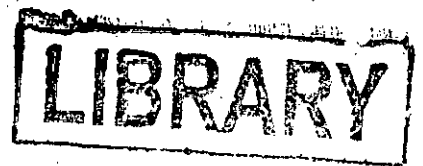


1
CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



No.O A.350/103/2018

Date of order : 26.09.2019

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

SK. ALIMUDDIN
VS.
UNION OF INDIA & OTHERS
(NATIONAL LIBRARY)

For the applicant : Mr. C. Sinha, counsel

For the respondents : Mr. B.B. Chatterjee, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant, an aspirant for the post of Assistant Library and Information Officer (Reprography/Microphotography), Group 'B' Gazetted in PB-2, Grade Pay of Rs.4600/-, has sought for the following reliefs in this O.A.:-

"a) To set aside and quash impugned Memorandum No. ADM/CON/S-I(25/1)/4404 dated 10.11.2017 issued by LIO & HOO, National Library, Kolkata;

b) To direct the respondents to grant promotion to the applicant to the post of Assistant Library & Information Officer (Reprography/Microphotography) in National Library, Kolkata in P.B. of Rs.9300-34800/-+G.P. of Rs.4600/- w.e.f. 07.09.2015 with all consequential benefits;

c) To direct the respondents to expunge the observation of the Departmental Promotional Committee to the extent "subject to revival of the said post" as the same is without jurisdiction of the committee;

d) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. The applicant has basically filed this O.A. against alleged illegal and arbitrary action on the part of the respondent authorities in depriving him promotion to the post of Assistant Library & Information Officer (Reprography/Microphotography)(GCS Group-B)(Gazetted) (Non Ministerial) in

P.B-2 of Rs.9300-34800/- + Grade Pay of Rs.4600/-, though he was found fit in the DPC held on 07.09.2015, against one of the two clear vacancies available. The applicant submitted representations on 31.03.2017 and 01.11.2017 which has been rejected vide impugned order dated 10.11.2017.

3. The order impugned reads as under:-

"In response to his letter, dated 31st March, 2017 and 1st November, 2017, Shri Sk. Alimuddin, Library & Information Assistant (Reprography), National Library, Kolkata is hereby informed that the meeting of Departmental Promotion Committee(Junior) was held on 7th September, 2015 for considering promotion to the vacant posts of Assistant Library & Information Officer(Reprography/Microphotography) along with the other Group 'B' posts in the National Library, Kolkata. The committee recommended the name of Shri Sk. Alimuddin, LIA(Reprography) for promotion to the post of Assistant Library & Information Officer(Reprography/Microphotography) with condition "subject to revival of the said post". Copy of the minutes of concerned item is hereby attached herewith.

The authority of the National Library, Kolkata sent several proposals to the Ministry of Culture for revival of the said post but as communicated by the Under Secretary, Ministry of Culture, New Delhi the Integrated Finance Division(IFD) of the Ministry of Culture did not agree with the said proposals for revival of the post on each occasions. The photocopies of the last of such proposals for revival sent to the Ministry of Culture vide this office letter No.ADM/CON/S-I(25/1)/514 dated 21.09.2017 and the replies received from the Ministry of Culture vide their letters of even No.F.12-11/2015-Lib., dated 04.07.2017 and 05.10.2017 are enclosed herewith.

4. We heard the Id. counsels, considered their rival contentions and perused the materials on record.

5. We infer the following from the records:

(I) The Recruitment Rules for Assistant Library and Information Officer(Reprography/Microphotography) shows a sanction of two posts to be filled up by promotion failing which by deputation, including short term contract, failing both by direct recruitment, from Library and Information Assistant (Reprography) with six years regular service in the Grade. The essential qualifications required to be satisfied by an aspiring Assistant are as under:-

"(i) Bachelor's Degree of a recognised university or equivalent with Physics and Chemistry as subjects.

(ii) Bachelor's Degree or equivalent in Library Science of a recognised University/Institute or equivalent.

(iii) Two years' experience in Reprography including Preservation and Printing Techniques; or Two years' experience in Microphotography and Photo-Duplication work in a recognised library."

(II) A DPC met on 07.09.2015 to consider the promotions against the following vacancies:-

Agenda No.	Description	DPC for	No. of Posts
Item No.1	ALIO(General & Language)	Confirmation	5
Item No.2	ALIO(General & Language)	Promotion	5
Item No.3	ALIO(Laboratory)	Promotion	1
Item No.4	ALIO(Microphotography)	Promotion	1
Item No.5	Superintendent	Promotion	2
Item No.6	LIA(General and Language)	Promotion	2
Item No.7	LIA(Reprography)	Confirmation	2
Item No.8	LIA(Preservation)	Promotion	1
Item No.9	Sr. Assistant	Panel for Promotion	5

The DPC that met in 2015, vide its minutes, recommended the following :-

"Form No.4

Filling up of vacancy in the grade of Assistant Library and Information Officer(Reprography/Microphotography) (G.C.S. Group-B) (Gazetted) (Non Ministerial)(Rs.9300-34800/-, Grade Pay Rs.4600/-) by promotion in the National Library, Kolkata.

The DPC has been informed that there are 2 (two) clear vacancies in the grade of Assistant Library & Information Officer (Reprography/Microphotography) (G.C.S. Group-B)(Gazetted) (Non Ministerial) in the scale of pay of Rs.9300-34800/-, Grade pay Rs.4600/-(PB-2) and the post of Assistant Library & Information Officer(Microphotography) vacancy is occurred on 13.03.2009 due to promotion to the post of LIO(General) on 13.03.2009.

The DPC noted that in terms of the provisions of the RRs for the post of Assistant Library and Information Officer(Reprography/Microphotography) 100% vacancies in the grade will be filled up by promotion on selection basis from the

feeder grade of Library and Information Assistant (Reprography) with 6(six) years regular service in the grade and on fulfilment of educational qualification failing which by deputation including short term contract, failing both by direct recruitment as laid down in Col.Nos.8-9 & 11-12.

The DPC noted that the sanctioned strength for the post of Assistant Library & Information Officer(Reprography/Microphotography) is 2(two).

The DPC has gone through the Seniority List and noted that there is only one candidate who fulfils the eligibility criteria in the feeder grade of Library & Information Assistant(Reprography) for the promotion to the post of Assistant Library & Information Officer(Reprography/Microphotography) and after assessing about suitability of the candidate recommends the following:

Name of the post	No. of post	Panel of names of eligible officers
ALIO(Reprography/ Microphotography	2 post	Sk. Alimuddin, L.I.A.(Reprography)

The DPC (Jr.) recommends Shri Sk. Alimuddin, LIA (Reprography) for the promotion to the post of Assistant Library & Information Officer (Reprography/Microphotography) subject to revival of the said post."

Therefore, as evident from supra, indubitably and irrefutably there were 2 clear vacancies in the post of ALIO(Reprography) when the DPC met and the vacancies had occurred in 2009 and the applicant was recommended for promotion in 2015.

(III) Vide R.T.I. the applicant has collected the following information:-

"Details of Group 'B' (Gazetted and Non-Gazetted) posts which were vacant for more than one year and are filled up under promotion quota in the last 8 years as on 22nd March, 2009."

"Details of name and number of posts in Group 'A' and Group 'B' (Gazetted and Non-Gazetted) category which are present vacant from more than a year with date of occurrence of respective vacancies:-

SL. No	Name of Posts	Group	No. of Sanctioned posts	No. of posts vacant	No. of posts lying vacant for more than one year
1.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX	XXXXXX	XXXXXXXXXX
2.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX	XXXXXX	XXXXXXXXXX
3.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX	XXXXXX	XXXXXXXXXX
4.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX	XXXXXX	XXXXXXXXXX
5.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX	XXXXXX	XXXXXXXXXX
6.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX	XXXXXX	XXXXXXXXXX

7.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX	XXXXX	XXXXXXXXXX
8.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX	XXXXX	XXXXXXXXXX
9.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX	XXXXX	XXXXXXXXXX
10.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX	XXXXX	XXXXXXXXXX
11.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX	XXXXX	XXXXXXXXXX
		Gr.-'B'			
12.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX	XXXXX	XXXXXXXXXX
13.	XXXXXXXXXXXXXXXXXXXXXXXXXXXX		XXXXXXXXXX x	XXXXX	XXXXXXXXXX
14.	Assistant Library & Information Officer(Reprography)		01	01	01

The document inarguably establishes the fact that out of 2 sanctioned posts of ALIO(Reprography), only 1 post required revival. Therefore, 1 clear vacancy was available for promotion when the DPC was held. Yet the applicant despite availability of a clear vacancy of ALIO(Reprography) was not granted promotion at the material time, despite the fact that he was found suitable for such promotion, which deprivation appears to be without justification.

(IV) Applicant's repeated representation to the authorities for promotion have fallen on deaf ears.

(V) On 30.10.2017 the Director, National Library was informed by the Ministry as under:-

"To
Director General,
National Library,
Belvedere,
Kolkata-700027

Subject : Abolition of posts vacant for five or more years in National Library, Kolkata-reg.

Sir,

I am directed refer to your letter dated ADM/CON/R-VIII-18/477 dated 07.08.2017 on the subject mentioned above and to say that as per compendium of instructions dated 12.04.2017 for creation, revival, continuation and transfer of posts issued by Dept. of Expenditure(copy enclosed), all the existing posts vacant for 5 years are to be abolished immediately. Also, while referring any proposal for creation/revival of posts to D/o Expenditure, a certificate indicating that all posts vacant for more than 5 years on the date of referring the proposal, have been abolished is required to be furnished.

2. As per information received from National Library, a list of posts in NL which are vacant for a period exceeding 5 years and are required to be abolished as per M/o Finance directions is enclosed. It is requested to furnish your views/comments to this Ministry at the earliest.

Yours faithfully,

(N.K. Sinha)

Under Secretary to the Government of India

(VI) The statement of posts lying vacant in National Library as prepared by the respondents, demonstrates the following :-

Sl.No.	Post & Pay Scale	Sanctioned Strength	Incumbency position	No. of vacant post	Date of vacancy	No. of posts vacant for 5 years	Remarks
xx	xxxxxxxxxxxxxxxx	xxxxxxxxxx	xxxxxxx	xxxxxxx	xxxxxxxxxx	xxxxxxx	xxxxxxx
50.	ALIO(Microphotography/Reprography)	02	Nil	02	01.07.1992(PR) 13.03.2009(PR)	2	--

(VII) On 12.11.2015 the Director General requested the Ministry for revival of the post of Assistant Library & Information Officer(Reprography/Microphotography) in the National Library, Kolkata. He recommended for revival in the following words :-

"Functional Justification"

The post of ALIO(Reprography/Microphotography) is of immense importance in National Library, Kolkata. The division plays a key role in digitization & microfilming of documents.

(IX) A note dated 19.07.2019 as furnished by the respondents reads as under:-

"Whether the post of Assistant Library & Information Officer(Reprography/Microphotography) was ever abolished officially?"

In terms of Ministry of Finance O.M. No.7(7)-E(Coord)/93 dated 03.05.1993 or in terms of Office Memorandum No.7(1)/E.Coord-I/2017 dated 12th April 2017 issued by Ministry of Finance, Department of Expenditure, no such abolition order has yet been issued. Also in terms of Office Memorandum No.7(1)/E.Coord-I/2017 dated 12th April 2017 issued by Ministry of Finance, Department of Expenditure, no certificate has been issued by National Library, Kolkata till date declaring 'abolished' in respect of many a posts which are lying vacant for more than five years including that of ALIO Microphotography or ALIO Reprography."

(X) Again the query of this Bench about "Name of the officers who were assigned the charge of Assistant Library and Information Officer(Reprography) and Assistant Library and Information Officer(Microphotography) during the period from 01.1992 to till date", the respondents have submitted in writing that the following officers were assigned the duty :

Sl. No.	Name of the officer & Designation	ALIO (Reprography)	ALIO (Microphotography)
1.	Shri Ashok Kr. Nath, ALIO (Microphotography)	01.07.1992 to 12.03.2009	He was the officer of same division
2.	Shri Ashok Kr. Nath, LIO (Sc. & Tech)	13.03.2009 to 0.11.2010 Note: The Division was under LIO (Sc. & Tech)	13.03.2009 to 30.11.2010 Note: The Division under LIO (Sc. & Tech)
3.	Shri Sunil Kr. Biswas, ALIO (General) (ad hoc)	01.12.2010 to 30.01.2011	01.12.2010 to 30.04.2011
4.	Shri Ashok Kr. Nath, LIO (Sc. & Tech)	01.05.2011 to 31.05.2011	01.05.2011 to 31.05.2011
5.	Shri Dulal Ch. Bachhar, ALIO (General)	01.06.2011 to 31.03.2012	01.06.2011 to 31.03.2012
6.	Shri Jagmal Singh, LIO (General)	01.04.2012 to 30.04.2012 Note: The Division was under LIO (General)	01.04.2012 to 30.04.2012 Note: The Division under LIO (General)
7.	Shri B. Nageswara Rao, ALIO (General)	01.05.2012 to 22.01.2014	01.05.2012 to 22.01.2014
8.	Shri A.M. Sing. Sardar, ALIO (General)	23.01.2014 to 31.07.2014	23.01.2014 to 31.07.2014
9.	Shri Supriya Sannigrahi, ALIO (General) (ad hoc)	01.08.2014 to 11.01.2015	01.08.2014 to 11.01.2015
10.	Shri Ashim Mukhopadhyay, ALIO (General)	12.01.2015 to 29.02.2016	12.01.2015 to 29.02.2016
11.	Shri Akhlaque Ahmad, ALIO (General)	01.03.2016 to till date	01.03.2016 to till date

(XI) O.M. dated 12.04.2017 of Government of India, Ministry of Finance, Department of Expenditure, North Block, New Delhi reads as under:-

No. 7(1)/E-Coord-1/2017
 Government of India
 Ministry of Finance
 Department of Expenditure

North Block, New Delhi
 Dated, 12th April, 2017

OFFICE MEMORANDUM

Subject: Compendium of instructions for Creation, Revival, Continuation and Transfer of posts.

This Department has issued instructions related to creation, deemed abolition, revival and continuation of posts from time to time. Therefore, in supersession of all previous instructions/orders regarding creation, continuation, transfer and revival of posts, it has been decided, with the approval of Competent Authority, to issue a compendium of instructions covering all the aspects relating to these issues.

2.1 These instructions shall apply to creation/continuation/revival of posts in all Ministries/ Departments, their Attached offices, Subordinate offices, Statutory bodies etc.

2.2 Proposal for creation/revival/continuation/supernumerary posts should be routed through I.D. of concerned Ministry.

2.3 These instructions are not applicable to CPSEs which may follow the instructions issued by Department of Public Enterprises in this regard.

2.4 Instructions in respect of Autonomous Bodies will be issued separately.

3.1 Creation of Posts

- a. All powers with respect to creation of posts delegated under DEPRs stands withdrawn and only Finance Minister (for below JS level posts) and Cabinet (for JS and above level posts) would be the Competent Authority for creation of posts.
- b. For creation of posts at JS and above levels only Cabinet and no other Standing Committee is competent, except in respect of requirements relating to national security.
- c. Approval of this Department is not required for creation of Statutory posts. Only those posts may be considered as Statutory, whose name and level/ pay scale have been specifically provided in an Act of Parliament (only post mentioned in Statute, not support staff).
- d. Proposals for creation of posts may be referred to Department of Expenditure through respective I.D. with the approval of Secretary and Minister in-charge of the concerned administrative Ministry.
- e. The proposals for creation of posts may be submitted on file, along with the prescribed checklist issued by this Department (Annexure - I). Separate checklist may be prepared for each category of post. Proposals received without proper checklist would not be considered and returned.
- f. Specific exemptions for creation of posts granted to any Ministry/ Department by this Department will however continue.

3.2 The level of approval for creation of posts is summarized in the following tables:

For Ministries/ Departments, Attached offices, Subordinate offices, Statutory bodies etc.

S.No.	Level of Post	Competent Authority
1	JS and above	Cabinet
2	Below JS level	Finance Minister

4.1 Supernumerary Posts:

The following principles should be observed while creating supernumerary posts:

- The supernumerary posts are created for the purpose of accommodating the lien of a Government servant who, though entitled to hold a lien against the regular post, cannot be so accommodated because of non-availability of such a post.
- The supernumerary post is a shadow post, i.e. no duties are attached to such a post. The supernumerary post is created for a definite and fixed period. Since a supernumerary post is created for accommodating an officer till he is absorbed in a regular post, it should not be created for an indefinite period.
- The supernumerary post is personal to the officer for whom it is created and no other officer can be appointed against such a post. It stands abolished as soon as the officer for whom it was created vacates it on account of retirement or is accommodated in another regular post. In other words, no officiating arrangements can be made against such a post.
- Administrative authorities should maintain a record of the supernumerary posts, the particulars of the individuals who hold liens against them and the progressive abolition of such posts as and when the holder of the posts retire or are absorbed in regular permanent posts for the purpose of verification of service for pension.

5.1 Deemed Abolition & Revival of posts:

- All posts, except newly created posts, kept in abeyance or remaining vacant for a period of more than 2 years in any Ministry/ Department/ Attached office/ Subordinate office/ Statutory body, would be considered as 'deemed abolished' unless an exemption has been given at the time of sanctioning the post.
- A post falling into the category of 'deemed abolished' cannot be filled up prior to obtaining its revival from Department of Expenditure.
- Statutory posts, the name and level/ pay scale of which is specifically provided for in an Act of Parliament, are exempted from falling in the category of 'deemed abolished' on remaining vacant for a period of more than 2 years. Only the posts mentioned in Statute may be considered Statutory, not their support staff.
- Newly created posts (posts which have been sanctioned recently by Department of Expenditure/ Cabinet), which do not have RRs would fall under the category of 'deemed abolished' after a period of 3 years from the date of creation unless it is clarified that this relaxation would not be applicable to those newly created posts which have existing RRs.
- Revival of posts would be considered in rare and unavoidable circumstances only.
- Proposals for revival of posts may be referred to this Department on file, along with the prescribed checklist issued by this Department (Annexure - II). Separate checklist may be prepared for each post. Proposals received without proper checklist would not be considered.

5.2 All Ministries/ Departments may submit to this Department, within 3 months, an Action Taken Report regarding abolition of posts which are vacant for more than 5 years in the Ministry/ Department and organizations under their administrative control. Further while

referring any proposal for creation/ revival of posts to this Department, Ministries/ Departments may enclose a Certificate that all posts under their administrative control, vacant for more than 5 years on the date of referring the proposal, have been abolished.

The conditions for deemed abolition are provided in the following table:

S.No	Type of Post	Post Live for
1	Existing Post (held in abeyance/ vacant for more than 2 year)	Post is deemed abolished
2	Newly created Post - RRs Exist	2 year
3	Newly created Post - RRs do not Exist	3 years
4	Existing Post vacant for 5 years	Post may be abolished immediately
5	Statutory Posts	Do not fall under deemed abolition

6.1 Continuation of Posts:

Continuation of posts would be considered subject to continuation of the scheme/project for which the posts were initially sanctioned. For above JS level posts, Department of Expenditure would examine and put up the proposal for approval of Secretary (Exp.), Secretary (DoPT) and Cabinet Secretary. In the case of continuation of Secretary level post, approval of Prime Minister may be obtained by the concerned Ministry/ Department after the approval of Cabinet Secretary.


6.2 Competent Authority for continuation of posts is as follows:

S.No	Level of Post	Competent Authority
1	JS and below level	DoE
2	Above JS level	CoS [Secretary (DoE), Secretary (DoPT) and Cabinet Secretary]
3	Secretary level	CoS as above. Thereafter, Ministry to obtain approval of PM

7. Transfer of Posts:

A post sanctioned for a specific purpose in an organization may not be diverted for another purpose at the same or different station. Cases of transfer/ diversion/ adjustment of posts would amount to creation of new post with simultaneous abolition of existing post and prior approval of Department of Expenditure is required for the same.

8. This issues with the approval of Finance Minister:


 (Renu Sarin)
 Deputy Secretary (E.C.I)
 Tel # 2309 2761

It contains a check list for revival of posts, which is as under:-

ANNEXURE-I

Checklist for Creation of Posts

S.No.	Particulars	
Details of Post		
1	Name/ Designation of the post	
2	Pay Scale of the post	
3	Nature of Post (Scientific/Technical/Admin/Faculty/other)	
4	Duties and responsibilities of the post	
5	Functional justification for creation	
6	Does this post exists with same scale of pay and grade pay	
7	How work is being managed in the absence of the post	
8	Mode of recruitment of post (enclose copy of RRs)	DR/Deputation/Promotion
9	Essential and minimum qualification of the post	
10	No. of existing posts in the grade of the post	(a) Sanctioned (b) Vacant (with date)
11	Immediate lower (feeder) post in the hierarchy	(a) Sanctioned (b) Vacant (with date)
12	Immediate higher (promotional) post in the hierarchy	(a) Sanctioned (b) Vacant (with date)
13	Workload of the post (Extract of SIU study, if any)	
14	Possibility of outsourcing/contract/redeployment	
15	Financial implication (both recurring and non-recurring)	
16	Matching Savings (Specific posts with pay scales) (FA may certify that posts are live and not surrendered earlier or recommended by SIU for abolition)	
17	Whether any Norms exist for the proposed posts. A copy of the Norms may be provided.	
Organization Details		
1	Name of the organization	
2	Status of Organization (Ministry/ Department/ Autonomous/ Attached/ Subordinate)	
3	Detailed sanctioned strength (category wise) with pay scale and vacancy position (with date of vacancy)	
4	Whether the organization has been studied by SIU/ IWSU. If so, details	
5	Any other relevant information	
Certificate: It is certified that all such posts under the administrative control of this Ministry/ Department which are vacant for more than 5 years, have been abolished		

Concurrence of Financial Advisor

Concurrence of Secretary

5. In view of the enumeration supra, we discern that :-

- (i) The posts of ALIO (Reprography/Microphotography) is a functional post and the services are very much required by the Library;

- (ii) The posts (2) are lying vacant since 2009;
- (iii) The posts have not been abolished but the duties of the posts are being performed till date by engaging ALIO from other disciplines;
- (iv) Since the posts have not been abolished, the Ministry is not in a position to revive the posts;
- (v) The present applicant has been cleared by DPC way back in 2015,, subject to revival of one post which cannot be done unless Ministry approves;
- (vi) The applicant despite his eligibility is unable to get promoted and is as such languishing.

6. In the aforesaid backdrop, we dispose of the O.A. with a direction upon the respondents to undertake the following exercise:-

- (i) To intimate the Ministry of Culture that the post of ALIO(Reprography/Microphotography) ought to be deemed as abolished in terms of the communication dated 30.10.2017 and prepare and send a check list as in O.M. 12.04.2017 and seek an early action for revival;
- (ii) Pending such action, to consider whether the applicant can be promoted to an equivalent post of ALIO(Reprography/Microphotography) as per rules, at least on ad hoc basis until ALIO(Reprography/Microphotography) is revived.

Upon receipt of the complete proposal, the respondent No.1 shall see that appropriate action is taken within 6 months.

(Dr.Nandita Chatterjee)
Administrative Member
sb

(Bidisha Banerjee)
Judicial Member