

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-473/2016

Reserved on : 07.09.2016.

Pronounced on : 12.09.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Mohd. Fareed,
S/o Sh. Mohd. Kamil,
R/o N71B, Ground Floor, Sailling Road,
Defence Enclave, Batla House,
Jamia Nagar, New Delhi-110 025.
Aged about 51 years.

..... Applicant

(through Sh. Ajesh Luthra, Advocate)

Versus

1. Union of India through
Its Revenue Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.

2. The Director,
Directorate of Enforcement,
6th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

3. The Director,
Central Bureau of Investigation,
Plot No.-5B, 11th Floor,
CGO Complex, Lodhi Road,
New Delhi-110 003.

.... Respondents

(through Sh. Hanu Bhaskar, Advocate)

ORDER

Mr. Shekhar Agarwal, Member (A)

The respondents issued a Notification on 16.09.2014 inviting applications for filling up 09 posts of Joint Director of Enforcement

located at different stations on deputation basis. The applicant applied for the same. According to him, he met all the necessary conditions that were prescribed for appointment and also had an unblemished service record. Later on, he came to know that the respondents selected only 04 candidates and 05 posts were left unfilled. No reason was assigned as to why all the posts were not filled. The applicant made enquiries from the respondents but was told that the process of selection was still under way. Thereafter, the respondents issued another O.M. on 10.12.2015 to fill up 11 posts of Joint Director. Thus, the respondents started fresh recruitment process without completing the earlier process. The applicant, who was working as Asstt. Legal Adviser on deputation basis in the Enforcement Directorate itself, had long experience in legal matters and was also dealing with FERA, FEMA and PMLA Acts. According to him, he should have been given preference for appointment on the aforesaid post. Instead of that the respondents started fresh recruitment process. Hence, he has approached this Tribunal by filing this O.A. According to him, the action of the respondents was illegal, arbitrary and unjustified as he had been discriminated against without any rational basis. No reasons have been assigned for not filling up all the posts in the first round itself and starting fresh recruitment process. As a result, the applicant, who deserved to be selected, has been denied opportunity to serve as Joint Director in transgression of his fundamental rights.

2. In their reply, the respondents have stated that applicant's O.A. was time barred. He filed this O.A. without making any representation against denial of appointment and hence this O.A. was liable to be dismissed in view of Section-20 of the Administrative Tribunals Act, 1985. The applicant had no inherent or vested right to be appointed on deputation basis. Further, the respondents have stated that a Committee was formed as per Rules and 04 officers were appointed on the recommendation of this Committee. The applicant has no vested right to be selected even if he was meeting the eligibility criteria. In the instant case, the selections were done by a High Level Committee comprising of the Central Vigilance Commissioner, Vigilance Commissioners and Secretaries of Government of India in Ministry of Home Affairs, Revenue and DoP&T. The respondents have also disputed the applicant's contention that he was teaching FEMA, FERA and other Acts of Enforcement Directorate as there was no academy in the Directorate.

3. We have heard both sides and have perused the material placed on record. To ascertain the reasons as to why the applicant was not selected, we also summoned the relevant File No. A. 35011/9/2014-Ad. CD of the respondents. On going through this file, we find that first meeting of the Selection Committee was held on 23.06.2015. In this meeting, no decision was taken and only the

modalities of selection were discussed. Thereafter, the next meeting of the Committee was held on 30.06.2015. The minutes of the aforesaid meeting are available at pages-103 to 105 of the file. A perusal of the minutes reveals that the Committee considered 13 officers out of 36 applications received. The remaining candidates were not found to be meeting the eligibility criteria. Thereafter, in para-6 of the minutes, the following is recorded:-

“The remaining 13 officers whose details are given in Annexure II were considered by the Committee. The Committee considered the history of posting, previous experience, vigilance status, ACR Gradings and choice of postings of each of the 13 officers. After detailed deliberations, the Committee recommended the names of the following officers for appointment on deputation to the post of Joint Director of Enforcement in the locations indicated against their names.”

4. On pages-95 to 99 of this file, a brief note prepared by the Department of Revenue regarding selection on the aforesaid post is available. At page-100 of this file, details of experience of the 13 officers considered are available. At pages-101 to 102, ACR Gradings of these officers have been assigned marks on the basis of gradings available therein and average marks obtained by each candidate are given.

5. From the above file, it is revealed that the Committee considered various aspects, such as, history of posting of the officer concerned, their previous experience, their vigilance status, their ACR gradings and their station choices before making a selection.

However, weightage given to each parameter is not available. Nor there is any record of the criteria evolved for making a selection on the basis of these parameters. Thus, while average marks have been assigned to each candidate on the basis of his ACR gradings, it is not clear from the minutes whether the Committee decided to have any cut off marks in the gradings on the basis of which selection was to be made. Similarly, while the Committee decided to consider history of posting of an officer and his previous experience, it is not clear what sort of experience was given preference to. In absence of any elaboration in the minutes on the criteria of selection, the whole selection appears to be arbitrary and lacking in transparency.

6. Further, we find that as per the Recruitment Rules for this post, the following eligibility conditions were prescribed:-

“2. As per the Recruitment Rules notified on 08.10.2009, 50% posts of Joint Director of Enforcement are to be filled up on deputation basis from amongst officers of All India Services/Central Services/Central Bureau of Investigation; (a)(i) holding analogous posts on regular basis in the parent cadre/Department; or (ii) with five years' service in the Grade rendered after appointment thereto on a regular basis in the pre-revised scale of Rs. 10,000-15,200 (Revised PB-3 of Rs. 15,600-39,100 with Grade Pay of Rs. 6600) or equivalent in the parent cadre/Department; and (b) possessing experience of at least 10 years in the field of intelligence, investigation/adjudication/prosecution work relating to fiscal/criminal laws.”

7. Thus, the Recruitment Rules prescribe that selected officer must possess atleast 10 years experience in the field of intelligence, investigation/adjudication/prosecution work relating to

fiscal/criminal laws. From the experience possessed by some of the selected officers, we find that they do not meet this criteria. Thus, Sh. Madhab C. Mishra Rajput has been selected even though as per his own application the relevant experience he possessed was only of 08.07 years. Further, Sh. Rahul Rajput has been selected in whose case the experience mentioned in the chart of the respondents is 09.09 years. Sh. Rajput has been shown to be of 2006 batch of IRS (C&CE:2006). The Selection Committee meeting was held on 30.06.2015 i.e. in the vacancy year 2015-2016. As per DoP&T Instructions, the eligibility for aforesaid vacancy year has to be seen on 01.04.2015. Since Sh. Rajput joined the Customs only in 2006, he would not have put in more than 09 years of service in Customs at the time of consideration. His candidature has been considered after counting his service in IFS. However, even if that service is counted by no stretch of imagination can it be argued that the experience in IFS was relevant experience for appointment to the post of Joint Director, Enforcement. Thus, Sh. Rahul Rajput, whose relevant experience in the chart has been shown to be 09.09 years actually could not have had relevant experience of more than 09 years even if his entire service in the Customs including the training period was counted. Thus, it is obvious that Sh. Rahul Rajput has also been selected despite not having the prescribed 10 years experience in the relevant file. This leads us to the conclusion that

the selection made by the Committee was de hors the Recruitment Rules.

8. Thus, we find that the selection not only lacks transparency but was also not in accordance with the Recruitment Rules. We would have been inclined to cancel the entire selection. However, we find that the applicant has not challenged the aforesaid selection but has only prayed for him to be considered for the same. Moreover, the persons, who would be affected by cancellation of the selection, have not been impleaded in this case. Hence, we refrain from cancelling the selection and confine ourselves to considering grant of relief asked for by the applicant.

9. As far as applicant is concerned, we find that the applicant was found to be eligible for consideration by the respondents and was amongst the 13 officers short listed for consideration for 09 posts of Joint Director. Further, we find that as per the chart of the respondents themselves, the applicant has been awarded 07 marks in the ACR gradings, which have been shown to be between Very Good to Outstanding. He has also been found to have 17 years of relevant experience. However, no reason has been assigned for not recommending him for the selection. In fact, no reason has been assigned as to why only 04 officers were selected even when 09 vacancies were available and there were other officers besides the applicant, who were meeting the eligibility conditions prescribed in

the Recruitment Rules. All this leads us to the conclusion that the case of the applicant has not been fairly considered by the respondents.

10. It can be argued that a person seeking appointment on deputation has no right to be appointed to a deputation post. Even then, the applicant had a right to be fairly considered along with other eligible officers. Depriving him from the right of fair consideration amounts to denial of equal opportunity to him and would be violative of Articles 14 and 16 of the Constitution.

11. Learned counsel for the respondents had argued that this O.A. was barred by limitation. However, we find this argument to be baseless. This is because the Selection Committee meeting itself was held on 30.06.2015 and the applicant has filed this O.A. on 25.01.2016. Thus, it is very much within the limitation period. The respondents had also argued that the applicant had approached this Tribunal without first making a representation to the respondents and thus, the O.A. was liable to be dismissed in view of Section-20 of the Administrative Tribunals Act, 1985. However, the applicant has submitted that he had all along been enquiring from the respondents regarding the fate of his application for appointment to the aforesaid post. The respondents had been assuring him that the process was under way. Subsequently, when they issued a Notification inviting applications for fresh consideration, it became

clear that the applicant's case had been turned down by the respondents. Hence, he has approached this Tribunal. We find this submission to be convincing as when the respondents had taken a decision to initiate fresh process of recruitment, it did tantamount to rejecting the candidature of the applicant.

12. In view of the above, we are inclined to allow this O.A. and direct the respondents to convene a review meeting of the Selection Committee to reconsider the candidature of the applicant again in accordance with law and in the light of observations made above. They may do so within a period of 08 weeks from the date of receipt of a certified copy of this order. The respondents may proceed with fresh selection notified by them vide their Notification dated 10.12.2015 only after the case of the applicant has been reconsidered as mentioned above. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/