

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. No 403/2002

Date of Decision 3-2-2003

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D. N. Prasad ... Applicant

Shri S. S. Tiwari ... Advocate for the Applicant

VERSUS

UOI and Ors. ... Respondents

Shri R. N. Singh Advocates for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Hon'ble Shri S. K. Malhotra, Member (A)

1. To be referred to the Reporter or not ? Yes

2. Whether it needs to be circulated to other
Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.403/2002

New Delhi this the 3rd day of February, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.K. Malhotra, Member (A)

Shri D.N.Prasad,
S/O Shri D.A.Sastry,
R/O 12-G,C.G.H.Complex,
Vasant Vihar, New Delhi,
and working as Deputy Adviser
(Monitoring-Coal/Petroleum)
in Planning Commission (Power
and Energy Division),
Yojana Bhawan, Sansad Marg,
New Delhi.

..Applicant

(By Advocate Shri S.S.Tiwari)

VERSUS

1. Union of India, through
Secretary, Planning
Commission, Yojana Bhawan,
New Delhi.
2. Secretary,
Union Public Service Commission,
Dholpur House, Shahjehan Road,
New Delhi.
3. Secretary,
Department of Personnel and
Training, North Block, N/ Delhi.

..Respondents

(By Advocate Shri R.N.Singh)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

The applicant is aggrieved by the orders passed by the respondents dated 15.10.2001 and 18.12.2001 by which they have informed him that he cannot be considered for promotion to the post of Joint Adviser (Coal) as he has not completed five years of regular service in the relevant grade.

2. According to the applicant, the above action of

the respondents will mean that he is made to suffer stagnation in the lower post, especially when there is no other eligible Departmental candidate and, therefore, none will be adversely affected if he is considered and promoted. The applicant has also submitted that he had also applied in terms of the Circular of the respondents inviting applications for appointment to the post of Joint Adviser (Coal) on promotion/deputation, including short-term contract basis. In the impugned Office Memo dated 18.12.2001, a reference has been made to the applicant's representation dated 20.11.2001 requesting the Administration to seek relaxation from Department of Personnel and Training (DOP&T) to consider him as ^{an} ~~an~~ eligible for the post of Joint Adviser (Coal). He was, however, informed that the DOP&T has not agreed to relax any condition of the Recruitment Rules (RRs) i.e. the condition of five years regular service as on 1.9.2001, as the quantum of relaxation involved is substantial. They have also indicated that five years regular service as on 1.9.2001 in the grade of Deputy Adviser was required whereas the applicant had only two years and three months of regular service in that post against the required five years.

3. By Presidential Notification dated 8.1.1996, the respondents have appointed the applicant who is a Senior Research Officer (SRO) as Deputy Adviser (Coal) from the forenoon of 28.12.1995 on ad hoc basis for a period of one year or until further orders, whichever is

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earlier. Subsequently a number of similar Notifications were issued from time to time and the period of ad hoc appointment of the applicant as Deputy Adviser was continued for a specified period or till the post is filled ~~is~~ on regular basis or until further orders, whichever is earlier. By one such Notification dated 23.2.1999 (Annexure R-XIV) annexed by the respondents to their reply, the period of adhoc appointment of the applicant was extended as Deputy Adviser in the Planning Commission for a further period of six months w.e.f. 26.2.1999 or till the post is filled up on regular basis or until further orders whichever is earlier. Thereafter, Notification dated 31.5.1999 was issued by the respondents appointing the applicant as Deputy Adviser on regular basis w.e.f. 27.5.1999 (FN) and until further orders.

4. Shri S.S.Tiwari, learned counsel for the applicant has very vehemently submitted that taking into account the nature of ad hoc appointment of the applicant as Deputy Adviser w.e.f. 28.12.1995 as also ^{the fact is} that he had worked on that post without any break till he was regularised on the same post w.e.f. 27.5.1999, all the previous periods of his ad hoc service ought to have been counted as regular service for the purposes of considering his candidature for the next promotional post of Joint Adviser (Coal). He submits that it was only when the applicant came to know that he has not been considered, he requested the respondents to grant him ^{the}

relaxation under any of the Rules which has also been wrongly turned down by the impugned Office Memo dated 18.12.2001. He has relied on certain judgements of the Tribunal which have also been referred to in the OA and we have seen them.

5. The respondents have filed the reply and controverted the above averments. The main contention of the respondents is that ad hoc service rendered by the applicant from 28.12.1995 till he was regularised in the grade of Deputy Adviser on 27.5.1999, cannot be counted because the RRs are very clear in this regard. The applications for the post of Joint Adviser were invited from all the eligible candidates who had rendered five years regular service as on 1.9.2001 i.e. the date of occurrence of the vacancy. Shri R.N.Singh, learned counsel has submitted that for filling up the post of Joint Adviser (Coal), under the relevant RRs of 2000, consultation with UPSC is necessary. He has also submitted that the applicant had been appointed on ad hoc basis earlier on the vacancy which had occurred due to deputation of the concerned officer and was not a clear vacancy. He has also submitted that under Column 12 of the Schedule to the relevant RRs, other officers holding the analogous posts on regular basis were also eligible and the applicant who was Deputy Adviser, was required to have completed five years regular service in the grade for such consideration under promotion/deputation to the higher post of Joint Adviser (Coal). Both the learned

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counsel for the parties have relied on the judgement of the Hon'ble Supreme Court in Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra (AIR 1990 SC 1607). Learned counsel for the respondents has distinguished the judgements of the Tribunal relied upon by the applicant. He has also emphasized on the fact that in the present case the relevant RRs for the post of Joint Adviser (Coal) have to be complied with. Therefore, there is no illegality in the impugned orders which have been issued by the respondents in accordance with the provisions of law and Rules.

6. In addition to the other judgements relied upon by the learned counsel for the applicant, he has also relied on the judgement of the Hon'ble Supreme Court in Ajit Kumar Rath Vs. State of Orissa and others (2002 SCC (L&S) 192) and has reiterated his arguments that ad hoc appointment of the applicant in the present case as Deputy Adviser is eventually the same and, therefore, there is no reason why the services rendered by him in that capacity should not be treated as regular for the purposes of promotion to the next post of Joint Adviser (Coal).

7. After careful consideration of the facts and the circumstances of the case, we find no merit in this application. A perusal of the annexures to the reply by which the applicant had been appointed as
Yours

Deputy Adviser (Coal) on ad hoc basis from 28.12.1995 till he was appointed in the same post on regular basis shows that this was only an ad hoc arrangement/stop gap arrangement till further orders or till the post was regularly filled up, whichever is earlier. This appointment has also not been done in accordance with the Rules inasmuch as consultation with the UPSC had not been done which had taken place only when the applicant was regularly appointed. The judgement of the Constitutional Bench of the Hon'ble Supreme Court in Direct Recruits's case (supra) is fully applicable to the facts in this case. The post of Deputy Adviser against which the applicant had been appointed on ad hoc basis was a post on which some other officer had a lien. In the circumstances, the ad hoc appointment of the applicant was fortuitous and not on regular basis. Shri S.S.Tiwari, learned counsel has very vehemently submitted that the person who was on deputation was subsequently absorbed in a higher post and did not come back to the parent Department and, therefore, the applicant should be considered to have been regularly appointed from day one of his ad hoc appointment. Such a proposition cannot be accepted as it is de hors the Rules and against the settled law as explained by the Hon'ble Supreme Court in the aforesaid case and in a number of other decisions of the Hon'ble Supreme Court referred to in the judgements of the Tribunal relied upon by the

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applicant, copies of which have also been placed on record. We have carefully considered these decisions and taking into account the settled law and the facts and circumstances of the case, the contention of the applicant that his ad hoc service should be deemed to be regular service in the grade of Deputy Adviser cannot be accepted and it is accordingly rejected.

8. The decision of the Hon'ble Supreme Court in Ajit Kumar Rath's case (supra) which refers to ad hoc promotion made by the competent authority was against a permanent vacancy and on receipt of concurrence from Public Service Commission, the regularisation order was issued after four years. In the circumstances the promotion was held on the facts, as virtually regular, though it was provisional pending receipt of the concurrence from the Commission. The facts in the present case are distinguishable from A.K.Rath's case (supra) as the concurrence of the UPSC, which is a pre requisite as laid down in the RRs, has not been obtained and there was no clear vacancy till the person who was on deputation was promoted in 1999. In the facts and circumstances of the case, the judgement of the Hon'ble Supreme Court in A. K. Rath's case (supra) relied upon by the applicant will not assist him.

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In the facts and circumstances of the case, the action taken by the respondents is neither illegal nor arbitrary to warrant any interference in the matter.

9. In the result, for the reasons given above, the OA fails and is dismissed. No order as to costs.

Omprakash
(S.K. Malhotra)

Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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