

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 1573/95

(9)

New Delhi this the 27th day of May, 1996

Hon'ble Shri A.V. Haridasan, Vice Chairman(J).

Hon'ble Shri R.K. Ahooja, Member(A).

R.K. Garg,
S/o late Shri Lakh Ram,
R/o B-2/332, Lancer Road,
Timarpur,
Delhi.

... Applicant.

By Advocate Shri B.B. Raval

Versus

Union of India through

1. The Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi.
2. Director General,
Directorate of Advertising and Visual Publicity,
P.T.I. Building,
Parliament Street,
New Delhi.
3. The Director (Publication Divn.),
Ministry of Information and Broadcasting,
Patiala House,
New Delhi.
4. The General Manager-cum-Chief Editor,
Employment News,
Publication Divisions,
East Block IV, Level 7,
R.K. Puram,
New Delhi.

... Respondents.

By Advocate Shri V.S.R. Krishna.

ORDER

Hon'ble Shri R.K. Ahooja, Member(A).

The applicant while holding the substantive post of
Library Assistant in the Production Division, Ministry of Information

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and Broadcasting, was appointed as Technical Assistant on ad hoc basis w.e.f. 30.6.1981. Even though the order of appointment stated that the appointment was purely on ad hoc basis ~~and a stop gap arrangement which will not confer any right on the applicant of seniority, etc.,~~ he was continued uninterruptedly on the same post and he had even reached the maximum of the pay scale, i.e. Rs. 1640-2900. The applicant's grievance is that in spite of rendering 14 years of continued and uninterrupted service on the post of Technical Assistant and getting numerous appreciation letters and rewards, the respondents vide order dated 17.7.1995 which was received by the applicant on 3.8.1995, reverted him to the substantive post of Librarian. He also alleges that he would have been continued on the post of Technical Assistant on ad hoc basis ~~had he not made the representations to the respondents for his regularisation against that post and consideration for further promotion.~~ Relying on a number of Supreme Court's judgements, the applicant has sought relief not only to quash the impugned order of reversion but also ^{to} regularise him on the post of Technical Assistant from the date of his taking over the charge i.e. 30.6.1981 with all consequential benefits.

2. The respondents in their reply have explained that they are unable to consider the case of the applicant for regularisation inasmuch as he is not eligible under the recruitment rules for appointment to the post of Technical Assistant. These recruitment rules were initially notified on 21.2.1961 and were later revised and notified on 30.4.1985. The 1961 rules prescribed direct recruitment with 35 years of maximum age and laid down the following essential and desirable qualifications:

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"Essential"

(i) A Licentiate in Printing Technology or a Graduate from a recognised University.

(ii) About three years practical experience in Printing Press and good acquaintance with production of Books, Magazines etc.

"Desirable"

Knowledge of Hindi."

The 1985 rules did not change the mode of recruitment, but reduced the maximum age of 35 years to 30 years with relaxation upto 5 years for government servants. The qualifications for the said post were changed as under:

"Essential"

(i) Diploma in Printing Technology from a recognised University/Institution or equivalent;

(ii) 2 years' experience in a reputable printing press/publishing House/Advertising agency/Government Organisation engaged in bringing out books, periodicals, posters, folders and other form of printed material.

The qualifications were also made relaxable at the discretion of the Union Public Service Commission.

3. The applicant is a Graduate from Delhi University.

He holds a Post-graduate diploma in Library Science also from Delhi University as well as three years Post-graduate diploma in Book Publishing (with specialisation in book production). Since he has been working in the office of Employment News as a Technical Assistant, it can be said that he has acquired technical experience in a Press of repute and has good acquaintance with the production of all types of books, magazines, posters, etc as required by the 1961 recruitment rules. He has ^{however, not} ~~also~~ acquired essential qualification of diploma in Printing Technology from a recognised University/Institution or equivalent. This qualification is, however, relaxable at the discretion of the UPSC.

The respondents have not made any issue on the ~~part~~ of the

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qualification but have stated ~~int~~ their counter that the main difficulty in his case is that the post is to be filled by direct recruitment and not by promotion.

4. Learned counsel for the applicant Shri B.B. Rawal submitted that there is a catena of judgements of the Hon'ble Supreme Court laying down that where persons continuously worked on ad hoc basis for a considerable long period of 10 to 15 years, they could not be denied regularisation and the consequential benefits of the post.

In this context, he referred to the case of N.S.K. Nayar & Ors. Vs. Union of India & Ors. (ATJ 1992 (1) p.393). In that case the petitioners were permanent members of the Indian Telecommunication service. Under the rules, their promotion from the feeder cadre had to be to the Junior Time Scale (JTS) but there was a provision under the rules that the post in the Senior Time Scale (STS) may be filled as a purely temporary measure in an officiating capacity by the members of the Class-II feeder cadre who are on the approved list for promotion to J.T.S. The petitioners were under the provision of the aforesaid rule continued in S.T.S. for a long period of ten to 15 years but they were reverted on the ground that there could not be any direct recruitment from Class-II service to S.T.S. ^{that} The Hon'ble Supreme Court held/after taking work from the petitioners in the S.T.S. post for 10-15 years and denying them the right of regularisation and the consequential benefits in the said grade was wholly arbitrary and violative of Article 16 of the Constitution of India. The petitioners were thereafter on that ~~post~~ ^{Score} allowed the regularisation in the grade of STS but to count their seniority after continuous period of five years since that was the pre-requisite or qualifying service for direct recruits for promotion from the grade of JTS to STS.

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5. Shri V.S.R.Krishna, counsel for the respondents in reply submitted that the ratio of the various judgements including the above mentioned cited by the counsel for the applicant Shri Raval, did not apply to a case, as the present one where the ad hoc appointment was dehors the recruitment rules. He relied on J&K Public Service Commission vs. Dr. Narinder Mohan & Ors. (1994 Vol. 27 ATC P.56). In that case the petitioners were appointed as Lecturers in various disciplines of medical education on ad hoc basis. They challenged the regular recruitment made under the rules and when the matter was heard by the single judge, he held that appointments should be in accordance with the rules. However

The Division Bench of the High Court held that as the rules provided for ad hoc Lecturers, their appointments were according to the rules and direction was given to regularise the services of all the petitioners in consultation with the Public Service Commission on evaluation of their work and conduct. When the matter came up before the Hon'ble Supreme Court, it set aside the direction issued by the Division Bench of High Court and confirmed that of the single judge. It was held that when the rules provide direct recruitment, every eligible candidate is entitled to be considered inviting applications for recruitment to fill in the notified vacancies in consistent with the right to apply for qualified and eligible persons. However, directions were given that ad-hoc Doctors will continue till the regularly selected candidates are appointed and they will also be entitled to apply for selection and the State Government was directed to consider the case for necessary relaxation under rules as regards age, qualification etc.

6. Shri Krishna argued that in this case also the respondents were not in a position to change the mode of recruitment and even if they wanted to retain the service of the applicant in the

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higher grade of Technical Assistant, they could not do so.

7. We have given careful consideration to the arguments advanced by the learned counsel of both the parties. It is indeed an unfortunate case where the applicant has been promoted to the higher post on ad hoc basis and allowed to continue for over 14 years during which time he has earned acclaim of his superiors and received many appreciation letters and monetary awards. The respondents had an opportunity to amend the rules in the year 1985 and to provide the alternative mode of recruitment by promotion if they wished to help the applicant but they did not avail of that opportunity. In the meantime, the applicant has even reached the maximum of the scale of the higher post and is stagnating there. There are indications to support the plea of the applicant that he would have been allowed to continue on ad hoc basis had he kept mum about his regularisation and sought further promotion. Afterall he has less than six years to go for his superannuation and that may well have been one solution to the problem. At the same time, we feel that we are not in a position to grant the relief sought for since there is no provision for appointment by promotion and the regularisation of the applicant would be clearly violative of the provisions of recruitment rules. We have carefully considered as to what can possibly be done in this case to ameliorate the hardship of the applicant. In the circumstances, we feel that the ends of justice would be met if we direct the respondents to continue the applicant in the post of Technical Assistant on ad hoc basis till such time that they take action to fill the post by direct recruitment in accordance with the recruitment rules. Accordingly, we set aside the impugned order dated 17.7.1995 reverting the applicant to the substantive post of Librarian. Respondents would also

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consider the relaxation of age and educational qualification in respect of the applicant in the matter of direct recruitment to enable him to apply for the same by direct entry. The Government may also consider an amendment of the recruitment rules to make the recruitment by promotion as an alternate method but we refrain from giving any direction on the subject since the respondents are the best judge as to what should be the requirement for recruitment to the post.

8. The application is disposed of with the above direction. There is no order as to costs.

R.K. Amoja
(R.K. Amoja)
Member (A)

A.V. Haridasan
Vice Chairman (A)

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