

(a)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1067/1998

New Delhi, this 16th day of April, 1998

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

1. Dr. R.U. Ahmed
14, Abul Fazal Apartment
22, Vasundhara Enclave, Delhi-96

2. Dr. P.C. Srivastava
974/Type IV, Kamla Nehru Nagar
Ghaziabad .. Applicants

(By Shri B.B. Raval, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Health & Family Welfare
Red Cross Building, New Delhi

2. Secretary
Department of Personnel & Training
North Block, New Delhi

3. Secretary
Union Public Service Commission
Dholpur House
Shahjahan Road, New Delhi .. Respondents

(By Shri R.P. Aggarwal, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The applicants are aggrieved because of the 1st respondent's communication dated 16.1.98 informing them that ad-hoc service of any period cannot be counted for grant of in-situ promotion. Consequently, they are seeking issuance of directions to the respondents to consider giving them in-situ promotions with effect from the date they had completed 5 years service from the date of their initial appointment on ad hoc basis.

(s)

2. For proper understanding of the case, it would be appropriate to mention background facts of the case in brief.

3. Applicant No.1 was appointed as Senior Scientific Officer (SSO for short) on ad hoc basis with effect from 14.3.86 for a period of six months on the recommendations of the Departmental Promotion Committee (DPC for short) by the presidential order dated 19.3.86. This ad hoc appointment was extended upto 22.3.87 by another presidential order dated 8.5.87. Thereafter, he was appointed on regular temporary capacity from 23.3.87 vide order dated 28.4.87. He was given in-situ promotion with effect from 1.4.92 after which he was further promoted as Director in the PLIM, Ghaziabad with effect from 3.12.92 by order dated 24.12.92, in which capacity he is presently working.

4. Similarly, second applicant was appointed as Research Officer on ad hoc-basis with effect from 19.8.85 by a presidential order dated 16.9.85 on the recommendations of the DPC. This ad-hoc appointment was further extended from time to time by separate orders upto 6.10.87, after which he was appointed on regular temporary capacity with effect from 7.10.87 by an order dated 19.12.87. He was given in-situ promotion with effect from 1.4.94 by order dated 22.8.96.

SP

5. Both the applicants claim that they should have been given in-situ promotion with effect from 14.3.91 and 18.8.90 respectively i.e. on completion of 5 years continuous service from the date of their initial appointment on ad hoc basis on the ground that their initial appointments were made by the President of India based on the recommendations of the duly constituted DPC and that there was no stipulation in the initial appointment orders to the effect that the ad-hoc appointment will not count towards seniority or further promotion in any manner whatsoever nor will the applicants have any claim to seniority in terms of the said ad-hoc appointments. In support of these claims, the learned counsel for the applicants placed reliance upon the decision of the apex court in the case of **Maharashtra Class II Engineering Officers Assn. vs. State of Maharashtra JT 1990 (2) SC 40** as also other identical cases in support of his contentions.

6. Learned counsel for the applicants drew our attention to judgement dated 23.11.95 in OA 557/94 in which the applicant therein (Dr. D.P. Lohar), similarly situated like the applicants herein, was ordered to be given in-situ promotion after completion of 5 years service from the date of initial appointment on ad hoc basis. That judgement was also based on the decision of **Maharashtra Class II Engg. Assn. (supra)**.

AP

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7. Respondents have opposed the claims on the grounds of limitation inasmuch as that the cause of action to the applicants arose in 1992 and 1996 respectively whereas the OA has been filed on 25.5.98 and that the ad-hoc promotions were only temporary arrangement and would not confer any right for regular promotion, seniority etc. They would further contend that Recruitment Rules of 1990 require five years regular service for grant of in-situ promotion from one grade to another and therefore ad hoc service cannot be considered as regular service.

While opposing reliefs in terms of limitation, Shri R.P. Aggarwal, learned counsel for the respondents drew strength from the decisions of the apex court in the cases of S.S.Rathore Vs. UOI AIR 1990 SC 10, P.K. Ramachandran Vs. State of Kerala, 1997 (7) SC 556 and Jagdish Lal Vs. UOI 1997(6) SCC 538.

8. Heard the learned counsel for both the parties and perused the records made available. We find that the applicants have been regularly representing their cases and yet the respondents did not care to send any response till 16.1.98 vide the Annexure-A impugned order. In these circumstances, respondents' plea of limitation cannot be sustained in terms of the law laid down by the apex court in the case of S.R.Bhanrale Vs.

S.P.

(B)

UOI & Ors. 1997(1) SLJ 14. It has been held therein that where the Government itself is at fault, it should not stand on plea of limitation.

9. We find that the applicants were appointed on ad-hoc basis only on the ground that recruitment rules were not finalised. However, the appointments were not by back-door entries. Admittedly, the relevant in-situ promotion Rules were framed in 1990 (Annexure R-1) on the basis of which all eligible persons were considered by a duly constituted DPC and applicants were regularised on 1.4.92 and 1.4.93 respectively. It is also not denied that the initial appointments/further extensions thereof were duly approved by the President of India. Respondents have also not contested that any other person was affected by the ad hoc promotions of the applicants in terms of the draft recruitment rules.

10. Based on the materials placed before us, we are satisfied that the ratio of the case in Maharashtra Class II Engg. Officers Assn. (Supra), as in para 13 of the judgement, is squarely applicable to the instant case. Dr. Lohar's case was decided by this Tribunal based on apex court's judgement. We find no reason to take a different view from that of Dr. Lohar's case decided on 23.11.95 in OA 557/94, which has now attained finality. Accordingly, applicants should be deemed to have been regularly appointed against the posts of SSO/Research Officer

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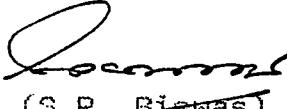
respectively from the date of their initial appointment and therefore they are eligible to be given in situ promotion with effect from 1.4.91 and 1.10.90 respectively.

11. In the result, the OA is allowed with the following directions:

(i) Annexure "A" order dated 16.1.98 shall stand quashed;

(ii) The applicants shall be entitled for all consequential benefits of being granted in-situ promotions from 1.4.91 and 1.10.90 respectively. Suitable orders to this effect shall be issued by the first respondent accordingly.

12. There shall be no order as to costs.


(S.P. Biswas)
Member (A)


16.4.98.
(T.N. Bhat)
Member (J)