
(2019) 04 CAT CK 0037

In the Central Administrative Tribunal

Case No : Original Application No. 2036 Of 2013

Shrawan Kumar Kaushik

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 23-04-2019

Acts Referred:

Citation : (2019) 04 CAT CK 0037

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

Bench : Division Bench

Advocate : Amit Sinha, Satish Kumar

Final Decision : Dismissed

Judgement

1. The O.A was filed by two applicants i.e., Sh. Shrawan Kumar Kaushik and Sudarshan Shekhar. Both of them joined service of the first respondent as Technical Assistants in the year 2006. The post of Technical Assistant and Senior Technical Assistant were merged and a single post of Senior Technical Assistant (Dairy) was constituted. The next higher post is Technical Officer (T.O.) (D.D). According to the service rules, appointment to the extent of 25% posts is by way of promotion and 75%, by direct recruitment. Further higher post is Senior T.O. In the year 2011, the recruitment rules in relation to the post of Assistant Commissioner were modified in such a way that appointment to the post is made to the extent of 66.66% by promotion and 33.33%, through direct recruitment.

2. Respondents issued advertisement in May, 2013 proposing to fill two posts of TO (DD). This O.A is filed challenging the notification. The applicant submits that the amendment of the rules, relating to the post of TO on the same lines as for Assistant Commissioner was in contemplation and in such a case the posts which were advertised, would have been available being filled through promotion. It is stated that both the applicants were holding the post of TO on ad hoc basis from the year 2011 onwards and there is no basis for the respondents in issuing the advertisement.

3. It appears that both the applicants responded to the advertisement and infact, the 2nd applicant was selected and appointed as TO (DD). Therefore, he withdrew from the O.A. The first applicant also participated therein but was not successful.

4. Respondents filed counter affidavit in the O.A and stated that the appointment for recruitment to the post of T.O cannot be held up in contemplation to the recruitment rules and that there are no merits in the O.A.

5. We heard Mr. Amit Sinha, learned counsel for applicants and Mr. Satish Kumar, learned counsel for respondents.

6. Reliance is placed upon the judgments in Pradeep Kumar & Ors. Vs. Govt. of NCT of Delhi & Ors. W.P. (C) Nos. 19087-91/2006 decided on 4th August, 2016 and in the case of Shivnandan S. Ingaleswar Vs. Union of India & Ors. (O.A No. 773/2017) decided on 27.11.2017. We have perused the same and find that they are not of immediate relevance.

7. The cadre strength of TO (DD) is said to be four. Out of that, one post was meant for being filled by way of promotion and other three posts are to be filled by direct recruitment.

8. This pattern was sought to be changed and proposals were in progress. The contention of the applicant is that if the proposal for filling the post of TO by promotion to the extent of 75% materializes, two more posts will be available for that and if the posts are filled through direct recruitment, it would mar his chance of promotion.

9. Howsoever attractive the arguments may be, the appointment on promotion to the post would depend only on the basis of the rules at the relevant point of time. The occasion to challenge would arise only when the rules are amended. The available posts are required to be filled on the basis of the un-amended rules. It is brought to our notice that the appointment in pursuance to the impugned advertisement is already made and the incumbents are working. Added to that, the rules in respect of the post of TO were amended only on 21.02.2014. The rights of the applicant cannot be determined on the basis of the rules which were amended after the O.A came to be filed.

10. We do not find merit in the O.A and the same is dismissed. There shall be no order as to costs.