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Central Administrative Tribunal, Principal Bench

O.A.No.2488/2003

New Delhi, this the 13th day of October, 2003.

Hon'ble Mr.Justice V.S. Aggarwal, Chairman

Hon'ble Mr.Sarweshwar Jha, Member(A)

Dr.Vijay Kumar Mathur,
S/o Dr.N.L.Mathur,
Dy.Curator(Pre-Columbian &
Western Art, Group 'A',
National Museum,Janpath,
New Delhi-1

....Applicant

(By Advocate: Shri Mahesh Srivastava)

versus

1. Union of India
Through its Secretary,
Dept. of Culture,
Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi-1

2. Director General,
National Museum,
New Delhi-1

3. Union Public Service Commission,
Through its Chairman,
Dholpur House,
Shahjahan Road,
New Delhi-11

4. Shri S.K.Pathak,
S/o late Shri Paramhans Pathak,
Assistant Curator (PCWA),
National Museum,
Janpath, New Delhi

....Respondents

Order(Oral)

By Justice V.S. Aggarwal, Chairman

By virtue of the present application, the applicant seeks quashing of the order of 29.9.2003 issued by respondent no.1.

2. Some of the relevant facts are that the applicant had been promoted to the post of Deputy Curator (Pre-Columbian and Western Art). The recruitment rules for the said post have been made available and it provides that the departmental promotion committee shall comprise of Chairman of the U.P.S.C. as Chairman of that committee besides three other Members. It further provides that consultation with

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the U.P.S.C. is necessary on each occasion. The department has realised the mistake that the U.P.S.C. had not been consulted while the applicant was promoted.

3. Learned counsel for the applicant, during the course of submissions, very fairly conceded that in the departmental promotion committee meeting, the Chairman or Member of the U.P.S.C. was not present. He argued that consultation with the U.P.S.C. will not make the promotion illegal. He further urged that draft recruitment rules had been prepared and therein consultation with U.P.S.C. would only be necessary in case of selection by deputation.

4. So far as draft recruitment rules are concerned, indeed they have no legal force till they are notified. They are still stated to be at a preliminary stage. Till such time the draft recruitment rules are not notified, the earlier recruitment rules would hold the ~~field~~ ^{field} filed. In accordance with the said rules, as is apparent, the consultation with U.P.S.C. was mandatory on each occasion and further even in the departmental promotion committee meeting, as referred to above and re-mentioned at the risk of repetition, the Chairman/Member of the U.P.S.C. was not present. Therefore, there was no proper composition of the departmental promotion committee meeting. If in this backdrop the mistake that has occurred is being rectified and, therefore, requisition is being issued for filling up the said post, we find that the impugned order cannot be termed to be illegal.

5. Learned counsel for the applicant has drawn our attention to the celebrated decision of the Supreme Court in the case of State of U.P. v. Manbodhan Lal Srivastava reported as 1958 S.C.R. 533. The said judgement of the Apex Court would lay down a particular principle. If there is a

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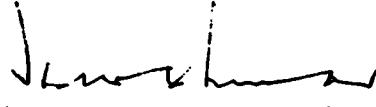
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general principle of law, it is binding on each subordinate court including this Tribunal. But if it is confined to the facts of the case, then only the ratio deci dendi can be made applicable.

6. In the case of *Manbodhan Lal Srivastava (supra)*, action had been initiated under Article 311 (2) of the Constitution. One of the question that came up for consideration was as to whether under Article 320 (3) of the Constitution, it is mandatory to consult the U.P.S.C. or not. The Supreme Court held that it does not confer any right on the public servant to contend that in the absence of consultation, no cause of action would arise against him.

7. Can the cited decision be made applicable to the facts of the present case? In our considered opinion, the answer would be in the negative. Reasons are obvious and not far to fetch. Herein the recruitment rules itself specifically prescribe that consultation of the U.P.S.C. is mandatory. We have already referred to above the said fact and ~~as~~ to crown the same furthermore, even in the departmental promotion committee meeting which was a sine qua non for the promotion, there was no Chairman or Member of the U.P.S.C. Therefore, the illegality of the promotion is writ large in the present case. The decision of the Supreme Court will not apply.

8. Resultantly the present application being without merit must fail and is dismissed in limine.


(Sarweshwar Jha)
Member(A).


(V.S. Aggarwal)
Chairman.