

Central Administrative Tribunal, Principal Bench

Original Application No.1972 of 1996

New Delhi, this the 8th day of March, 2000

Hon'ble Mr.Justice Ashok Agarwal Chairman
Hon'ble Mr.V.K.Majotra, Member (Admnv)

Dalbir Singh, aged about 35 years, S/o Sri
Sukhe Singh, R/o House No.37, Village Dichaan
Kalan, New Delhi-110043, presently working
as Senior Demonstrator, Office of the
Project Officer (IADP), Government of Delhi,
11th Floor, MSO Building, IP Estate, New
Delhi-110002

- Applicant

(Applicant in person)

Versus

1. Government of Delhi, through Chief
Secretary, 5, Shyamnath Marg, Delhi-110054.
2. Development Commissioner, Government of
Delhi, 5/9 under Hill Road, Delhi-110054.
3. Dy. Development Commissioner, Office of
the Development Commissioner, 5/9, Under
Hill Road, Delhi-54.
4. Project Officer (IADP), MSO Building, I P
Estate, Delhi.

- Respondents

(By departmental representative Mrs.J. Kumari)

O R D E R (Oral)

By V.K.Majotra, Member(Admnv) -

The applicant has challenged office order dated 9.2.1995 passed by the Deputy Development Commissioner, respondent no.3 whereby the applicant has been regularised on the post of Senior Demonstrator with effect from 1.8.1994 and ^{also} the final seniority list of the officials working in the office of the Development Commissioner in the pay scale of Rs.1640-2900 contained in office order dated 9.5.1995, whereby the applicant has been shown junior to 7 officials (Annexure-A-1 and Annexure-A-2 respectively).

2. The applicant was recruited to the post of Senior Demonstrator as a direct recruit in the year 1990

through Staff Selection Board. The aforesaid post of Senior Demonstrator was created in the year 1986 pursuant to the office order of 24.12.1986 of the respondent-department (Annexure-A-8). In the offer of appointment dated 27.6.1990 it was mentioned that the applicant would be under probation for a period of 12 months from the date of his joining the duties. In the letter of appointment dated 18.7.1990 it has also been mentioned that the applicant would continue on the said post of Senior Demonstrator on adhoc basis till the finalisation of the departmental recruitment rules. After completion of the probationary period of 12 months neither the probation period of the applicant was extended nor order of confirmation was communicated to him. According to the applicant in the absence of such communication he has a reason to believe that his services on the said post of Senior Demonstrator had been confirmed from the date of initial appointment i.e. 13.7.1990. He made a representation dated 18.6.1993 (Annexure-A-10) for regularisation of his services from the date of his initial entry. Respondent no.2 vide his order dated 10.6.1993 promoted six officials ~~from~~ ^{from} from a lower pay scale to the higher pay scale of Rs.1640-2900 on the basis of the recommendations of the DPC (Annexure-A-11). The applicant submitted several reminders about his representation. Ultimately the large awaited departmental recruitment rules were finalized and notified vide Annexure-A-14 dated 1.8.1994. Thereafter the applicant was regularised on the said post of Senior Demonstrator with effect from 1.8.1994. This decision

(2)

was conveyed to him vide order dated 9.2.1995 (Annexure-A-1). The respondent department vide notification dated 2.3.1995 circulated the combined seniority list of the officials working in the pay scale of Rs.1640-2900 asking the concerned officials to file their respective objections. The applicant's name was at the bottom of the list. He filed his representation contending that being a direct recruit he stood on a better footing than those persons shown at serial nos.2 to 8, who were promoted from a lower pay scale much after the joining of the applicant. He made a representation on 7.2.1995 to the Chief Secretary (Annexure-A-17) which remained unrepiled. The office of the Development Commissioner issued the final seniority list on 9.5.1995 (Annexure-A-1) showing the applicant at serial no.9 and his date of appointment in the said grade has been mentioned as 1.8.1994. He made another representation on 5.6.1995. The Deputy Development Commissioner vide his letter dated 12.7.1995 conveyed to the applicant that the final seniority list has been prepared on the basis of the respective regular appointment of the concerned officials in the pay scale of Rs. 1640-2900 and since the services of the applicant had been regularised with effect from 1.8.1994 his name has been shown at serial no.9 below the persons junior to the applicant (Annexure-A-20). The applicant has sought quashing of the final seniority list dated 9.5.1995 (Annexure-A-2) and direction to the respondents to review promotions in accordance with the relevant rules. He has also sought that he should be regularised with effect from the date of his initial appointment in the pay scale of Rs.1640-2900 i.e. 13.7.1990.

U

(B)

3. The respondents in their written statement have taken a preliminary objection that the OA is barred by res judicata as the applicant having already filed an OA No.1862/96 which was decided on 3.9.1996 by this Tribunal. The respondents have admitted that DPC has regularised seven officials in the pay scale of Rs. 1640-2900 and Rs.1600-2600 on 10.6.1993. According to them the combined seniority list had been issued after taking into consideration the objections of the concerned officials. The applicant could not have been regularised without finalization and notification of the recruitment rules of the post of Senior Demonstrator. The applicant has filed a rejoinder also.

4. The applicant who has come in person has argued out his case himself. Departmental representative Mrs.Jasvinder Kumari, Litigation Inspector also assisted the Court elucidating the contentions of the respondents and clarifying various points.

5. The applicant drew our attention to judgment dated 23.9.1993 in the case of K.Balan and Bool Chand Chablani and others Vs. Union of India and others, OAs Nos. 8 & 9/A& N of 1992 of the Calcutta Bench of this Tribunal (553 Swamy's CL Digest 1993) as well as Shri L.Chandrakishore Singh Vs.State of Manipur & others, JT 1999(7) SC 576 in support of his claim. In the former case the applicants were promoted on adhoc basis on diverse dates on the basis of extant guide-lines regarding appointment and promotion of Assistant



Engineers. Subsequently, the Government of India had promulgated a set of recruitment rules for appointment to the post of Assistant Engineers and this was made effective by an order of 15.9.1982. After the promulgation of recruitment rules, some direct recruitments were made in the year 1984. The applicants were given regularisation from 3.12.1980, but the direct recruits who were appointed in 1984 were given higher seniority with effect from September, 1984. After considering various rulings and facts of the case, it was held by the Tribunal that the seniority of the applicants would be counted from the date of their initial adhoc promotion to the post of Assistant Engineers. In the later judgment it was accepted as well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard this view was fortified by the judgment of the Hon'ble Supreme Court in G.P.Doval and another Vs. Chief Secretary, Govt. of U.P. and another, (1984) 4 SCC 329.

6. We will now address ourselves to the question

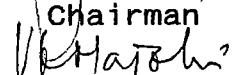
of application of res judicata. In the order dated 3.9.1996 in OA 1862/96 filed by the applicant earlier this Tribunal had stated that '[H]is grievance is that persons who have been promoted as Senior Demonstrator after his adhoc officiation in that post but regularised earlier have been shown above him in the seniority list. The grievance of the applicant is, therefore, against earlier regularisation of the promotees and about the date from which he was regularised in his service". It was concluded by the Tribunal that the applicant "should have challenged the regularisation of promotees prior to him or the date on which he was regularised by an order dated 9.2.1995. It was clarified that unless he did that, he cannot claim seniority and seek setting aside of the order dated 9.5.1995. In this light the OA was rejected. However,, it was made clear that rejection of that OA shall not in any way preclude the applicant from seeking the appropriate relief from the respondents in accordance with the law. From the above discussion we find that the present OA is not hit by the principle of res judicata. The relief claimed by the applicant are quite in order. Placing reliance on the ratio of the judgments quoted above we find the claim of the applicant is quite justified. He was appointed as Senior Demonstrator with effect from 13.7.1990 on probation for a period of one year. He was neither confirmed nor was his probation extended in any manner. He was later on regularised with effect from 1.8.1994 after the recruitment rules to the post of Senior Demonstrator were ultimately notified. The present case is wholly covered by the judgments cited above. The applicant's adhoc appointment on probation which is

followed by confirmation cannot be ignored for reckoning length of continuous officiating service for determining the place in the seniority list. No contrary rule has been shown against this view. His confirmation has to be related back to the date when he was appointed and the entire service will have to be computed in reckoning his seniority according to the length of continuous officiation.

7. In the light of the above discussions/reasons, the respondents are directed to take into consideration the continuous adhoc appointment of the applicant in the pay scale of Rs.1640-2900 as regular appointment from the date of his initial appointment i.e. 13.7.1990 and also to allocate a proper place to the applicant in the seniority list accordingly. No costs.


(Ashok Agarwal)

Chairman


(V.K. Majotra)
Member (Admnv)

rkv