

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. No. 1829/1999

Date of Decision: 11.4.2001

Shri V.D. Mehta, ...Applicant

(By Advocate : Shri Narain Bhatia)

Versus

Union of India & Anr. ...Respondents

(By Advocate Shri Madhav Panicker)

Corum:

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not ? YES/NO

2. Whether it needs to be circulated to
other Benches of the Tribunal ?

YES/NO

(GOVINDAN S. TAMPI)
MEMBER (A)

Patwal/

(V)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 1829/1999

New Delhi this 12th day of April 2001

Hon'ble Mrs. Lakshmi Swaminathan, VC(J)
Hon'ble Mr. Govindan S. Tampi, Member (A)

V.D. Mehta,
S/o Sh. G.D. Mehta,
Working as Milk Distribution Officer in
Delhi Milk Scheme and R/o AC/13-C, Shalimar Bagh,
New Delhi

.....applicant

(By: Shri Narain Bhatia, Advocate)

Versus

1. Union of India through Secretary,
Ministry of Agriculture,
Krishi Bhawan,
Deptt. of Animal Husbandry & Dairying,
New Delhi

2. The General Manager,
Delhi Milk Scheme,
Patel Nagar Depot,
New Delhi.

.....Respondents.

(By: Shri Madhav Pannikar Advocate)

O R D E R

By: Shri Govindan S. Tampi, Member (A)

By this O.A., the applicant seeks to have a declaration promoting him as "Milk Distribution Officer" on regular basis since 1990, when he was promoted to the grade on ad hoc basis and even earlier since 1987 when he was given the additional charge of the post and granting him seniority ^{accordingly} making him eligible for promotion as Dy. Manager (Distribution).

2. Heard the learned counsel for the applicant and the respondents.

3. Facts in brief are, that the applicant who joined as Asstt. Milk Distribution Officer on 16.9.64, in Delhi Milk Scheme was confirmed in that grade on 1.1.70. He was given full additional charge of Milk Distribution Officer on 25.4.87 and was promoted to that grade on 22.3.90 on ad hoc basis against the vacancy of Dy. Manager and regularised on 26.12.97. Shri Narain Bhatia, learned counsel for the applicant states that since 1991, the applicant has been making representations for regularising him, to which the administration replied on 16.3.99, stating that the representation had no merit. Similar reply was given by the Ministry of Agriculture, Deptt. of Animal Husbandry and Dairying on 24.5.99. In terms of the Promotion Rules, post of Dy. Manager (Distribution) in Delhi Milk Scheme is to be filled fully by promotion from M.D.Os. with eight years of regular service. However, as the applicant was regularised only on 26.12.97, in spite of his working for seven years in that capacity before that and for three years prior to it looking after the charge, he has been denied the chance to be promoted in spite of their being a regular vacancy of Dy. Manager. Though the applicant was fully qualified and eligible for regular promotion in 1990 itself, he was not so promoted and a S.C. candidate who was not qualified had been promoted earlier. This also has prejudiced the cause of the applicant considerably, argues Sh. Bhatia, learned counsel. As the applicant has been occupying the post uninterruptedly for nearly seven years on ad hoc basis and for three years before that on additional charge basis, he has a vested right to be considered for regularisation from 1990, with

consequential benefits, according to Sh. Bhatia. He also placed reliance upon the following judgements, which he felt squarely covered his case.

- i) Narendar Chaddha and Ors Vs Union of India & Others AIR 1986 SC 638 (para 14).
- ii) Delhi Water Supply Vs R.K. Kashyap & Others and Sewage Disposal Committee & Others - 1988 (6) SLR-33 (Para 14).
- iii) Sajjad Hussain Naquib Vs State of J&K - 2000(3) SCT 1085.
- iv) Rakesh Miglani Vs State of Haryana - 1995 (I)SLR 83
- v) H B Sharma Vs Union of India - 1996 (6) SLR 184
- vi) Chambel Singh Vs State of Haryana & another 1995 (I)SLR 1
- vii) I.K. Sukhija Vs Union of India -1998(1) SLR. 294 and
- viii) Rudra Kumar Sain & Others Vs Union of India & Others - AIR 2000 SC 2809.

The application in the circumstances merits acceptance with full consequential benefits, pleads Shri Bhatia.

4. Strongly repudiating the pleas canvassed by for the applicants, Shri Madhav Panikkar, learned counsel appearing for the respondents details the circumstances in the case. It is pointed out by Sh.. Panikkar that one post of Dy. Manager (Distribution) Group-'A' which fell vacant on 1.6.84 and one post of Milk Distribution Officer which fell vacant on 1.11.85 in D.M.S. were not filled on account of ban imposed on 25.10.85 by the Ministry . Due to exigencies of service one Sh. Khanna and thereafter the applicant, who were AMDOs were given additional charge of MDOs, when the ban was lifted in 1989, one vacancy each of Dy M (D) and MDO were also

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created, in addition of the two post of MDOs. The first went to one Sh. Trilochan Singh, who was the seniormost AMDO and the second which fell on the S.C. point was given on ad hoc basis to Sh. Gautam Chand, subject to relaxation of academic qualifications. Thus no post of MDOs were vacant. Still the applicant and one Sr. P N Sareen, AMDOs were promoted as Ad hoc MDOs w.e.f. 22.3.90 against the vacant posts of Dy. Manager (Distribution) without holding any DPC and as the clear stipulation that the promotion was purely on ad hoc basis and the appointment would not confer upon them any right or claim for seniority. Though another vacancy of MDO arose on 25.9.90, it was filled by another senior, N.L. Sehgal, who was granted by the Tribunal, reinstatement from Suspension with consequential benefits. However, as the proposal for relaxation of educational qualification in the case of Gautam Chand was not accepted and Sehgal had to be adjusted in the wake of Tribunal's order, Sareen & Gautam chand were reverted, while the applicant was allowed to continue as MDO against reserved point 8 in the roster. Following his reversion, Sareen approached the Tribunal claiming seniority over the applicant and the department following its withdrawal, after consulting UPSC held a review DPC on 8.10.97 and placed him above the applicant w.e.f. 1.1.68, by the order dated 27.11.97. After the adoption of post based reservation roster by DOPT's OM No. 36012/2/96 Estt (Res.) dated 2.7.97, earlier roster was revised, whereunder point 8 became unreserved vacancy. Vacancies which arose on 25.9.90, 1.3.97 and 1.5.97 were given to Sareen on notional basis, the applicant RD Mathur respectively. Shri Panikkar therefore points out that the applicant was holding the post of MDO on ad hoc basis from 23.3.90 to

9.9.92 against the higher post of Dy M (D) and thereafter till 25.12.97 by adjustment against a reserved post both ~~times~~ without a DPC and was regularised correctly on 26.12.97 against the post which became available only on 1.3.97. Applicant's claim to the contrary was against facts and the same cannot be conceded. This has been clearly explained to him in a detailed, self contained and speaking order dated 16.3.99. As the applicant was given ad hoc promotion on ad hoc basis against a vacant senior post in 1990 and was continued to be adjusted also in the same manner in 1992 against a reserved point he cannot claim any right for regularisation from 22.3.90 to 25.12.97 was fallacious and does not merit acceptance, pleads the learned counsel for the respondents. Shri Panikkar relies upon the decision of the full Bench of the Hon'ble Supreme Court in M.K. Shanmugham and another Vs Union of India and Other [(2000) 4 Supreme Court Cases 476].

5. We have carefully deliberated on the matter. The facts are not in dispute in this case. The applicant V.D. Mehta, was holding additional charge of the post of Milk Distribution officer since 1987, appointed as M.D.O. on ad hoc basis against a vacant senior post continued to be adjusted as MDO against a reserved point post since 1992 and was finally regularised w.e.f. 26.12.97, against a regular vacancy which arose on 1.5.97. Evidently therefore in spite of his looking after the charge since 1987 and holding it on ad hoc basis since 1990 and on adjustment since 1992 he was not working against any regular post of M.D.O. His being asked to hold additional charge, being promoted on ad hoc basis ^{and} being adjusted against a reserved post which did not

belong to him were not at all against any regular post of MDO or on the basis of any selection procedure in accordance with the recruitment or promotion rules. It was a stop gap arrangement pure and simple. Obviously therefore he was looking after the post and functioning on ad hoc basis was on a concession by the respondents and not as of any vested right in him. It is also worth mentioning that the applicant would have been reverted in 1992, instead of his senior P.N. Sareen being reverted but he was adjusted against the reserved point. Such ad hoc appointment and adjustment cannot at all be considered for counting the service for regularisation. Unless and until on ad hoc appointment is made against a regular vacancy and by the same process as is applicable to a regular appointment and is not a stop gap arrangement, the individual cannot get the benefit of regularisation keeping the ad hoc service also in the reckoning as pointed out by the Hon'ble Supreme Court in the case of M.K. Shanmugham, referred (Supra) by the respondents. We have also carefully perused the judgements cited by the learned counsel for the applicant and are convinced that even those do not come to his help. In Narendar Chadha's case the Hon'ble Court has opined "it is not our view that whenever any person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post." But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly ^{unjust} ~~unwise~~ to hold that they have no sort of claim to such posts and could be reverted unceremoniously." In this case the appointment or adjustment of the applicant in the post of

← MDO was only a stop gap arrangement de hors the rules. In R K Kashyap's cas. [1988 (6) SLR] the Apex court has observed that "if the claims of all eligible were considered at the time of ad hoc appointments and such appointments continued uninterruptedly till the regularisation of the services by DPC or UPSC there is no reason to exclude such service for determining the seniority. " As pointed out earlier the appointment and adjustment having been purely stop gap in nature, in spite of its being continuation it does not give any right to the applicant. In Chambal Singh Vs State of Haryana & Another [1995(I) SLR.1] the full Bench of Punjab & Haryana High Court has opined thus:

For the purpose of present enquiry, Clauses (A) and (B) in the Direct Recruit Class-II Engineering Officers' Association and others case (supra) coupled with elucidation of these Clauses in Aghore Nath Dey's case (supra) and also the views expressed in the earlier judgements of the apex Court, it can be said: (i) that the period as an ad hoc appointee cannot be taken into account for considering the seniority of an incumbent (ii) it is only when such an appointment is as per rules and not by way of a stop gap arrangement and only a procedural formality is required to be complied with that the services so rendered will be taken into account towards his seniority in the cadre; (iii) In the absence of Rules, it would have to be kept in view as to whether the appointment so made is against an existing vacancy and not for a limited period and in that case the period so spent by incumbent can be considered to determine his seniority in the cadre; (iv) If the appointment is otherwise regular except for the deficiency of certain procedural defects, such defect/defects stand cured with the subsequent regularisation; (v) mere long stay at the post on account of some inaction on the part of delinquent officer or on account of interim direction of the Court will not clothe an appointee with any right to tag such a period to determine his seniority in the cadre. Period of service as a stop gap arrangement shall be ignored while determining his seniority in the cadre. The above points are only illustrative and not exhaustive in content. Any point which is not specifically covered the rein is to be examined in the light of Clauses (A) and (B) of Direct Recruit Class -II Engineering Officers' Association and others case (supra) as explained in Aghore Nath Dey's case (supra).

This finding though cited by the applicant goes against him on facts.

Hon'ble Apex Court has in I. K. Sukhija Vs Union of India, [1998(1) SLR 294] case has observed as below:

"Constitution of India, Articles 14 and 16 - Posts and Telegraphs (Civil Engineering Electrical Gazetted Officers) Recruitment Rules, 1975-Seniority/Promotion/Ad hoc Promotion - Appellants appointed against regular vacancies on their being found fit and suitable by Departmental Promotion Committee - Appointments made in accordance with the rules prevailing then -- When they were promoted as A.Es (E) regular vacancies in the promotion quota were available -- Therefore, the only reason why they were not regularly promoted and their promotions were described as ad hoc was the delay on the part of the Department in finalising the Draft Recruitment Rules -- It is not possible to accept that the appointment of the appellants as A.Es. though temporary and ad hoc were by way of stop-gap arrangements only -- Appellants entitled to get their seniority counted from the dates they were initially promoted as A.Es.(E)."

This decision also will not help the applicant as the delay in regularisation was not because of any procedural reason but because there were no regular vacancies of MDOs and the appointment/adjustment was only stop gap in nature. Relevant portion of the Supreme Court's decision in the case of Rudra Kumar Sain Vs U.O.I. and Others, AIR 2000 SC 2809 reads as below:

"20. In the 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 appointment cannot be held to be "stop gap or fortuitous or purely ad hoc". In his view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ad hoc/stop gap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous."

This also does not come to the rescue of the applicant as his appointment was not for as approved post nor with the approval and consultation of the appropriate authority.

It is thus clear that the applicant's ad hoc appointment/adjustment was stop gap in nature and no benefit for seniority or continuous service shall flow from it.

6. Applicant has thus not made out any case for our interference. It fails and is accordingly dismissed.

No costs.

(Govindan S. Tampi)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

Patwal/