

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 275/2003
NEW DELHI THIS THE 7TH DAY OF NOVEMBER 2003

HON'BLE SHRI JUSTICE V S AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Son Pal,
Hindi Translator
O/o Land & Development Officer,
Nirman Bhawan,
New Delhi

.....Applicant

(By Advocate: Shri K.K. Sharma)

VERSUS

1. The Secretary,
Ministry of Urban Development
Nirman Bhawan, New Delhi
2. The Land & Development Officer
Nirman Bhawan New Delhi
3. The Administrative Officer,
O/o the Land & Development Officer,
Nirman Bhawan, New Delhi
4. Mrs. Anula Mehta, LDC
O/o Assistant Director,
Dte. of Employment
Government of NCT of Delhi
EMI, Pusa, New Delhi

.....Respondents.

(By Advocate: Sh. R N Singh for respondents 1 to 3.
None for Respondent No. 4)

O R D E R (ORAL)

BY HON'BLE JUSTICE SHRI V S AGGARWAL, CHAIRMAN

The applicant joined as LDC in the Office of Land & Development Officer in 1979. He was promoted as UDC in 1989. On the recommendations of Departmental Promotion Committee he was appointed as Hindi Translator in the same office and the order reads:



(10)

"On the recommendation of Departmental Promotion Committee for Group 'C', Sh. Son Pal, U.D.C., is appointed to the post of Hindi Translator in the pay scale of Rs.1400-40-1800-EB-50-2300 on deputation basis in the Land & Development Office, New Delhi with immediate effect."

2. By virtue of the present application the applicant seeks a direction to the respondents to allow him to continue on the post of Hindi Translator and absorb him as such by treating the present arrangement of transfer on promotion.

3. The application has been contested. It is asserted that applicant was appointed as Hindi Translator on deputation basis. Merely because he was not reverted and continued on the said post for large number of years will not entitle the applicant for regularisation and absorption to the post under reference nor the same makes the applicant immune from being reverted to his parent cadre.

4. The post of Hindi Translator stated to be sanctioned in the scale of Rs.5000-8000/- It is now encadred in the grade of Junior Hindi Translator of the Central Secretariat Official Language Service in 2002. As per recruitment rules before encadrement the post was required to be filled up by deputation or transfer failing which by direct recruitment. The applicant had been taken on deputation .

5. We have heard the parties' counsel. Learned counsel for applicant contended that the applicant had been selected on deputation. He was allowed to continue to work on the post referred to above for a period of 8 years and that in terms of instructions of Government of India dated 3.10.1989 he is entitled to be permanently absorbed. He strongly relied upon the two decisions of the Central Administrative Tribunal in the case of Shri Bhaskar Ram Vs. Union of India in OA No.

SL Ag

936/HP/93 decided on 24.3.1994 by Chandigarh Bench and in the case of Shri Darshan Lal vs. Union of India in OA 1893/2001 decided on 2.12.2002 by Principal Bench. The Recruitment Rules for the post of Hindi Translator in the Land and Development Office had been notified on 12.3.1982. These were made in exercise of the powers conferred by the proviso to Article 309 of the Constitution. Under col. 10 of the Schedule, the method of recruitment is "By deputation or transfer failing which by direct recruitment." The order passed in the case of applicant is that he had been appointed on deputation basis in the Land and Development Office in New Delhi. In other words herein the method was 'by deputation' rather than 'by transfer' or last resort of direct recruitment.

6. Reliance is being placed to above, on the Department of Personnel & Training OM dated 3rd October 1989. The relevant extract of the same is:

"1.2 In cases where the field of promotion consists of only one post, the method of recruitment by "Transfer on deputation (including short term contract)/promotion" is prescribed so that the departmental officer holding the?feeder post is considered alongwith outsiders who have applied for appointment by transfer on deputation. This method is also known as the "composite method". If the departmental candidate is selected for appointment to the post, it is to be treated as having been filled by promotion, otherwise, the post is filled by deputation/contract for the prescribed period of deputation/contract at the end of which the departmental-officer will again be afforded an opportunity to be considered for appointment to the post."

7. Perusal of relevant portion clearly shows that these instructions would apply only if a departmental candidate is selected for appointment which is to be treated as having been filled by promotion. In the present case there are Recruitment Rules that have been framed and the instructions in this view of the fact would have been

W.Ay

(12)

- 4 -

supplementary to the Recruitment Rules. The order specifically states that the applicant has been taken on deputation. He was not appointed to the post on regular basis. It is obvious that such instructions would not come to the rescue of the applicant.

8. So far as the decision in the case of Darshan Lal Vs. UOI is concerned, it is evident on perusal of the fact that the Minister concerned had decided that applicant possesses qualifications in conformity with the Recruitment Rules. Accordingly the order revoking him was cancelled and Darshan Lal was continued. It was in these peculiar facts that decision in the case of Darshan Lal had come which is distinguishable from the facts of the present case.

9. So reverting back to the decision by the Chandigarh Bench in the case of **Bhaskar Ram**, it also appears, from the perusal of the facts, that after completion of 3 years he had continued in the post of the Lower Division Clerk. He was reverted and was again selected on deputation. The Chandigarh Bench of this Tribunal had consequently directed that the appointment of the applicant therein was on transfer basis and not on deputation. In fact Supreme Court recently in the case of Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan (All India Services Law Journal 2003 -1) held that the Court cannot go against express language of appointment order. Herein, expressly the applicant had been taken on deputation which is one of the terms prescribed by the Recruitment Rules. Therefore applicant indeed cannot be said to have been taken on transfer. It is true that the applicant had to work on the said post for almost 8 to 9 years. He had

As Ag

exceeded the normal period of deputation but that will not confer any right on the applicant to take a plea that he be taken on transfer basis.

10. At this stage, we deem it necessary that respondent-Department should take care of relevant instructions regarding continuing a person on deputation and not allow the period of deputation to be continued unnecessarily.

11. During the course of submissions it was pointed that in the meantime, in the year 2002, the said post had been encadred with the Junior Hindi Translator (Central Secretariat Official Language Service). Once the post is encadred, it would be improper otherwise also to direct that applicant automatically be taken so appointed as Junior Hindi Translator in Central Secretariat Official Language Service.

12. Resultantly the present application is without merit and is accordingly dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

Patwali/