

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1061/1995

New Delhi this the 6th day of September, 1999.

(b)

HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

HON'BLE SHRI SYED KHALID IDRIS NAQVI, MEMBER (J)

Ram Kishan S/O Darshan Ram,
R/O B-352, Delhi Admn. Flats,
Timarpur,
Delhi-110009.

... Applicant

(By Shri G. D. Gupta, Advocate)

-Versus-

1. Govt. of N.C.T. of Delhi
through its Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.

2. Secretady (GAD),
General Admn. Department,
Govt. of N.C.T. of Delhi,
5, Sham Nath Marg,
Delhi-110054.

3. Union of India through
Secretary, Ministry of Home Affairs,
North Block,
New Delhi. ... Respondents

(By Shri Rajender Pandita, Advocate)

O R D E R

Shri Syed Khalid Idris Naqvi, JM :

The applicant, Shri Ram Kishan, is at present employed as a Hindi Officer on ad hoc basis w.e.f. 2.3.1990. He was initially appointed as a Technical Assistant (Hindi) in the Language Department of the Delhi Administration w.e.f. 8.4.1982. On the promotion of the then Hindi Officer, Smt. Sneh Lata a vacancy accrued to which the applicant was appointed as Hindi Officer on emergent ad hoc basis. Now he claims that on the appointment of Smt. Sneh Lata to

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the post of Assistant Director (Hindi) w.e.f.

1.12.1987, the vacancy accrued to the post of Hindi Officer with effect from that date and the applicant is entitled for his seniority w.e.f. 1.12.1987. He has further mentioned that on retirement of Smt. Sneh Lata w.e.f. 31.7.1994, the respondents moved for convening Departmental Promotion Committee (DPC) for making promotion to the post of Hindi Officer on regular basis though the said post of Hindi Officer had already been filled up by the applicant in March, ^{as recommended by} 1990 on ad hoc basis on the basis of ~~approval~~ by the DPC and, therefore, the act of the respondents to call for another DPC for that very post is uncalled for. On the basis of this ~~pleas~~ the applicant has come up before the Tribunal seeking a declaration to treat his appointment as Hindi Officer on regular basis w.e.f. 1.12.1987 or in the alternative, w.e.f. 2.3.1990, with all consequential benefits and also to declare the applicant entitled to be considered for promotion to the post of Assistant Director (Hindi) on regular basis in the DPC, whenever it is convened, and that the respondents be restrained from convening fresh DPC for reconsidering the case of applicant for his promotion to the post of Hindi Officer on regular basis as according to the case of the applicant, he is entitled to be treated regular in the post of Hindi Officer ^{through} right from 2.3.1990 on the basis of his selection by a duly constituted DPC against a reserved post for SC candidate.

SC

2. The applicant has pleaded that his appointment as made in March, 1990 was challenged by one Shri Suresh Kumar Sharma in O.A. No.2015/94. Here, it is relevant to mention that at the time of arguments, copy of the judgment in that O.A. No.2015/94 was shown in which the application of Shri Suresh Kumar Sharma, applicant therein, has been dismissed holding the appointment of the applicant herein as Hindi Officer as in order. While narrating the facts of O.A. No.2015/94, the applicant has mentioned that the respondents therein who are respondents in the present matter as well, had mentioned in their reply that a DPC convened in the year 1990 to make promotion to the post of Hindi Officer, which was reserved for SC candidate and was carried forward vacancy, recommended the name of the applicant as a SC candidate for promotion to the post of Hindi Officer on regular basis. The applicant, referring to this plea taken by the respondents in O.A.2015/94, asserts that the appointing authority had considered the recommendations of the DPC and ordered for promotion of the applicant, a SC Technical Assistant (Hindi), to the post of Hindi Officer on ad hoc and emergent basis although the DPC recommended his name for promotion to the post of Hindi Officer on regular basis. With these facts, the applicant submits that since he was recommended by the DPC for promotion on regular basis in the year 1990, therefore, the act of the respondents in convening DPC again to fill in the same post is irregular for which direction of the Tribunal has been sought.

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3. On the point of his seniority, the applicant has pleaded that the post of Hindi Officer fell vacant w.e.f. 1.12.1987 on promotion of Smt. Sneh Lata, the then incumbent to that post, and the applicant being the only entitled claimant to this post, should be given seniority from that date. In the alternative, he has pleaded that since he was appointed as Hindi Officer on the recommendation of a duly constituted DPC which recommended for his promotion to the post on regular basis to which he joined on 2.3.1990, therefore, he is entitled for his seniority from 2.3.1990 and with this seniority, he becomes entitled to be considered for promotion to the post of Assistant Director (Hindi) on regular basis in the DPC whenever it is held.

4. The respondents have controverted the claim of the applicant and have filed their replies.

5. Considered the arguments placed from either side.

6. In this matter, the main question is whether the appointment of the applicant as Hindi Officer w.e.f. 2.3.1990 on the basis of recommendation by the DPC is to be taken as regular appointment or ad hoc emergent appointment, and also, ^{whether} ~~that if~~ he is entitled to the seniority with effect from the date of his appointment as such or not. The first plea of the applicant is that he is entitled to seniority from 1987 is not acceptable because mere vacancy of a post does not create a claim without being appointed to

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that post. So far as the question of his seniority w.e.f. 2.3.1990 is concerned, it is to be examined as to what were the conditions of his appointment. The respondents have filed a copy of the order appointing the applicant to the post of Hindi Officer which is annexed as Annexure R-1 and there is a clear stipulation that the appointment would not give the official concerned any benefit for the purposes of seniority or claim for regular appointment to this post or any other equivalent post. It goes to show that this order dated 2.3.1990 appoints the applicant, Shri Ram Kishan, on 'emergent/ad hoc basis' for a period of six months with effect from the date he joined the duty or till further orders, whichever be earlier, and for this appointment he was not to claim any seniority or regular appointment.

7. The contention of the applicant that his appointment as Hindi Officer was on the recommendation of a DPC convened for the purpose which recommended for his regular appointment and, therefore, in view of this recommendation, his appointment should be deemed to be regular. The contention of the respondents is that this vacancy accrued on appointment of Smt. Sneh Lata as Assistant Director (Hindi) in the Language Department which was on ad hoc basis and, therefore, till regularisation of the services of Smt. Sneh Lata to the promoted post, her lien remained to the post of Hindi Officer, and that two persons cannot hold lien against one substantive post. We find force in this contention.

Slv.

8. It is undisputed fact that the applicant was appointed as Hindi Officer out of recommendation by the DPC and the recommendation of the DPC was for his regular appointment, but we cannot ignore the fact that the applicant was appointed to a post against which another officer, namely, Smt. Sneh Lata was having her lien. Moreover, the recommendation of the DPC is only for the eligibility of the candidate and not in respect of the condition of the service to which the appointment is to be made.

9. So far as the seniority of the applicant is concerned, it is a settled position that an ad hoc employee if appointed by following the rules in that respect, has continuous uninterrupted service and is regularised in due course as per rules in that regard, he becomes entitled to the benefit of his ad hoc service in his seniority. In the present case, the applicant has been appointed on promotion in due course and as per rules, so far he is continuing on this post without any break, and he will be entitled to the benefit of this ad hoc service in his seniority only when he is regularised, which is yet to be done and, therefore, we find that at present neither the applicant is entitled to get benefit of his ad hoc service in his seniority nor he can successfully get directions from the Tribunal restraining the respondents from convening fresh DPC for considering his case for promotion to the post of Hindi Officer on regular basis.

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10. With the above position in view, we do not find any force in the contention placed on behalf of the applicant and the application is liable to be dismissed. The same is accordingly dismissed. No costs.

R.K. Aahooja

(R. K. Aahooja)
Member (A)

Syed Khalid Idris Naqvi

(Syed Khalid Idris Naqvi)
Member (J)

/as/