

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.297/2002

Thursday, this the 9th day of January, 2003

Hon'ble Shri Govindan S. Tampli, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

1. Shri B.L.Sharma
s/o Shri Janki Dass Sharma
Junior Analyst, Ministry of Finance
Dept. of Expenditure
Staff Inspection Unit
Lok Nayak Bhawan, New Delhi
2. Shri Ravinder Kumar
s/o Shri S.N.Kaushik
Junior Analyst
Ministry of Finance
Dept. of Expenditure
Staff Inspection Unit
Lok Nayak Bhawan
New Delhi

...Applicants

(By Advocates: Shri Naresh Kaushik & Ms. Shilpa Chauhan)

Versus

1. Union of India
through the Secretary
Ministry of Finance
Dept. of Expenditure
North Block, New Delhi
2. The Deptt. of Personnel & Training
through the Secretary, North Block, New Delhi
3. The Director
Staff Inspection Unit
5th Floor, Wing "A"
Lok Nayak Bhawan, New Delhi-03

...Respondents

(By Advocates: Shri Adish C. Aggarwala & Shri Anil Kashyap)

O R D E R (ORAL)

Shri Govindan S. Tampli:

Quashing and setting aside order
No.12034/1/2000-Admn-II dated 20.7.2001 rejecting the
representation of the applicant as well as grant of
counting of service rendered on ad hoc basis for purposes
of seniority, pay, promotion, are ~~the~~ the requests made
in this OA by S/Shri B.L.Sharma and Ravinder Kumar, the
applicants.

2. Heard Shri Naresh Kaushik with Ms. Shilpa Chauhan, learned counsel for the applicants and Shri Adish C. Aggarwala for the respondents.

3. The applicants, who were working as Technical Assistants (TAs) with the Staff Inspection Unit (SIU), Department of Expenditure, Ministry of Finance since April, 1989, were considered for promotion to the post of Junior Analyst (JA) on ad hoc basis against regular vacancies in 1991, for which appointments were to be made 50% by promotion and 50% by deputation. The applicants, having worked as TAs, thereby acquired the necessary expertise, were appointed as JA, after following the procedure under Recruitment Rules without violating inter-se-seniority. This was done on 11.2.1991, but w.e.f. 6.2.1991. Though the initial appointment was for the period of six months or till the candidates became available for appointment, the applicants were continued by extending their terms on ad hoc basis, which arrangements was in vogue till 27.2.2000. On 28.2.2000, they were eventually absorbed as JA on regular basis, with immediate effect or from the date of their actual taking over in the post, whichever is later. The applicants, who have thus been working uninterruptedly for a period of ten years as ad hoc JAs, have been regularised in the said post, but ignoring the entire period of ten years spent by them in ad hoc capacity. Therefore, the services rendered by them as ad hoc JA have been rendered inapplicable for the purpose of pensionary benefits and for promotion to the next higher post for which the eligibility period is fixed as eight

years. The inaction on the part of the respondents in not regularizing the services of the applicants, but keeping them on ad hoc basis for nearly ten years, had caused them irreparable loss. This is also against the directions of the Hon'ble Supreme Court in the case of Direct Recruit Class-II Engineering Officers Association Vs. State of Maharashtra & Others (1990 SCC (L&S) 339), whereunder it has been directed that continuous officiation in an ad hoc post after complying with the requirements under the Recruitment Rules and continued for long would result in counting the said service for the purpose of seniority and other benefits. Since the respondents have not taken any action in granting them regularization, the benefit of the ad hoc service, in spite of the representations, they came up in OA-792/2001, which was disposed of on 28.3.2001 at the admission stage itself, directing the respondents to consider the representations within a period of two months from the date of receipt of a copy of the order. In terms of the directions of the Tribunal dated 28.3.2001, the respondents have issued the impugned order dated 20.7.2001 rejecting the claim of the applicants for inclusion of ad hoc service for purpose of regularization. According to the respondents, the appointment of the applicants was on purely ad hoc basis, which was done in short spells due to exigencies of service and there had been breaks in between two spells of appointments. This averment was factually incorrect. The applicants had unbroken spell of service from the date of their ad hoc appointment for the first time till their regular appointment on 28.2.2000 and even during

the period when technical breaks were shown to have been given, the applicants had continued to work and respondents had granted ex-post sanction. Another ground taken by the respondents was that the ad hoc appointments had been made against vacancies meant for deputation quota and not against promotion quota which also has borne out by the facts. In fact, if the applicants' ad hoc appointments were against deputation quota vacancies, they should not have been continued for periods as long as ten years, which was against the directions of the DOP&T contained in OM No. 28036/8/87-Estt.(D) dated 30.3.1988. The failure of the respondents to act in accordance with the rules, instructions and precedent had led to the filing of this OA.

4. The grounds raised in this OA are that (a) the impugned order was illegal and based on incorrect premises, (b) the averment of the respondents that the applicants had not worked continuously but were only working in short spells on account of the exigencies of service was incorrect, (c) the applicants had worked in an unbroken and continuous spell even during the periods which the respondents attempt to show as cooling off periods, (d) the contention that the applicants had been appointed on ad hoc basis against deputation vacancies was clearly an after thought, (e) the respondents had violated the instructions of the Department of Personnel & Training in the matter of ad hoc appointments as they could not have been kept for a period as long as ten years, if the appointments were against deputation quota, (f) the applicants had fulfilled eligibility conditions

and had acquired necessary qualifications/experience, having worked earlier as TAs for three years, as on 19.4.1992, (g) the appointment of the applicants to the post of JA on ad hoc basis was after having found that they were fit for such promotion, (h) continuous period of officiation in the capacity as JA by the applicants cannot be overlooked or marginalized in terms of various pronouncements of the Hon'ble Apex Court, (i) denial of the applicants' request for including their ad hoc period would render the entire service performed by them as null and void and would also come in the way of their promotion to the next higher grade, as far as eligibility period is concerned. As the applicants had fulfilled all the necessary conditions in terms of the Recruitment Rules, their continued appointments on ad hoc basis, in spite of the ~~presence~~^{presence} on regular vacancies was only on account of the failure of the respondents to act properly and, therefore, the respondents cannot be faulted for the same, (j) nothing has been brought out on record to show that the services performed by the applicants during their ad hoc tenure, extending to ten years, was anything but satisfactory; and (k) the decision of the Hon'ble Supreme Court in the case of Direct Recruit Class-II Engineering Officers Association's case (supra) and that of Bombay Bench of this Tribunal in the case of Kunjal Laxminarayan Navak Vs. Union of India & Others (ATR 1987 (1) CAT 456), issued on 12.1.1987 go fully in favour of the applicants.

5. All the above points were forcibly reiterated by Shri Naresh Kaushik who appeared on behalf of the

applicants. During the course of oral submissions, he referred to the various orders issued by the respondents from time to time in support of his case that the applicants had had unbroken spells of ten years' service, which could not be washed away by the respondents, in the manner in which they have sought to do so by the impugned order.

6. In the short reply filed on behalf of the respondents on 25.7.2002, it is submitted that in the SIU of Department of Expenditure, Ministry of Finance, the post of JA is filled partly by promotion from the feeder cadre of TA with three years' service. On 6.2.1991, on account of non-availability of regular candidates and due to exigencies of work, the applicants, who were working as TAs, were appointed as JA on ad hoc basis granting them one time relaxation in regard to their eligibility of service conditions. While issuing orders, the applicants were clearly informed that the appointment was purely ad hoc for a period of six months or till the date on which regular candidates became available, whichever was earlier and that the ad hoc appointment order would not confer any rights on the candidates for counting that period for seniority in the grade of JA. The applicants have taken up the above appointments after accepting the above conditions in toto. Though the appointments were originally for six months on account of the exigencies of work, their terms were extended from time to time upto 28.2.1994 in a pro-term arrangement, whereafter on 1.3.1994, they were reverted. That being the case, the applicants' contention that their ad hoc appointments

were uninterrupted and without any break till 27.2.2000 was incorrect. The respondents point out that the applicants had also been given pay and allowances in the grade of TA only from 1.3.1994 to 29.6.1994. In 1994, following the re-organization of SIU, only 20 posts of JA were retained. Out of 16 vacancies, which were present, 9 were kept in the promotion quota and 7 under deputation quota. Action was initiated thereafter for holding DPC for regular appointment against both the quotas. Still keeping in mind the operational need of SIU, it was decided again to resort to ad hoc appointment as stop-gap-arrangement, whereupon the applicants were again engaged as JA on ad hoc basis from 30.6.1994 for a period of two months or till the regular incumbents join, as a purely stop-gap-arrangement. These arrangements also continued from time to time with the approval of the competent authority. Respondents could not regularize all the ad hoc appointments against promotion quota as there were no vacant posts in the said quota. Still, as the posts in deputation quota were lying vacant and with a view to open some promotional avenues for TA in the year 2000, 7 posts of TAs were upgraded by diverting all the deputation vacancies to promotion quota with the approval of the DOPT and UPSC as one time measure, following which the applicants were promoted w.e.f. 28.2.2000 on regular basis. The applicants cannot take advantage of the above situation and claim that they should be regularized with effect from their first ad hoc appointment. The respondents also relied upon the decision of the Hon'ble Supreme Court in the cases of State of Orissa & Another Vs. Dr. Pyari Mohan Misra

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(1995 (1) SCSLJ 259) and Excise Commissioner, Karnataka & Another Vs. V. Sreekantha (1993 (1) SLJ 297) to show that mere prolonged continuance of ad hoc service did not ripen into a regular service and that those appointed on ad hoc basis and were regularized under the said rules, can be given seniority only from the date of their initial appointment on ad hoc basis. They point out that the applicants were in fact not eligible for being promoted as JA in 1991 when they were given the ad hoc appointment, but the same was done only by giving them relaxation as a matter of concession. The applicants are only taking undue advantage of the concession granted to them by the respondents. The Tribunal shall not accede to the same request, urged S/Shri Adish C. Aggarwala and Anil Kashyap, who reiterated the points made in the written pleadings of the respondents.

7. We have carefully considered the matter. The applicants in this case, who have been regularized as JA in the respondents' organization w.e.f. 28.2.2000, are claiming that they should be granted the benefit of counting of their ad hoc service from 6.2.1991, on account of their having been selected by the proper selection method and having continued in the said post uninterruptedly since then. The respondents, on the other hand, point out that the applicants did not enjoy an uninterrupted spell, as claimed by them but had been reverted in between and, therefore, their regular service as JA can date only from their promotion on 28.2.2000. On perusal of the documents brought on record, we find that the applicants, who were engaged for the first time

w.e.f. 6.2.1991, had enjoyed a continuous spell of ad hoc service as JA from 6.2.1991 to 28.2.2000, except for a short break of 1.3.1994 to 29.6.1994. This will mean that the applicants had been continuously working as JA since February, 1992 and in uninterrupted spell from 30.6.1994. The respondents' plea that the applicants were not eligible for being promoted as JA in February, 1991, as they had not completed the requisite period of three years as TA, does not merit acceptance as it has clearly been pointed out by themselves that necessary relaxation of eligibility conditions had been ordered. It is also on record that by April 1992, both the applicants had completed the requisite eligible period. The alternate plea raised by the respondents that the applicants could not have been promoted, as during 1994 when the SIU's cadre was restructured, only 16 vacancies were available out of which 7 had to be kept reserved for deputationists, also is clearly an after-thought as during that period as well the ad hoc appointment of the applicants continued. We note that except for a short period of April to June, 1994, every single day has been duly counted for. That being the case, the applicants are correctly entitled for getting their ad hoc service at least from 30.6.1994 since when they had been enjoying an uninterrupted spell and the same cannot be termed as pro-term or stop gap. In the facts and circumstances of the case, the reliance placed by the respondents on the decision of Hon'ble Supreme Court in the case of Dr. Pyari Mohan Misra (supra) does not come to their

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assistance. In fact, as it is found that the engagement of the applicants having been gone through correct procedure of selection by the competent authority, the applicants should get the benefit of the decision of the Hon'ble Supreme Court in the case of Direct Recruit Class-II Engineering Officers Association (supra) as well as the decision of Constitution Bench of the Hon'ble Supreme Court in Rudra Kumar Sain & Others, etc. Vs. Union of India & Others (2000 (2) SCSLJ 168). The above decisions had held that the period of continuous officiation in a post for a long time, when the selection was made through correct procedure followed by regularisation, would count for seniority. It would, therefore, mean that the applicants would correctly get the benefit of inclusion of their uninterrupted ad hoc service from 30.6.1994 for all the purposes, including seniority, fixation of pay, pension, etc. Denial of the above would lead to the situation that the effect of ad hoc service put in by the applicants uninterruptedly following appointment after proper selection would be washed way. This cannot be permitted.

8. In the above view of the matter, the OA succeeds substantially and is accordingly disposed of. It is directed that the respondents shall grant to the applicants the benefit of their uninterrupted ad hoc service as JA from 30.6.1994 for all purposes, including seniority, pensionary benefits, fixation of pay and promotion. In other words, the applicants would be deemed to have been regularised in service as JA w.e.f. 30.6.1994 with all consequential benefits. Respondents

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shall issue the necessary orders in this connection within two months from the date of receipt of a copy of this order, including seniority and promotion.

No costs.

S. Raju
(Shanker Raju)
Member (J)

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(Govindan S. Tampi)
Member (A)