

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1116/2001

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Wednesday, this the 3rd day of April, 2002

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

Shri Avinash Mishra,
S/o Shri M.D. Mishra,
Aged 37 years,
R/o D-107, Pragati Vihar,
Lodhi Road, New Delhi

..Applicant

(By Advocate: Shri A.K. Behra)

Versus

1. The Secretary,
Planning Commission,
Yojana Bhawan,
New Delhi

2. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi - 110 011

..Respondents

(By Advocate: Shri N.S. Mehta)

O R D E R (ORAL)

S.A.T. Rizvi, Member (A):

Non-consideration of the applicant's candidature for promotion to the post of Deputy Adviser in the Planning Commission (P.C.) forms the basis of the present OA.

2. The facts of the case briefly stated are that after working as Assistant Director in the Ministry of Water Resources (MWR) in the pay grade of Rs.2200-4000 for sometime in April 1991, the applicant came to be directly appointed as a Research Officer (R.O) in the P.C. on 4.6.1991 in the same pay grade. Thus, while he has been working as R.O. in the P.C. only from 4.6.1991, his experience of working in the pay grade of

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Rs.2200-4000 takes effect from April 1991. In accordance with the relevant Recruitment Rules, the applicant could be promoted to the next higher post of Senior Research Officer (SRO) after completing five years of regular service as R.O. Since he had not completed five years of regular service as R.O. in the P.C. even though he had already acquired the experience of working in the pay grade of Rs.2200-4000 for a period of more than five years, he was considered for promotion to the post of SRO only on ad hoc basis w.e.f. 14.5.1996 and promoted as such by a notification issued on 17.5.1996 (A-2). The aforesaid notification contained the usual stipulation that the applicant's ad hoc appointment as SRO will not bestow upon him the right to claim regular appointment, seniority etc. to the post. However, since the applicant had become eligible for regular promotion to the post of SRO in accordance with the Recruitment Rules w.e.f. 3.6.1996, i.e., on completion of 5 years of regular service and the respondents had failed to promote him regularly, the applicant approached this Tribunal through OA No.986/1997. The Tribunal directed the respondents to hold a DPC to consider the applicant's claim for regular promotion as SRO. Accordingly a DPC was held and the applicant has been regularised as SRO w.e.f. 21.7.1999 vide notification issued on 23.7.1999. The applicant's case is that since he had continuously worked as SRO w.e.f. 14.5.1996 without any break, and the ad hoc appointment itself has been made with the approval of the appointing authority (the President of India) after considering the cases of all the eligible candidates,

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his seniority in the post of SRO should be computed from 14.5.1996 and based on this he should be considered for further promotion to the post of Deputy Adviser in the P.C. The respondents having failed to consider his aforesaid claim, the applicant has come up before us by filing the present OA.

3. The respondents seek to contest the OA and have filed a counter reply, which has been followed by a rejoinder filed on behalf of the applicant. The learned senior counsel appearing on behalf of the respondents has, to begin with, relied on the rule position and has subsequently also placed reliance on the ratio of the judgement rendered by the Supreme Court on 22.8.2000 in R.K. Sain & Others vs. Union of India & Others reported in (2000) 8 SCC 25 to contend that the applicant has no case and the respondents have correctly computed his seniority as SRO w.e.f. 21.7.1999 on which date he was regularised on the said post.

4. It is not disputed that the applicant possessed all the qualifications laid down in the Recruitment Rules. It is also not disputed that he had worked continuously and without break even if on ad hoc basis as SRO right from 14.5.1996, and had thus completed more than five years of service as SRO as on 14.5.2001. The relevant rules (Annexure A-1) provide for a regular service of five years in the grade of SRO for promotion to the post of Deputy Adviser. Thus, if the aforesaid period taking effect from 14.5.1996 could be treated as the period of regular service as SRO, there could be no

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difficulty in considering his claim for promotion to the post of Deputy Adviser. The learned senior counsel appearing on behalf of the respondents argues, by placing reliance on the Planning Commission (SRO) Recruitment Rules, 1985, that consultation with the UPSC is a must for regular promotion to the post of SRO. He has advanced the plea that even though the applicant fulfilled all the qualifications for the post of SRO and was also appointed on ad hoc basis by the competent authority (the President of India), the promotion given to him could not be treated as regular promotion for the reason that the UPSC was admittedly not consulted. In order to buttress his aforesaid argument, the learned senior counsel has placed before us a copy of the departmental noting which resulted in the applicant's appointment as SRO on ad hoc basis. His contention is that the applicant was fully conscious and aware of the fact that consultation with the UPSC was a must for regular promotion to the post of SRO. The aforesaid noting also shows, according to the learned senior counsel, that the applicant himself had made a prayer for promotion on ad hoc basis until he became fully qualified for regular promotion after completing five years of regular service. In the circumstances, according to him, the applicant cannot stake his claim for treating the period of ad hoc promotion as one of regular promotion for the purpose of further promotion to the post of Deputy Adviser.

5. The learned counsel appearing on behalf of the respondents has, as already stated, further relied on

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the ratio laid down by the Supreme Court in the case of R.K. Sain & Others (*supra*), which reads as follows-

"In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc" (emphasis supplied)

Shri N.S. Mehta, learned senior counsel argues that the words "consultation of the appropriate authority" occurring in the above would, in the present case, mean consultation with the UPSC which, as stated above, has not been carried out. That being so, according to him, the period of the applicant's appointment as SRO before he was regularised in the same post is required to be treated as purely ad hoc, and as such the benefit of regular service cannot be extended to the applicant in the manner prayed for by him for his further promotion to the post of Deputy Adviser.

6. The learned senior counsel for the respondents has thereafter sought to place reliance on the judgement rendered by the Supreme Court on 9.5.2001 in the case of Swapan Kumar Pal and Others vs. Samitabhar Chakraborty and Others reported in (2001) 5 Supreme Court Cases 581. In that case, the following question posed for the consideration of the Court has been answered by it in the negative:-

"Is it possible to hold that on regular promotion being given, after adjudging the suitability of the ad hoc employees by holding test, it dates back to the date of ad hoc promotion?"

According to him, the aforesaid ratio will find application in the facts and circumstances of the present case and accordingly the applicant's case cannot be sustained.

7. Shri N.S. Mehta, learned senior counsel for the respondents has also argued that going by what the Supreme Court has held in paragraph 10 of the same judgement (S.K.Pal and others, *supra*), it has to be accepted that "appointees dehors the Rules can get seniority not from their initial appointments, but from the date on which they are actually selected and appointed, in accordance with the Rules and their appointment and seniority would take effect from the date of selection, after due completion of the process". The respondents' case is that the applicant's appointment on ad hoc basis was dehors the Rules inasmuch as the UPSC was not consulted and in this view of the matter the aforesaid principle laid down by the Supreme Court will find application in the present case as well.

8. The learned counsel appearing on behalf of the applicant, on the other hand, places reliance, inter alia, on the very same judgement rendered by the Supreme Court in the case of R.K. Sain and Others (*supra*) which has been relied upon by the learned senior counsel to bring home his contention that notwithstanding the fact that UPSC was not consulted, the applicant's promotion to the post of SRO w.e.f. 14.5.1996 could not be held to be 'stopgap' or 'fortuitous' or 'purely ad hoc'. In

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support of this contention, the learned counsel has proceeded to rely on the judgement rendered by a Constitution Bench of the Supreme Court on 2.5.1990 in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Others reproduced in (1990) 2 SCC 715. In that case, while dealing with ad hoc appointments, the Supreme Court, inter alia, laid down as follows:-

"If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted"

The aforesaid case was not noticed by the Constitution Bench of the Supreme Court in the case of R.K. Sain and Others (supra) also decided by a five Judges Bench of the same Court. The ratio in the case of Direct Recruit Class II Engineering Officers' Association (supra) will, therefore, according to the learned counsel, squarely apply in the facts and circumstances of the present case.

9. Shri A.K. Behra, learned counsel appearing on behalf of the applicant has next relied on the judgement made by the Supreme Court on 8.7.1997 in the case of I.K. Sukhila and Others v. Union of India and Others reported in (1997) 6 SCC 406. The judgement rendered by the Supreme Court in the case of Direct Recruit Class II Engineering Officers' Assn. (supra) was noticed by the Court while delivering the aforesaid judgement. A perusal of the judgement rendered by the Supreme Court

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in the aforesaid case reveals that the appellants in that case who were Assistant Engineers had been promoted on ad hoc basis between 1970 and 1977 and subsequently all of them were appointed as Assistant Engineer on regular basis w.e.f. 20.3.1978. The appellants in that case had sought a direction for determining their seniority by taking into account the period of uninterrupted and continuous service rendered by them on ad hoc basis. Regular appointments to the post of Assistant Engineers were not made in that case partly because for some time no rules were in existence and partly because no action was taken even after the rules came in existence to promote the officers regularly until 1978. A recourse to ad hoc promotion was thus made in the peculiar circumstances of that case. Regular vacancies in the promotion quota remained available during the relevant period, but regular promotions, as stated, were not made, and instead the appellants were promoted only on ad-hoc basis. In the aforesaid circumstances, the Supreme Court in that case held that "it is not possible to accept that the appointment of the appellants as AEs though temporary and ad-hoc were by way of stop-gap arrangements only." The Court accordingly went on to hold that the appellants were entitled to get their seniority counted from the dates they were initially appointed as AEs. The learned counsel argues that there is a great deal of similarity between the facts and circumstances of that case and those which obtained in the present case, and therefore, the ratio of the aforesaid judgement must be applied in the present case in order to give the benefit

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of seniority to the applicant from the date he started working as SRO on ad hoc basis, moreso because the judgement rendered by the Supreme Court in the case of Direct Recruit Class II Engineering Officers' Assn. (supra) has been noticed by the Supreme Court in the aforesaid case.

10. Coming to the judgement relied upon by the learned senior counsel for the respondents in the case of Swapan Kumar Pal and Others (supra), the learned counsel for the applicant stresses that on facts and circumstances, that case is distinguished. Firstly, according to him, a trade test was expected to be cleared by the appellants in the said case in order to fulfil the qualifications laid down for promotion, and the same had not been cleared by the appellants. Secondly, a definite rule with regard to seniority in the initial recruitment grade was in existence in that case, whereas no such rule was in place in the situation of the present case. In the circumstances, according to him, placing of reliance on the aforesaid judgement will not assist the respondents in any manner.

11. We have considered the aforesaid submissions and for the reasons recorded above find substance and merit in the applicant's case. From the departmental noting placed before us for our perusal by the learned senior counsel for the respondents, it has become clear to us that the applicant fulfilled all the qualifications laid down in the relevant rules for regular promotion to the post of SRO, and also that regular vacancies existed

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against which the applicant could be considered for regular promotion. We also find, after hearing the parties, that there was no justifiable reason for not holding a DPC to make regular promotion to the post of SRO. Relevant Recruitment Rules were in place and regular vacancies also existed. All that was required was to hold a DPC for considering the applicant's case for further promotion to the post of SRO. He was, according to the aforesaid departmental noting, the senior most eligible candidate for being considered for regular promotion to the post of SRO. The criterion for promotion was non-selection. However, for unknown reasons, the respondents continued the applicant in ^{an} ~~ad~~ hoc capacity until he was regularised by the respondents not suo-moto but in consequence of this Tribunal's intervention. In our view, it will be just too bad and unjust to allow the applicant to suffer merely because the respondents have failed to do their duty by holding a DPC in time. Moreover, the case of the applicant finds abundant support in the various judgements relied upon by the learned counsel appearing on his behalf and to which references have been made in the preceding paragraphs.

12. To sum up, we find that even though appointed on ad-hoc basis initially for a period of one year in May, 1996, the applicant was continued as such and in the same capacity until he was regularised in July, 1999. Thus, by necessary implication, his appointment cannot be said to have been made by way of a stopgap/fortuitous arrangement. The same was, to all

intents and purposes, a long term appointment/arrangement. At the end of the aforesaid long term appointment/arrangement, the applicant has been regularised w.e.f. 21.7.1999. Admittedly, the applicant was qualified to hold the post of SRO on completion of five years on 4.6.1996. He was eligible for promotion in all respects and was also the senior-most among the eligible candidates. The criterion for promotion was non-selection. There could be no doubt about his performance as he has ultimately been regularised by the respondents themselves w.e.f. 21.7.1999. In the circumstances, there could be no doubt about the application of the ratio of the judgements rendered by the Supreme Court relied upon by the learned counsel appearing on his behalf to the facts and circumstances of the present OA. Thus, it will be most improper to deny him the benefit of seniority with effect from the date he was appointed on ad-hoc basis.

13. In the light of the foregoing, the OA is found to have merit and is allowed. Accordingly we hold that the service rendered by the applicant on ad hoc basis during the period from 14.5.1996 to 21.7.1999 will be counted as qualifying service for the purpose of promotion to the post of Deputy Adviser in Planning Commission and direct that the result of the selection of the applicant which has been kept in a sealed cover in pursuance of the direction contained in the interim order passed on 3.5.2001, shall be given effect to by the respondents after opening the sealed cover within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs.

S. A. T. RIZVI
MEMBER (A)

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ASHOK AGARWAL
CHAIRMAN