
(2019) 02 CAT CK 0126

In the Central Administrative Tribunal

Case No : Original Application No. 2778 Of 2013

Ram Prakash Meena

APPELLANT

Vs

Secretary, Ministry Of Environment And Forests

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0126

Hon'ble Judges : L. Narasimha Reddy, J; Sh. Mohd. Jamshed, J

Bench : Division Bench

Advocate : Amit Sinha, V.S.R. Krishna

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J

1. The applicants joined the service of National Museum of Natural History, the 4th respondent herein, which is under the Ministry of Environment & Forests, at different points of time. They hold the post of Group 'B'. In the establishment of the 4th respondent, there exists a post of Scientist 'B', which is a Group 'A' post. The Recruitment Rules framed in the year 1977 for the organisation provide for appointment to such posts through promotion, transfer or deputation or by direct recruitment. The Secretary of the Department is conferred with the power to determine the method of recruitment.

2. The respondents issued Advertisement No. 01/2013 inviting applications for five posts of Scientist 'B' through the method of direct recruitment. This O.A. is filed challenging the action of the respondents proposing to fill the post by way of direct recruitment. Directions are sought to distribute the five vacancies among the departmental candidates to create promotional avenues to them. Other ancillary directions, such as the one for framing policy guidelines, are also sought.

3. The applicants contend that though alternative methods of promotion to the post of Scientist 'B' are provided under the Rules, the departmental candidates

have a right to be considered for promotion and only when the eligible candidates are not available, that alternative can be considered. Other grounds are also urged.

4. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that Rules were framed in such a way that the flexibility exists with the department to choose the method depending on the specific requirement of the post. It is stated that many a time Scientist 'B', of particular description is required and it becomes essential to take recourse to direct recruitment, to get suitable candidates.

5. We heard Mr. Amit Sinha, learned counsel for applicants and Mr. V. S. R. Krishna, learned counsel for respondents at length.

6. The applicants held the Group 'B' posts in the 4th respondent-organization. As of now, the promotional avenues for them do not appear to be that much encouraging. In the establishment of the 4th respondent, there exist the posts of Scientist of different categories. The first among them is Scientist 'B'. The method of recruitment for them is provided under the Rules. Rule 5.3 of the Rules reads as under:-

"Recruitment shall be by promotion transfer on deputation (including short term contract), transfer or by direct recruitment. The particular method of recruitment for each vacancy shall be decided by the Secretary. Whenever the posts are to be filled up by direct recruitment the posts shall be advertised in the newspaper or by such appropriate methods as the Secretary deems fit."

7. From this, it becomes clear that maximum flexibility is given to the Secretary of the Department to choose the method of appointment. Naturally, the alternative has to be chosen after examining the circumstances obtaining at the relevant point of time. For example, if the candidates in the feeder category for the post are available, taking recourse to direct recruitment, that too, for all the posts, may not be advisable. It is a different matter if the posts, which are sought to be filled, are of a particular description and the candidates in the department are not suitable for that post. Mere existence of power does not justify the exercise of the same, unless the circumstances warrant it.

8. We, therefore, dispose of the O.A. directing that in case the posts, which are advertised through an Advertisement No.01/2013, are not filled up by now, or the necessity arises to fill such posts in future, the respondents shall first examine whether any candidates within the department are available for promotion. If such candidates are available they shall not fill the posts by direct recruitment. There shall be no order as to costs.