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**(2011) 08 DEL CK 0039**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 4783 of 1999**

J. P. Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 02-08-2011

**Acts Referred:**

Council of Historical Research Rules — Rule 15, 16

**Citation :** (2011) 08 DEL CK 0039

**Hon'ble Judges :** Dr. S. Muralidhar, J

**Bench :** Single Bench

**Advocate :** None, for the Appellant; M.A. Niyazi, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S. Muralidhar, J.—The Petitioner, who at the time of filing of the present writ petition was an Assistant Director (Library) in the Indian Council of Historical Research ("ICHR"), Respondent No. 2, filed the writ petition on 2nd August 1999 praying that a direction should be issued to the Union of India through the Ministry of Human Resource Development ("HRD Ministry"), Respondent No. 1, and the ICHR to appoint the Petitioner to the vacant post of Deputy Director (Library) ["DD (L)"] in the ICHR and to quash the action of Respondent No. 2 ICHR in advertising the said post for direct recruitment.

2. The Petitioner was appointed as a Library Assistant in the ICHR on 22nd February 1975 in the pay scale of Rs. 425-700/-. The service conditions of the employees of the ICHR are governed by the ICHR Service Regulations, 1972 (as amended up to 1989). The changes proposed to the regulations since then are still pending with the HRD Ministry for approval. In terms of the 1989 Regulations, there was a post of Librarian which was to be filled up by direct recruitment. One of the essential eligibility requirements was five years' work experience in a reputed library. At the 20th meeting of the ICHR, the post of Librarian was re-designated as Assistant Director (Library) ["AD (L)"].

3. At the 31st special meeting of the Administrative Committee ("AC") of the ICHR, it was decided to re-designate the post of Library Attendant as Library and Information Assistant and the post of Professional Assistant as Senior Librarian and Information Assistant ("SL & IA"). Thereafter on 7th October 1992, the Petitioner was promoted as SL & IA. The scale of pay was revised to Rs. 1640-2900 in terms of the recommendations of the Fourth Central Pay Commission with effect from 1st January 1986.

4. There were initially two posts of AD (L); one under the general category and the other reserved for a Scheduled Tribe ("ST"). Consequent upon the orders of the Government of India to implement a 10% cut in posts, one post of AD (L) in the general category was surrendered in 1993. Therefore, only one reserved post of AD (L) remained. The Petitioner was promoted as AD (L) on ad hoc basis with effect from 6th May 1994 against the vacant post of Deputy Director (Documentation). This ad hoc appointment was continued by the orders dated 30th June 1995, 1st November 1995 and 17th May 1996. The last order in fact states that the ad hoc appointment of the Petitioner as an AD (L) "is extended till further orders". The Petitioner claims that thereafter he should be deemed to have been appointed to the post on regular basis. This is the bone of contention as far as the present action is concerned.

5. The ICHR disputes that the Petitioner was deemed to have been appointed on a regular basis to the post of AD (L). It is submitted that he continued throughout on ad hoc basis. It is pointed out that the post of AD (L) could have been filled up only through direct recruitment for which five years' work experience was an essential requirement. The Petitioner was appointed on ad hoc basis as there was no channel of promotion from the post of SL & IA to the post of AD (L). He had only two years' work experience in the post of SL & IA at the time he was appointed on an ad hoc basis to the post of AD (L). Secondly, with the surrender of the general category post of AD (L), there was no vacant post against which the Petitioner could be appointed. The only vacant post of AD (L) was reserved for an ST candidate.

6. The post of AD (L) was the feeder cadre vis-à-vis the next grade of DD (L). It is the Petitioner's case that one Mr. P. N. Sahay who had been promoted to the post of DD (L) after working as an AD (L), superannuated on 28th February 1999. Thereafter the post of DD (L) was lying vacant. The post had been created at the 28th meeting of the ICHR on 28th November 1989. Since the Petitioner was the senior-most AD (L), he ought to have been considered for being promoted for the vacant post of DD (L). Since his representations in this regard were not responded to, and in the meanwhile the post was advertised for direct recruitment, the present writ petition was filed.

7. The case of the Respondents is that the post of DD (L) remained vacant after 1999 till as late as March 2010 since no approval of the HRD Ministry was granted to the creation of the post. At one stage, it was not clear whether the said post of DD (L) had to be filled up by internal promotion or direct

recruitment. Only much later in 2005, Review Committee headed by Mr. D. Bandyopadhyay, IAS, recommended the filling up of the post of DD (L) as well as AD (L) either through open selection or deputation. These recommendations were approved by the HRD Ministry and were binding on the ICHR as per Rule 15 & 16 of Memorandum of Association ("MOA") of the ICHR. Subsequently, the said posts were filled up by open selection through advertisement.

8. It is the Petitioner's case that since he had served for a long number of years as AD (L) on ad hoc basis, he should be deemed to have been made permanent on the said post and further he ought to have been promoted to the post of DD (L). He filed an additional affidavit on 23rd November 2002 enclosing a copy of annual report of the ICHR for the year 2000-2001 showing the post of AD (L) to be vacant. He also referred to the minutes of the meeting of the Departmental Promotion Committee ("DPC") held on 4th May 2000 which recommended regularization of the Petitioner in the post of AD (L). His further contention is that the single post of AD (L) could not be reserved as it carved out a 100% reservation which is contrary to law. He refers to the example of the Assistant Director (Grants) where an incumbent Section Officer (Accounts) from the general category was promoted even where the post was a reserved one according to the roster.

9. The ICHR, in its written submission has pointed out that although the case of the Petitioner was recommended by the DPC on 4th May 2000 and found mention in the meeting of the AC held on 15th December 2000, the said recommendation was in fact turned down by the AC. It is pointed out that the AC has a government representative who is also a financial adviser to the HRD Ministry. It is pointed out that the post of DD (L) is a reserved post; there was no question of 100% reservation as that concept applied only to vacancies and not posts. Further, since the post had to be filled up by direct recruitment, there was no question of the Petitioner being promoted to the said post.

10. There is merit in the above contention of the ICHR. The post of DD (L) is not to be filled up by way of promotion. The Petitioner was not regularized as an AD (L), and as such he could not have been considered for promotion to DD (L). Even the post of AD (L) had to be filled up only by way of direct recruitment and not by promotion. This Court consequently does not find any merit in any of the contentions of the Petitioner.

11. The writ petition is dismissed, but in the circumstances, with no order as to costs.