

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No.1667/96

New Delhi: this the 29th day of February, 2000.

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A).

HON'BLE MR. KUL DIP SINGH, MEMBER (J)

Dr. D. S. Mishra,

Deputy Director,

Directorate of Adult Education,

Department of Education,

Ministry of Human Resource Development,

Jamnagar House,

New Delhi

..... Applicant.

(By Advocate: Sri E. X. Joseph, Sr. counsel with
Shri V. P. Sharma & Shri Yogesh Sharma)

Versus

Union of India
through

1. Secretary,
Dep'tt. of Education,
Ministry of Human Resource Development,
Shastri Bhawan,
New Delhi -1
2. Secretary,
Dep'tt. of Personnel & Training,
Ministry of Personnel Public Grievances
& Pensions,
Norther Block,
New Delhi.
3. Director,
Directorate of Adult Education,
Govt. of India, Jamnagar House,
New Delhi -011.
4. Smt. Kusum Vir,
Deputy Director,
Directorate of Adult Education,
10-Jamnagar House,
New Delhi.-011.
5. Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi -11.

..... Respondents

(By Advocate: Shri KCD Gangwani for respondents (Official)
Pvt. Respondent No. 4 is in person.)

ORDER

HON. MR. S. R. ADIGE VC(A):

Applicant impugns respondents' order dated 6.3.95

(page 12 of OA) and seeks seniority as Dy. Director

w.e.f. 27.5.89.

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2. Heard both sides.

3. Admittedly applicant who at the relevant point of time was working as Asstt. Director in the Directorate of Education was appointed to the post of Dy. Director w.e.f. 27.5.89 on adhoc basis for a period of one year or until further orders, whichever was earlier, vide respondents' order dated 4.7.89 (copy taken on record). It is not denied that applicant continued as Deputy Director, till he was eventually promoted as such on the basis of the DPC's recommendations held by UPSC w.e.f. 4.1.95 vide impugned order dated 6.3.95.

4. The question for adjudication is whether applicant is entitled to count the period from 27.5.89 to 4.1.95 towards seniority as Dy. Director.

5. Learned counsel for applicant has relied heavily on conclusion (B) of the Hon'ble Supreme Court's judgment in The Director Recruits' case JT 1990 (2) SC 264 to argue that applicant is entitled to count this period towards seniority.

6. The aforesaid ruling in the Director Recruits' case (supra) has been discussed in detail by the Hon'ble Supreme Court in State of West Bengal & Ors. Vs. Aghore Nath Day & Ors. & connected cases (1993) 3 SCC 371.

7. In Aghore Nath Day's case (supra) the Hon'ble Supreme Court has observed that Conclusions (A) and (B) in the Director Recruits' case (supra) have to be read harmoniously and Conclusion (B) cannot cover case, which are expressly excluded by Conclusion (A). Proceeding further it has been observed that (B) would cover those

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cases where appointment is made against an existing vacancy not limited to a fixed period of time or purpose, by the appointment order itself (emphasis supplied) and there is a deficiency in the procedural requirements prescribed by the rules.

The appointee in such cases is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment (emphasis supplied), subject to the remaining procedural requirements of the rules being fulfilled at the earliest.

8. In the present case admittedly when applicant was promoted on adhoc basis in 1989, no DPC was held. This cannot be said to be a mere procedural infirmity, but strikes at the very root of applicant's claim for grant of seniority from 1989. The impugned order dated 27.5.89 itself states that the appointment is on adhoc basis, and is limited to a fixed period of time, i.e. one year or until further orders, whichever was earlier. The fact that applicant was allowed to continue against that post till he was eventually promoted on regular basis w.e.f. 4.1.95 cannot in any way be construed to mean that when respondents made the adhoc appointments they intended it to be a regular appointment, because if they had intended it to be so, they would not have limited it to one year or till further orders, whichever was earlier in their order dated 27.5.89.

9. In the result we are satisfied that applicant's claim is squarely hit by the corollary to conclusion (A)

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of the Direct Recruits' case (Supra), and under the circumstances we find ourselves unable to grant the relief claimed by applicant.

10. The OA is therefore dismissed. No costs.

Kuldip Singh
(KULDIP SINGH)
MEMBER(J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN(A).

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