. The learned counsel for the applicant has submitted that in the case of the ^{applicant} ~~the~~/also the Staff Selection Commission at the relevant time expressed its inability to provide the suitable candidates and the competent authority is authorised to make the appointment. He has also submitted that as exhibited by him from the very records of the respondents that applicant is similarly situated persons as that of the persons who were regularised in the year 1985, the applicant should also be regularised in the similar manner without subjecting him to any examination for the same to be conducted by the Staff Selection Commission and that there is no reason for subjecting him to hostile discrimination. From the records we find that the applicant was also appointed against the 11 vacancies which were authorised to be filled in by the competent authority from the other sources. Thus we find from perusal of Annexure R-III and Annexure R-IV that there were 11 vacancies and they were to be filled in as per the region-wise. It also seems that the vacancies have been filled in batches and only 7 persons have been filled in. The respondents have not given any details as to how the remaining 4 vacancies were filled in. Nothing contrary has been shown to us. Thus the inescapable conclusion would be that the applicant was appointed against one of the 11 vacancies for which the Staff Selection Commission gave permission to the competent authority to fill in from other permissible channels

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