

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.4213/2016

Reserved on : 30.10.2018
Pronounced on : 02.11.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Dr. Tejinder Kaur D/o Sudershan Singh,
R/o M-16, Green Park (Main),
New Delhi-110016.

... Applicant

(In person)

Versus

1. Union of India through Secretary,
Ministry of Women & Child Development,
& Vice-Chairperson, NIPCCD,
Room No.601, A-Wing, Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi-110001.
2. National Institute of Public Cooperation
& Child Development (NIPCCD)
through its Director, 5 Siri Institutional Area,
August Kranti Marg,
New Delhi-110016.

... Respondents

(By Mr. Amir Sheikh and Mr. Sanjeev Joshi, Advocates)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant is working as a Joint Director in the National Institute of Public Cooperation & Child Development (NIPCCD), the 2nd respondent herein. With a view to fill the

post of Director, the 2nd respondent issued 'vacancy circular' on 28.09.2016. Applications were invited from eligible candidates for being appointed on deputation basis for a period of two years, extendable up to three years. This OA is filed challenging the vacancy circular. The applicant has also sought a direction to the respondents to review the amended recruitment rules for the post of Director.

2. The applicant contends that according to the relevant recruitment rules, the post of Director can be filled through direct recruitment, or promotion, or by deputation/transfer, and instead of filling the post through direct recruitment or promotion, the 2nd respondent has deliberately chosen to issue the circular proposing to fill the post only through deputation. It is contended that in several proceedings instituted earlier, the Courts have expressed the view that in matters of this nature, direct recruitment must be preferred, and it is only when the efforts in that direction are not successful, that alternative methods can be considered; and despite that, the respondents have straightway chosen to prefer the method of deputation.

3. The 2nd respondent filed a detailed counter affidavit, raising a serious objection about the *locus standi* of the applicant. According to them, the applicant is not an officer holding the post in the feeder category for the post of Director, nor is she entitled to apply for the post in whatever manner, and that the OA is not maintainable in law. They further contend that the objective of the applicant is only to create obstruction in the process of appointment of Director, and the same cannot be countenanced.

4. As regards the choosing of the method of deputation, it is stated that it was resorted to, with a view to protect the interests and the future prospects of internal candidates, and that as of now, there are no eligible candidates for promotion.

5. The applicant argued the case in person. On behalf of the respondents, the arguments are advanced by Shri Amir Sheikh and Shri Sanjeev Joshi.

6. The applicant has challenged the vacancy circular issued by the respondent No.2 to fill the post of Director. The principal ground urged by her is that though different methods are available for appointment of Director, the one of deputation

was chosen. This plea of the applicant can be examined if only she was otherwise entitled to be considered for promotion to that post. For promotion to the post of Director, the feeder category is Additional Director with two years of regular service. Admittedly, the applicant is holding a post which is one step below that, i.e., Joint Director. This is not a public interest litigation, where, even a totally unrelated person can assail the steps initiated by the department. The applicant can maintain this OA, if only her rights are affected on account of the action taken by the respondents. Viewed from this angle, the applicant does not have the *locus standi* to challenge the vacancy circular.

7. Be that as it may, the method of appointment to the post of Director under the recruitment rules is indicated as under:

- “(i) By Direct Recruitment.
 - (ii) By Promotion or
 - (iii) By transfer on deputation/transfer
 - (iv) On Short-term contract not exceeding three years with the approval of Executive Council.
- xxx xxx xxx
- (i) Promotion: From Additional Director with 2 years regular service in the grade.”

The importance of the post of Director is mentioned in the constitution of the 2nd respondent in the following terms:

“9.3 The Director of the Institute shall be appointed by the Executive Council on such terms and for such period as may be decided by the Executive Council with the prior approval of the Government of India. The Director shall be in charge of the management of the Institute and shall exercise such powers in respect of the affairs of the Institute as defined in the Bye-laws.”

Obviously, on account of the importance, which the post of Director of the Institute assumes, multiple methods are provided, so that the appointing authority has a wider choice. It is only when the rule stipulates the ratio to be maintained for the respective methods of appointment, such as promotion and direct recruitment, that the respective methods have to be chosen for appointment/promotion, either simultaneously or in a pattern. If it is a multiple method, the appointing authority has the discretion to choose the option, which suits its convenience.

8. In the instant case, the respondents have not taken recourse to direct recruitment, by stating that such a method would block the chances of the departmental candidates. Relevant paragraph in the counter-affidavit reads as under:

“1. ...mode of recruitment by way of Transfer on deputation/short term contract, being one of the modes of recruitment to the post of Direct recruitment, instead of Direct Recruitment has been resorted to in the interest of the in-house officials who would become eligible for promotion as Director after a period of Two years and the mode of Direct recruitment may block the case of in-house candidates for a long time as the age limit of 50 years for direct recruitment...”

9. It is also not denied that there are no candidates available for promotion. Therefore, it cannot be said that the action taken by the respondents in choosing the method of deputation is vitiated in any manner.

10. There is another strong defect in the OA. After considering the applications that were received in response to the vacancy circular, the 2nd respondent appointed one Mr. M. A. Imam as Director. The applicant has not chosen to implead him.

11. The prayer of the applicant for review of the recruitment rules is equally untenable. Except making a general and abstract prayer for amendment, the applicant is not able to demonstrate as to what defect the existing rules suffer from. It is the prerogative of the 2nd respondent to frame its

own recruitment rules, and no individual has a right to insist on review of the same.

12. The OA is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/