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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.1708/2003

New Delhi, this the 27<sup>th</sup> day of February, 2004

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

Tushar Ranjan Mohanty  
s/o Shri Rabi Naryan Mohanty  
Non-Functional Selection Grade Officer  
of the Indian Statistical Service  
Gr. No.38, Type-IV, Sector-3  
Sadiq Nagar, New Delhi - 110 049. ... Applicant

(By Advocate: Sh. A.K.Behera)

Versus

1. Union of India  
through the Secretary  
Ministry of Statistics and Programme  
Implementation  
Sardar Patel Bhawan  
Sansad Marg  
New Delhi - 110 001.
2. Chairman  
Union Public Service Commission  
Dholpur House, Shahjahan Road  
New Delhi - 110 011. ... Respondents

(By Advocate: Sh. M.M.Sudan for Respondent No.1 and  
Mrs. B.Rana for Respondent No.2)

O R D E R

Justice V.S. Aggarwal:-

Under Cabinet Secretariat, Department of Statistics, (Class-I posts in the Central Statistical Organisation) Recruitment Rules, 1964, which have been framed under Article 309 of the Constitution, there is one post of Director, Central Statistical Organisation. Under Column Nos.10 and 11 pertaining to the method of recruitment whether by direct recruitment or by deputation the following qualifications have been prescribed:

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"(10)"	(11)
By deputation failing which by direct recruitment	Deputation from amongst suitable officers of the Indian Administrative Service/Indian Statistical Service/Indian Economic Service/General Central Services/State Services (Period of deputation-not to exceed five years)"

2. On 16.5.1980 an order was passed redesignating the temporary Gazetted post of Director, Central Statistical Organisation as Director General, Central Statistical Organisation. The said order reads:

"Sanction of the President is hereby accorded to the redesignation of the temporary Gazetted post of Director, Central Statistical Organisation (which has been continued upto 28.2.81 vide Department of Statistics Order No.A-11011/4/80-Estt.I, dated 20.3.80) as DIRECTOR GENERAL, CENTRAL STATISTICAL ORGANISATION. There will be no change in the scale of pay attached to the post, viz., Rs.3,000/- fixed in the case of a deputationist and Rs.3000-3500 in the case of a direct recruit.

2. Consequent on the redesignation, Dr. K.C.Seal, the present Director, CSO and ex-officio Additional Secretary, Department of Statistics, will be designated as DIRECTOR GENERAL, CENTRAL STATISTICAL ORGANISATION & EX-OFFICIO ADDITIONAL SECRETARY, DEPARTMENT OF STATISTICS."

3. There is another Indian Statistical Service which is governed and controlled by the Indian Statistical Service Rules, 1961. In Rule 5 of the said rules there was five functional grades and one non-functional grade in the service. These grades are

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(1) Junior Time Scale (2) Senior Time Scale (3) Junior Administrative Grade (4) Non-Functional Selection Grade (5) Senior Administrative Grade and (6) Higher Administrative Grade.

4. The applicant is a member of the Indian Statistical Service. He was promoted to the Grade-III (Senior Time Scale) w.e.f. 8.4.1993. He was further promoted to Grade-II which is a Junior Administrative Grade of the said service from 31.8.1998 and was regularised on 10.5.1999. He was promoted to Grade-I Non-Functional Selection Grade from 6.6.2000.

5. The post of Director General, Central Statistical Organisation is the head of the Central Statistical Organisation and according to the applicant it is the highest post that an officer of the Indian Statistical Service can aspire for.

6. The grievance of the applicant is that Respondent No.1 had circulated the vacancy for the post of Director General of the Central Statistical Organisation. It fell vacant on 01.9.1997. The applicant applied for the post of Director General of Central Statistical Organisation. In the meantime, Shri M.D.Asthana, Secretary of the Department of Statistics was given additional charge of the post of Director General, Central Statistical Organisation, and thereafter the officer holding the post of Secretary, Ministry of Statistics and Programme Implementation has been giving additional charge of the post of Director General, Central Statistical Organisation. The grievance of the applicant is that

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those persons holding the additional charge do not even fulfil the eligibility criteria as they are not even natural or social Scientists with distinguished records. Applicant contends that respondents have been trying to fill up the post of Director General, Central Statistical Organisation by promotion amongst the Higher Administrative Grade officers of the Indian Statistical Service but the concerned officers were not found eligible.

7. By virtue of the present application, he seeks a direction to quash the action of the respondents in proceeding to fill up the post of Director General, Central Statistical Organisation by promotion. Additional charge of the post of Director General, Central Statistical Organisation should not be given to Respondent No.1 and further direction should be given to fill up the post of Director General, Central Statistical Organisation on basis of recruitment rules of the post prevalent on 1.9.1997 when the aforesaid vacancy arose.

8. The application has been contested. The Union Public Service Commission in its reply contended that so far as the Commission is concerned, no proposal had been received by them for filling up the said post on deputation from the respondents, i.e., Ministry of Statistics and Programme Implementation in response to the Circular stated to have been issued by the Ministry in February, 1997. As per the information available with the Commission, the post of Director General, Central Statistical Organisation was earlier an ex-cadre post and carried the pay scale of

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Rs.7300-8000 which had been upgraded to the pay scale of Rs.26000/- (Fixed) after the Fifth Central Pay Commission's report. With the above upgradation and encadrement of the post of Director General, Central Statistical Organisation into the Indian Statistical Service the old recruitment rules had become inoperative. Revised recruitment rules have still not been finalised. As a one-time measure, the Commission had approved the mode of recruitment for filling up the post of Director General referred to above by promotion from Higher Administrative Grade-I level officers in October, 2001. Recently, they had received a proposal from the Ministry of Statistics and Programme Implementation for approving the mode of recruitment and holding the Departmental Promotion Committee meeting for promotion to the post of DG, CSO and Ex-officio Special Secretary pending finalisation/notification of the Recruitment Rules. The proposal is being examined.

9. A separate reply has been filed by Respondent No.1. It has been pleaded that the first challenge about the method of filling of the post of Director General, Central Statistical Organisation by promotion is concerned, the same had already been negatived by this Bench. The second challenge was about non-filling up of the post as per the Circular dated 3.2.1997 is concerned, the respondents plead that consequent to the encadrement of the post and other changes effected as recommended by the Fifth Central Pay Commission, the Criteria for recruitment to the post requires to undergo a change.

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10. The post of Director General is a technical post at the top level in the field of statistical discipline. The Director General is the Statistical Adviser to the Government of India. Earlier the post was an ex-cadre post; used to be filled up as per the recruitment rules. The Fifth Central Pay Commission had recommended for its encadrement into Indian Statistical Service. As already pointed above, scale was revised to Rs.26000/- (Fixed) with a status of Special Secretary to the Government of India. Consequent upon the change in the status of the post as also its encadrement into Indian Statistical Service the recruitment rules which have already been referred to above required amendment. The Department of Personnel & Training had issued instructions in this regard and in case of post for which higher pay scale had been recommended by the Fifth Central Pay Commission, the Department of Personnel & Training guide-lines stipulate:

"as the eligibility criteria for direct recruitment or promotion or deputation, etc. to the higher post will be different from those prescribed for a post on a comparatively lower scale, it will be necessary to review the relevant columns of the existing RRs for the post for which an upgraded revised scale has been approved. The DOPT guidelines further stipulate that "pending revision of the RRs with reference to the pay-scales as approved by the Government, the existing rules for lower pay-scale may not be operated."

11. It is not disputed that earlier Circular was issued inviting applications in the year 1997. The applicant had also applied. Considering the fact that the post of Director General is the highest

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technical post, a view was taken at the appropriate level to have wider choice/more flexibility in selection.

12. Furthermore, it is observed that the recommendations of the Fifth Central Pay Commission pertaining to the upgradation of the post had been accepted. After accepting the recommendations, further action had to be initiated. The action had been taken for change of their recruitment rules.

13. We have heard the parties counsel.

14. The learned counsel for the applicant contended that applications were invited in the year 1997 to fill up the post in accordance with the recruitment rules. There is no decision shown at the appropriate level that the post is not to be filled up as per the recruitment rules prevalent in the year 1997. Thus, according to the learned counsel, the post necessarily has to be filled up as per the rules that were prevalent. As yet, according to him, the post of Director General has not been included by amending the necessary recruitment rules and since no conscious decision has been taken not to fill up the post as per the Rules of 1997, the respondents have no option but to adhere the old rules.

15. The contentions of the respondents on the contrary were as has been enumerated in their reply.

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16. Before proceeding further it would be necessary to glance through the provisions of law on the subject.

17. In The State of Haryana v. Subash Chander Marwaha and Others, (1974) 3 SCC 220 advertisement had been issued for selection of fifteen Subordinate Judges. Merit list of forty eligible candidates was prepared. The Government appointed only seven candidates from the top with a view to maintain high standard of competence. The question for consideration was whether appearance of candidate's name in the list entitles him to appointment or not. The Supreme Court held that existence of the vacancies did not give a legal right to candidate to be selected for appointment. The findings are:

"10. One fails to see how the existence of vacancies give a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed.  
....."

18. It was followed by the leading decision of the Supreme Court in the case of Y.V. Rangaiah and Others v. J. Sreenivasa Rao and Others, (1983) 3 SCC 284. The question for consideration was as to when post falls vacant the recruitment has to be effected as per the rules then prevalent or not. In the cited case there was a delay in preparing the panel. It resulted in deprivation of the chances of the

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promotion. There some amendments were effected. The Supreme Court held that vacancies in the promotional posts occurred prior to the amendment have to be filled up in accordance with the unamended rules. The findings of the Supreme Court are:

"9. Having heard the counsel for the parties, we find no force in either of the two contentions. under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

19. Similarly, in the case of N.T. Devin Katti and Others v. Karnataka Public Service Commission and Others, (1990) 3 SCC 157. The Supreme Court held that when advertisement expressly states that appointment shall be made in accordance with the existing rule or order, subsequent amendment in the existing rule or order will not affect the pending selection process unless contrary intention is expressly or impliedly indicated.

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20. In the case of State of Bihar v. Md. Kallmuddin & Ors., JT 1996(1) SC 271, out of the selected list some candidates were only appointed. Posts neither abolished nor reduced. In the cited case the question for consideration was that can the Government say that since a new reservation policy has been adopted, the rules would be amended and appointments would be made thereafter consistent with the revised rules and new policy? The answer given by the Supreme Court was in the affirmative that once it has been stated that the rules as per the modified policy are in the process, are being formulated and the list had expired long ago which had ceased to be operative, the Government is entitled to change its reservation policy in consistent with the Constitution. The Government could refuse to fill up the post from the said panel. The decision of the High Court in this process had been set aside.

21. Identical question : again came before the Supreme Court in the case of Dr. K. Ramulu and Anr. etc. v. Dr. S. Suryaprakash Rao and Ors., JT 1997(2) SC 80. The facts were little different. The Supreme Court held that once Government has taken decision not to fill up any of the vacancies as soon as repealed rules were duly amended and has taken a conscious decision not to fill up any of the pending vacancy there is nothing illegal about it.

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22. In the case of Government of Orissa v. Haraprasad Das and Others, AIR 1998 SC 375, the Supreme Court again held that mere empanelment or inclusion of one's name in the selection list does not give him a right to be appointed. The findings reads:

"8. It was contended by the learned Counsel for the appellant-State that the Tribunal in giving the aforesaid directions has acted beyond its jurisdiction and that the said directions are illegal inasmuch as they are contrary to Rule 11 of the Rules. In our opinion the contention deserves to be accepted. Merely because there were some vacant posts of Copy Holders and the Director of the Press had recommended to the Government to fill up those posts it was not open to the Tribunal to direct the Government to fill up those posts even though it had good reasons not to do so. It should have been appreciated by the Tribunal that mere empanelment or inclusion of one's name in the selection list does not give him a right to be appointed. So also if the Government decided not to make further appointments for a valid reason, it cannot be said that it has acted arbitrarily by not appointing those whose names are included in the selection list. Whether to fill up a post or not is a policy decision and unless it is shown to be arbitrary it is not open to the Tribunal to interfere with such decision of the Government and direct it to make further appointments."

23. Lastly, we refer to the Supreme Court in the case of Union Public Service Commission v. Gaurav Dwivedi and Others, (1999) 5 SCC 180. Herein while issuing the notification for Civil Service Examination, tentatively vacancies were indicated as 740. Later on, after declaring the results, the vacancies were reassessed as 470. Some candidates have filed the petition claiming for they should have been called for an interview. The Supreme Court held that Government was not bound to fill up the vacancies even if selection had been made.

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24. From these precedents referred to above the following principles can clearly be drawn:

- (i) Ordinarily when a post is to be filled up it should be filled up according to the prevalent recruitment rules. If the process has started and subsequently recruitment rules are amended in terms of the case of Y.V.Rangaiah (supra) the post should be filled up as per the old recruitment rules.
- (ii) However, a conscious decision can always be taken by the Government not to fill up the post as per the old recruitment rules till the amendment is effected or otherwise. In that event, the principle at Sl. No.(i) above will not apply.
- (iii) No person has a right to be appointed he has only a right to be considered.
- (iv) Even if a person's name has appeared in the select list, he does not get a vested right to be appointed if the Government decided not to fill up those posts. In that event, he cannot insist that because his name

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had appeared in the panel he has a  
fundamental right to be so  
appointed.

25. Reverting back to the facts of the present case, it requires no repetition but is relevant to mention that the post in question had been upgraded as Director General. The Indian Statistical Service Rules, 1961 had been amended on 13.1.2003. It does not refer to any post of Director General to be in the Schedule-I appended thereto. Therefore, it is obvious that the post of Director General as yet had not been made part of the Indian Statistical Service strictly by amending the rules.

26. The respondents, therefore, rightly contend that there is a proposal for amending the Indian Statistical Service Rules (including the recruitment rules for the post of Director General, Central Statistical Organisation) based on the Fifth Central Pay Commission's report. Till such time the rules are, therefore, not amended, the matter cannot be taken up governed by the rules of the Indian Statistical Service.

27. It is true that in the counter reply of the official respondents there is a vague plea that there was a decision at the appropriate level to have a wide choice/more flexibility in selection, but as already referred to above, a decision can always be taken which can be express or implied not to fill up the post till the recruitment rules are amended. This is apparent from the guide-lines of the

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Department of Personnel & Training which we have reproduced above dated 25.5.1998 that pending revision of the recruitment rules with reference to the pay scales as approved by the Government, existing rules for the lower pay scale may not be operated. This would obviously <sup>be</sup> a conscious decision taken in this regard.

28. Otherwise also in the facts it would be implied that there is a decision taken not to fill up the post of Director General, Central Statistical Organisation as per the old recruitment rules. The applicant has placed on the record his application for the post dated 10.3.1997, which refers to the Circular dated 3.2.1997 to fill up the post of Director General in the CSO, Department of Statistics. More than seven years have passed and the post has not been filled up. The sequence of events clearly show that after the Fifth Central Pay Commission's report it is appropriate to effect the amendment in the relevant rules and thereafter to fill up the post. This is an implied decision thus not to operate the old recruitment rules.

29. We hasten to add that nothing stops herein the respondents from amending the relevant rules thereafter take appropriate decision and fill up the post. The applicant cannot, therefore, have a right to contend that he must be considered as per the old rules. As per the ~~new~~ rules the applicant, in accordance with the same, only could claim a right of consideration.

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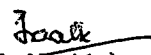
30. So far as giving the additional charge of the Director General, Central Statistical Organisation is concerned, to run the Department, if an additional charge is given we find nothing illegal about it. After all, the work of the Government cannot be brought to a grinding halt.

31. No other arguments have been advanced.


32. For these reasons, subject to findings above, we dispose of the present application holding:

- a) the applicant cannot insist that the post of Director General, Central Statistical Organisation must be filled up as per the rules prevalent on 1.9.1997 when the vacancy arose, for the reasons which we have recorded above; and
- b) the plea of the applicant that the additional charge of the post of Director General cannot be given to Respondent No.1 or any other persons must fail.

No costs.

  
(S.K. Naik)  
Member (A)

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(V.S. Aggarwal)  
Chairman