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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2008 of 1998

✓ New Delhi, this the 8th day of December, 1999 (9)

HON'BLE SH. S. P. BISWAS, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Nand Lal S/o Shri Thakar Dass
R/o F-52, DDA Flat,
New Ranjit Nagar,
New Delhi-110 008.

... Applicant

(By Advocate: Shri C.B. Pillai)

Vs.

Union of India through

1. The Secretary to the Government of India,
Department of Animal Husbandry & Dairying,
Ministry of Agriculture,
Krishi Bhavan,
New Delhi.

2. The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110 008. ... Respondents

(By Advocate: Shri Gajender Giri)

O R D E R

By Hon'ble Shri Kuldip Singh, Member (J)

The applicant Nand Lal has filed this application under Section 19 of the Administrative Tribunal's Act, 1985, wherein he has prayed that he may be promoted to the post of Senior Mechanic for which he had passed the written test, practical test as well as the interview and he should also be allowed the consequential benefits.

2. The facts in brief are that the applicant was appointed as Fitter (Auto Electrician) in Delhi Milk Scheme somewhere in the year 1969. Then he was stated to have been promoted to the post of Mechanic (Auto

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Electrician) and from time to time he has also been sent for various trainings with Tata Diesel Vehicles at Jamshedpur etc. and has stated to have completed those trainings successfully.

3. It is further stated that on 17.12.1996 the respondents had conducted a written test/trade test as well as interview for the post of Senior Mechanic and all those tests are stated to have been cleared by him and he believes that he had been approved for appointment by the DPC. However, the applicant had superannuated on 31.10.1997. He had also made a representation to the General Manager, Delhi Milk Scheme requesting him to issue promotion orders as he would be retiring on 31.10.1997. A lawyer's notice was also alleged to have been sent on 27.9.97 but to no effect. After his retirement, he had submitted a detailed representation but the same had been rejected. So it is prayed that since the applicant was eligible for promotion and for no fault of him he had been denied the same, so the respondents may be directed to promote him from the date the interview was held.

4. The respondents contested this O.A. The main objection taken by the respondents is that the applicant's initial appointment was irregular and void ab initio.

5. It is stated that the applicant was appointed to the post of Fitter w.e.f. 4.8.69 as direct recruit on ad hoc basis in accordance with the provisions of the proposed Recruitment Rules. It is further stated that at

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the time of his appointment the applicant was aged 32 years and as per the rules for the direct recruitment, a person could be appointed if he is within the age of 18-25 years. Since under the proposed Recruitment Rules, the age group was proposed as 18-35 years so in anticipation of the proposed rules, the applicant was given ad hoc appointment but the proposed rules never came into existence so the appointment of the applicant remained irregular void ab initio as the applicant had been appointed in violation of the rules without getting the relaxation in age.

6. It is further stated that the applicant had also filed an OA claiming the retiral benefits, pension etc. vide OA No. 1301 of 1998 and this Tribunal vide order dated 14.1.1999 allowed the OA. But while allowing the OA, the Tribunal observed that this particular case should not be treated as a precedent and the directions were issued to the respondents to treat the applicant as a confirmed employee and give him pension and other admissible retiral benefits.

7. We have heard the learned counsel for the parties and have perused the records.

8. The learned counsel appearing for the applicant submitted that since vide an earlier order passed by the Tribunal the retiral benefits had been released to him and the applicant had been confirmed, so the applicant is entitled to promotion with effect from the date of interview since he had already qualified the tests and

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even the department in anticipation of his promotion, had filled up the post of Mechanic also, so the applicant should be given that promotion.

9. In our view, this contention of the learned counsel for the applicant has no merit because the fact that applicant was appointed in contravention of the rules and without getting age relaxation by the department, so the initial appointment of the applicant was void ab initio.

10. The applicant is trying to get the benefit of the earlier order passed by this Tribunal. But a perusal of the entire order will show that the Tribunal nowhere has held in clear terms that the applicant was entitled to confirmation as a right. Rather the Tribunal has held as follows:-

(In the facts and circumstances of this particular case which should not be treated as a precedent, this OA is disposed of with a direction to respondents to treat the applicant as a confirmed employee and give him pension and other admissible retiral benefits w.e.f. the date of his retirement on superannuation on 31.10.1997).

11. In this regard we may also mention that along with the rejoinder as placed on record, an order dated 17.3.99 passed by the Government of India in compliance with the directions given by this Tribunal has been annexed. In that order, the Government of India has regularised his service from 4.8.69 to 31.10.97 for pension and other admissible retiral benefits with effect from the date of his retirement on superannuation, which

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means that the Government of India while complying with the order of the Tribunal has regularised his service w.e.f. 4.8.69 to 31.10.97 only for pension purpose. This implies, that at the time when the DPC was held for promotion of a Mechanic to the post of Senior Mechanic, the applicant was treated as ad hoc employee. So ad hoc employee cannot claim any right for promotion.

12. We may further observe that the Tribunal while allowing the previous OA of the applicant had taken a humanitarian approach that a person who had rendered such a long service should be allowed pension etc. as a normal retiree is allowed but right of promotion is not a recognised right under the service jurisprudence. It is only a right to be considered for promotion from the date whenever a junior to an employee is promoted which is recognised under law. Since the applicant being a ad hoc Mechanic, has no right for promotion to the post of Senior Mechanic because of his irregular appointment. As such, we see no merits in the O.A. and it has to be dismissed.

13. Accordingly, the OA is dismissed. No order as to costs.

Kul
(KULDIP SINGH)
MEMBER (J)

Basu
(S.P. BISWAS)
MEMBER (A)

Rakesh