

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

OA No.2103 of 2015

Orders reserved on : 29.10.2015

Orders pronounced on : 30.10.2015

**HON'BLE MR. SHEKHAR AGARWAL, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)**

T.M. Sampath
S/o late Shri Munisamy Mudaliar
Aged about 59 years
Administrative Officer
National Water Development Agency,
Flat No.117, Palika Bhawan,
R.K. Puram, Sector-13,
New Delhi-110066.

... Applicant

(Applicant in person)

Versus

Union of India through

1. The Secretary to Government of India
Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
2. The Director General
National Water Development Agency,
18-20, Community Centre,
Saket, New Delhi-110017.
3. The Secretary,
Department of Personnel & Training
Ministry of Personnel, Public Grievances & Pensions,
North Block, New Delhi.
4. The Secretary,
Department of Pension & Pensioner's Welfare
Ministry of Personnel, Public Grievances & Pensions,
3rd Floor, Lok Nayak Bhawan,
New Delhi.

... Respondents

By Advocate : Shri S.N. Verma)

O R D E R

MR. SHEKHAR AGARWAL, MEMBER (A) :

The applicant was an employee of National Water Development Agency (NWDA). This Agency came into

existence as a society registered under the Societies Registration Act, 1967 in November 1982. It is functioning under the administrative control of Ministry of Water Resources. The applicant got promoted to the post of Administrative Officer and was working as such since 24.3.2011. In this OA, he has sought the following reliefs:-

- õ(i) quash the recruitment rules for the post of Deputy Director (Admn.) and that part of the preamble in respect of appointing authorities which contravenes the Bye-laws of respondent No.2 organisation framed/amended on 19.12.2008 in the 52nd meeting of the Governing Body;
- (ii) direct the respondents to replace column 11 ó method of recruitment of the Recruitment Rules for the post of Deputy Director (Admn.) framed on 19.1.2000 by the words ~~promotion~~ failing which by deputationø in placed of ~~deputation/promotion~~ø
- (iii) quash the Dept. of Pension & Pensionerø Welfare vide OM No.4/3/ 2010-P&PW (D) dated 6.4.2010 granting exemption from the rule of immediate absorption which is illegal and contrary to their own policy circulated vide their OM No.4/78/2006-P&PW(D) dated 31.10.2007.
- (iv) quash all the appointments made to the post of Deputy Director (Admn) on or after 1.11.2000;
- (v) allow the OA with exemplary cost; and
- (vi) Pass any further orders as this Honøble Tribunal may deem fit and proper in the facts and circumstances of the case.ö

2. His contention is that the method of recruitment mentioned in Column No.11 of the Recruitment Rules for the post of Deputy

Director (Administration) was illegal and contrary to the DOP&T guidelines issued on 18.3.1988 and 31.12.2010. Further, the appointing authority for this post has been mentioned as Director General, NWDA in the Recruitment Rules whereas as per Bye Laws of the Society, the appointing authority should be Governing Body since this was a Group 'A' post. He submitted that as per these guidelines, if more than two or three feeder posts are available for filling up a particular post for promotion then such a post ought to be filled by promotion rather than by resorting to composite method of recruitment. He also submitted that the respondent no.2 gave false information to respondent no.4 stating that no departmental candidate was eligible for promotion to the post of Deputy Director (Administration) and on that basis obtained on 6.4.2010 an exemption from the rule of filling up the post by immediate absorption. He has also questioned the past appointments of Shri S.G. Sood and Shri P. Bala Krishnan on the post of Deputy Director (Administration).

3. In their reply, the respondents have submitted that para 28 of bye laws of NWDA provides that till such time as the Agency frames its own working rules and regulations governing service condition of the employees, the rules and orders applicable to the Central Government employees shall apply *mutatis mutandis* to the employees of the Agency. Till 19.1.2000, the Recruitment Rules provided for filling up this post on deputation only. It was

only then that one Shri P. Balakrishanan, a departmental Superintendent Grade-I, had become eligible for promotion to this post. Hence, a proposal was taken to the Governing Body for amending the Recruitment Rules and for providing for promotion as well for filling up this post. After deliberations, it was decided to adopt composite method for filling up this post. Thereafter Shri Balakrishanan was selected for appointment to this post in a meeting of the Selection Committee held on 16.5.2000. After retirement of Shri Balakrishanan, the post was filled up by appointment of Shri S.G. Sood, an officer of Central Secretariat Service Cadre, on deputation for a period of three years. On expiry of Shri Sood deputation term, the post of Deputy Director (Administration) was again circulated. Even at that time, the applicant was not eligible for consideration, as he had not rendered requisite five years service as Administrative Officer. Nevertheless, his case was considered by the Selection Committee based on the interim Order dated 8.10.2004 of Honøble High Court of Delhi passed in Writ Petition No.4385/2003. The Selection Committee, however, did not recommend him for promotion and an outside candidate, namely, Shri Daya Nand was offered this post. The applicant challenged the appointment of Shri Daya Nand in Writ Petition No.3629/2015. This was transferred to Central Administrative Tribunal as TA No.220/2007. The Tribunal dismissed the

aforesaid TA on 14.2.2008. The respondents have alleged that the applicant was trying to misinterpret the provisions of DOP&T guidelines and have asserted that he was not eligible to be considered for the post of Deputy Director (Administration) as per the Recruitment Rules. They have further submitted that the applicant was a chronic litigant and had filed various OAs in the Tribunals as well as several writ petitions before the Honøble High Court of Delhi. Thus, the applicant challenged the appointment of two former Deputy Directors in the year 2000 and 2004 in Writ Petition No.8645/2009, 9083/2009 and 8604/2010 respectively which were pending adjudication before the Honøble High Court of Delhi. The applicant has also challenged the appointment made to the post of Deputy Director (Administration) in the year 2013 vide OA No.1574/2014 which is still under adjudication before this Tribunal.

4. We have heard the applicant in person and learned counsel for the respondents.

5. We have perused the reliefs sought by the applicant. Clause 8 (iv) of the relief clause reads as follows:-

õ(iv) quash all the appointments made to the post of Deputy Director (Admn) on or after 1.11.2000;ö

6. We find that even though he has challenged the appointments of various incumbent of the posts of Deputy Director in the past starting from 1.1.2000, none of them has been

arrayed as a party in the present OA. As such this OA is not maintainable for non-joinder of necessary parties. Moreover, as submitted by the respondents, this OA has been filed on 28.5.2015 in which he is challenging the appointments made on or after 2000, the last one being made in the year 2013. This OA, is therefore, barred by limitation, in so far as prayer in clause 8 (iv) is concerned.

7. In their counter, the respondents have also stated that the applicant has challenged the appointment of Deputy Director (Administration) in Writ Petitions pending before the Honøble High Court of Delhi as well as in a separate OA pending before this Tribunal. This averment has not been denied by the applicant. Consequently the declaration made by the applicant in Clause 7 of his OA (page 32), namely, that on this subject matter no other OA/Writ Petition/SLP was pending in any court was obviously wrong and, therefore, unacceptable.

8. One of the grounds taken by the applicant to challenge the Recruitment Rules for the post is that the Recruitment Rules were inconsistent with the instructions of the DOP&T. However, in our opinion, NWDA is an autonomous society. It is not bound by the instructions of the DOP&T and it is at liberty to frame its own service conditions for the employees. As per Bye law No.28 on which the applicant has himself relied upon, the instructions of Central Government apply to the employees of NWDA only till

such time the Agency frames its own working rules and regulations governing the service conditions of its employees. Nowhere, it is provided that as and when such service conditions are framed by the NWDA, all instructions of DOP&T must necessarily be adhered to. The Society has its own Governing Body. It is at liberty to frame service conditions for the employees as it deems fit.

9. During the course of arguments, the applicant admitted before us that he has since retired from service on attaining the age of superannuation. As such he cannot now aspire to be promoted to the post of Deputy Director (Administration). We also notice that the applicant has not sought retrospective promotion to the post of Deputy Director either. He has only challenged the Recruitment Rules and the method of recruitment for the post of Deputy Director (Administration). Since he has neither held the post of Deputy Director nor can he now aspire to hold the same after his retirement, this prayer obviously cannot now be treated as a service matter of the applicant. As per Section 14 of the Administrative Tribunals Act, 1985, this Tribunal is empowered to entertain service matters and matters concerning recruitment of an officer of All India Service or any civil service of Union or holder of any civil post under the Union. This Tribunal is not entitled to entertain Public Interest Litigation. Section 14 reads as under:-

“14. Jurisdiction, powers and authority of the Central Administrative Tribunal.- (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence service, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service;
or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred in clause (c)] appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controller by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[*Explanation* - for the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or societies] owned or controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations [or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court [***]) in relation to-

- (a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and
- (b) all service matters concerning a person [other than a person referred to in clause (a) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs.”

After retirement of the applicant, challenge to Recruitment Rules of the post, which the applicant has neither held nor he can aspire

to hold in future, cannot be termed as his service matter as no benefit would accrue to him even if this OA was allowed. As such his prayer for quashing of the Recruitment Rules of the post of Deputy Director or quashing of the DOP&T OM granting exemption from filling this post on immediate absorption basis would now fall outside the jurisdiction of this Tribunal, as this OA is now in the nature of a PIL.

10. In view of the aforesaid, we are of the opinion that this OA is not maintainable and is dismissed as such. No costs.

(Dr. BRAHM AVTAR AGRAWAL)
MEMBER (J)

(SHEKHAR AGARWAL)
MEMBER (A)

/ravi/