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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1674 of 2003

New Delhi, this the 19th day of December, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. S.A. SINGH, MEMBER (A)

1. Jai Narain S/o Late Shri Badri Dass
Deputy Director Grade-B
R/o C-7/45 Sector 8, Rohini,
Delhi-110 085.
2. B.P. Juyal S/o Shri S.D. Juyal
Deputy Director Grade-B
R/o 648, Laxmibai Nagar,
New Delhi-110 083.Applicants

By Advocate: Shri Yogesh Sharma.

VERSUS

1. Union of India through the Secretary
Government of India,
Ministry of Home Affairs,
Department of Official Language,
Lok Nayak Bhawan,
Khan Market,
New Delhi.
2. The Under Secretary,
Government of India,
Ministry of Home Affairs,
Department of Official Language,
Lok Nayak Bhawan,
Khan Market,
New Delhi.Respondents

By Advocate: Shri R.P. Aggarwal.

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

This is a joint application filed by two applicants as they have challenged the order dated 2.6.2003 vide which their representation for the claim for promotion to the post of Director against the vacant posts and inaction on the part of the respondents to fill up those vacancies had been rejected.

2. Facts in brief are that both the applicants were appointed as Translators and risen to the post of

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Deputy Director. Applicant No.1 is working in the Ministry of Steel and the applicant No.2 is working in the Ministry of Labour.

3. According to the applicants the channel of promotion as per existing rule is as under:-

Grade-III (Assistant Director)

Grade-II (Deputy Director)

Grade-I (Director)

4. It is further stated that the last DPC was held in the month of November, 1999. Thereafter no DPC has been constituted and in the last DPC three senior persons to the applicants were promoted consequent to an order passed in OA Nos. 675 and 939 of 2001 whereby directions were issued to the respondents to fill up the vacancies.

5. It is further submitted that as per the Government of India instructions it is essential for the concerned appointing authorities to initiate action to fill up existing as well as anticipated vacancies well in advances and when the respondents constituted the DPC only for the existing vacancies, they did not fill up the anticipated vacancies though one post had become vacant in November, 2000 in the Department of Official Language and one post is lying vacant in the Ministry of Water Resources as the incumbent had proceeded on long term

deputation abroad. Similarly one post is lying vacant in the department of Economic Affairs, Ministry of Finance since 4.9.2002 and the applicants are due for their promotion since 2000 and the posts are lying vacant but they have not been promoted only for the reason that the respondents had prepared panel for 7 posts and not for all the vacant posts so the applicants allege that since they fulfil the requisite number of years of service so the vacancies should have been filled up by convening a regular DPC at regular intervals. Not holding of DPC is inaction on the part of the respondents so directions should be issued to the respondents to consider the case of the applicants for promotion to the post of Deputy Directors.

6. Respondents in their reply pleaded that the cadre of the Central Secretariat Official Language Service (Group 'A' and 'B') (CSOLS) has been restructured and prior to the restructuring there were 5 posts of Director in the pay scale of Rs.1500-1800 and officers of Grade-II, i.e., Deputy Director with 5 years regular service were eligible for promotion.

7. Consequent upon the recommendations of the 5th CPC the cadre has been restructured and instead of 3 grades 6 grades have been introduced. The post of Director is in the pay scale of Rs.14300-18300.

8. It is also stated that UPSC has decided that mode of recruitment to all the posts in the CSOLS is done as a one time measure pending finalisation of Recruitment Rules so all promotions are to be made according to the mode of recruitment as one time measure and after



restructuring the post with new nomenclature as Joint Director has come into existence with the pay scale between the existing cadre and as such the existing Recruitment Rules for the post of Director (OL) cannot be operated upon for the reasons that the pay scale has been laid down as Rs.3700-5000 while the pay scale of the post of Director has been upgraded to Rs.4500-5700 and the feeder grade prescribed earlier is Deputy Director while the feeder grade to be prescribed in the changed hierarchy is the grade of Joint Director. In the existing Recruitment Rules, the qualifying service for promotion has been laid down as five years from the grade of Rs.3000-4500 (pre-revised) while the qualifying service for promotion to the pay scale of Rs.4500-5700 is five years from the pay scale of Rs.3000-4500.

9. According to the instructions issued by the Department of Personnel and Training the incumbents of the post in the pre-revised pay cannot be accorded the higher pay scale nor can the upgraded post be filled in accordance with the existing Recruitment Rules till the Recruitment Rules of the upgraded post are framed and notified.

10. It is admitted that the Tribunal in OA Nos. 675 and 939 of 2001 has passed the following order:-

" In the facts and circumstances of these cases, in our considered view, the ratios in the cases of Y.V. Rangaiah (supra) and Lalit Kumar Mahto (Supra) are squarely applicable here. The recruitment rules which have yet not come into existence will have a prospective effect as and when they come about. Five vacancies of Director which occurred in 1999 will have to be governed by the then existing recruitment rules. Respondents are directed to convene DPC meeting for filling up five posts of Director (Official Language) under the existing recruitment rules to consider, among other eligible candidates, if any, the present applicants who were eligible for promotion to the post of Director in 1999.



In case these applicants are found fit for promotion, they should be accorded notional promotion to the post of Director in the grade of Rs.14300-18300 with effect from the date they became eligible but with actual monetary benefits from 14.3.2001 and 16.4.2001 respectively, when these OAs were filed (OA No.675/2001 was filed on 14.3.2001 and OA No. 939/2001 was filed on 16.4.2001)".

11. According to the above directions UPSC was requested for filling up 8 vacant posts of Director (OL) in the pay scale of Rs.14300-18300. The UPSC provided a panel of 9 officers including 2 retired officers on 5.9.2002. The Department again requested the UPSC for 2 more names for the post of Director (OL) from the panel on 25.9.2002 but the UPSC replied that the DPC has been held in accordance with the rules and instructions and orders passed by this Tribunal in the above-mentioned OAs.

12. The respondents also pleaded that the promotions always have prospective effect as laid down by various judgments, so in view of the above, the applicants are not entitled for the relief, as prayed for.

13. We have heard the learned counsel for the parties and gone through the records of the case.

14. Though its is submitted that the cadre has been restructured and the feeder cadre for the post of Director will be from the post of Joint Director who will be holding different posts which is being held by the applicants but at the same time it is admitted that the new rules have not yet been framed.

15. It is a well settled law as has been held in Y.V., Rangaiah and Others Vs. J. Srinivasa Rao and Others, 1983 (1) SLR 789 (SC) wherein it has been held

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that the vacancies which occurred prior to amended rules are governed by the old rules and not the new rules and in the OA Nos. 675 and 939 of 2001 decided by this Tribunal on 9.5.2002 the same plea was taken up by the respondents and the court had observed as under:-

" It is an admitted position that five posts of Director have been vacant since September, 2000 and no DPC meeting has been convened to fill these posts. The fact that twenty posts of Deputy Director out of a total of 49 have been upgraded as Joint Director in the pay scale of Rs.3700-5000 (Rs.12000-16500) cannot have any impact on filling up the vacant posts of director after applicants have become eligible for consideration for promotion to the post of Director".

16. The court further held as follows:-

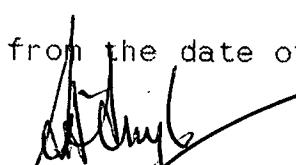
" The Fifth CPC recommendations were made in 1997. We are deep in the year 2002. The present applicants became eligible for promotion to the post of Director in 1999 but neither the intermediate post of Joint Director has come into existence nor have recruitment rules for the post of Director etc. come into effect".

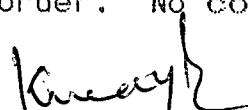
17. Hence we find that the judgment given in OA Nos. 675 and 939 of 2001 fully applies to the present facts of the case and particularly the said judgment has attained finality because in that case no appeal has been filed so we find that on the same lines this OA can also be allowed since so far it is not known as to when the new rules would be framed and when the posts could be filled up.

18. In view of the above, OA has to be allowed in view of the ratios laid down in Y.V. Rangaiah (Supra) and Lalit Kumar Mahto (Supra). Accordingly, the OA is allowed and the impugned order dated 2.6.2003 is quashed. Respondents are directed to convene DPC meeting for filling up the posts of Directors as per existing rules.

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In case applicants are found fit for promotion, they should be accorded notional promotion on the post of Director in the grade of Rs.14300-18300 w.e.f. the dates they became eligible but the actual monetary benefits be given when the OA was filed, i.e., 2.7.2003. The above exercise should be completed within a period of 2 months from the date of communication of this order. No costs.


(S.A. SINGH)
MEMBER (A)


(KULDIP SINGH)
MEMBER (J)

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