

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1745/97

Date of decision 29.5.98

(A)

Smt. Indu Rani Arora Petitioner

Sh. M. K. Gupta Advocate for the Petitioner(s)

Versus

UOI M/O Health & F.W. Respondent(s)

Sh. A. C. Aggarwal with Shri
Rajeev Bansal for R 1-4
Sh. M. L. Sharma for R-5
Advocate for the Respondents

CORAM

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Hon'ble Shri K. Muthukumar, Member (A)

1. To be referred to the Reporter or not ? Yes

2. Whether it needs to be circulated to other Benches
of the Tribunal ? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1745/97

(20)
New Delhi this the 29th day of May, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member (J).
Hon'ble Shri K. Muthukumar, Member (A).

Smt. Indu Rani Arora,
W/o Shri V.K. Arora,
Sector 23, Raj Nagar,
Ghaziabad.

... Applicant.

By Advocate Shri M.K. Gupta.

Versus

1. Union of India through its Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
2. Director General Health Services, Nirman Bhawan, New Delhi.
3. Drugs Controller General of India, Nirman Bhawan, New Delhi.
4. Central Indian Pharmacopoeia Laboratory, through its Directorate, Sector 23, Raj Nagar, Ghaziabad.
5. Shri R.C. Saxena, Office Superintendent, to be served through Respondent 4. ... Respondents.

By Advocate Shri A.C. Aggarwal with Shri R. Bansal for Respondents 1 to 4.

By Advocate Shri M.L. Sharma - for Respondent 5.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

The applicant has challenged the combined seniority lists of Head Clerks/Technical Assistants in the Central Indian Pharmacopoeia Laboratory (hereinafter referred to as 'the Laboratory'), Ghaziabad issued by the respondents dated 1.4.1995 and 1.4.1997. She has claimed that her

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services as Head Clerk w.e.f. 29.3.1979 till 2.8.1982 should be counted towards her seniority which has not been done by the respondents.

2. The brief facts of the case are that the applicant was appointed as LDC w.e.f. 14.6.1966 in the office of Respondent 4 and promoted as UDC w.e.f. 22.11.1971. By order dated 25.4.1979, she was promoted as Head Clerk on the recommendations of the DPC in a purely temporary capacity in the vacancy created by the appointment of Shri Y.K. Dutt to the post of Office Superintendent, CGHS Ahmedabad on deputation basis for a period of one year w.e.f. 29.3.1979 and until further orders. By this order, she was also placed on probation for a period of two years. She claims that as she had continued in the post of Head Clerk without any interruption or any break of service, as Shri Y.K. Dutt on his reversion did not join as Head Clerk but joined as Office Superintendent, her services from 29.3.1979 should count towards her seniority. Later, another Office Order was issued on 4.8.1982 in which also it is stated that on the recommendations of the DPC, the applicant was appointed to the post of Head Clerk in the same scale of Rs. 425-700 in the Laboratory w.e.f. 3.8.1982 in a temporary capacity and until further orders. She has pointed out that in the second order there was no mention of any probation period.

3. Respondent 4 had issued a combined seniority list of Technical Assistants/Head Clerks working in the Laboratory as on 1.4.1995 by memo dated 29.6.1995 against which she submits that she had made ^{the} representation on 4.8.1995 which was rejected by memo dated 29.8.1995. The

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applicant has submitted that in the appointment letter dated 25.4.1979 it is nowhere mentioned that her services as Head Clerk, even though on temporary basis, will not count towards her seniority. Later, Respondent 4 also issued two more combined seniority lists of officers in the grade of Technical Assistants/Head Clerks as on 1.4.1996 and 1.4.1997 which were similar to that issued on 1.6.1995, in which Respondent 5, Shri R.C. Saxena is shown senior to her. She had made further representation against the latter seniority list which by memo dated 11.7.1997 is said to have been forwarded to the competent authority for consideration.

4. The main contention of the applicant is that since she had continued to officiate in the post of Head Clerk from 29.3.1979, her services from that date should count towards seniority. Shri M.K. Gupta, learned counsel, has relied on the judgements of the Supreme Court in *State of West Bengal & Ors. Vs. Aghore Nath Dey & Ors.* (JT 1993(2) SC 598), *I.K. Sukhija & Ors. Vs. Union of India & Ors.* Sukhija (1997(6) SCC 406 and *Kuldeep Chand Vs. Union of India* (1995(5) SCC 680. He has submitted that there is no reason why the services of the applicant as Head Clerk from 29.3.1979, which promotion has been given on the basis of the recommendations of the DPC should not be counted towards her seniority. He has submitted that even though another order was issued on 4.8.1982 that she has been promoted again on the recommendations of the DPC for appointment as Head Clerk w.e.f. 3.8.1982, she did not question that order at that stage because the matter of her seniority was not at issue. She had represented against the seniority lists of 1995 and she had filed this O.A. on 31.7.1997. In the 1996 and thereafter filed this O.A. on 31.7.1997. In the

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circumstances, she has submitted that the O.A. is not barred by limitation relying on the judgement of the Supreme Court in Kuldip Chand's case (supra).

5. The official respondents as well as Respondent 5 have filed replies and we have heard Shri A.C. Aggarwal and Shri M.L. Sharma, learned counsel. The official respondents in their reply have submitted that the applicant was appointed as Head Clerk in the vacancy created by Shri Y.K. Dutt who was sent on deputation by the order dated 25.4.1979 in a purely temporary capacity. In between, a post of Office Superintendent was created by order dated 29.8.1980 and Shri Y.K. Dutt was appointed on this post on ad hoc basis in CIPL Ghaziabad w.e.f. 8.12.1980. They have stated that he was appointed on ad hoc basis as the recruitment rules were not in force. He was regularised in the post of Office Superintendent after recommendations of the DPC only on 31.7.1982 by which time recruitment rules had also been finalised on 19.7.1982. In the resultant vacancy the applicant was appointed as Head Clerk on regular basis by order dated 4.8.1982 w.e.f. 3.8.1982. According to them, therefore, the applicant was serving only on ad hoc basis as Head Clerk w.e.f. 29.3.1979 to 2.8.1982. They have also submitted that they had issued a combined seniority list of Technical Assistants/Head Clerks as on 1.7.1982 (Annexure-VII) in which the name of the applicant does not figure, whereas the name of Respondent 5, Shri R.C. Saxena, is shown at Serial No. 3 below that of Shri Y.K. Dutt. They have also referred to the noting done by the applicant herself on 20.7.1982 wherein she has shown three other candidates as being eligible for ^{consideration for 18/2} the post of Office Superintendent. In this list, the name of Respondent 5 is

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included. According to them, even when the case was sent by *to the Laboratory* *to the competent authority for holding DPC for regular appointment in the post of Office Superintendent by letter dated 20.7.1982*, the applicant had put her signatures indicating that she was only officiating as Head Clerk on ad hoc basis and was not eligible for consideration.

6. The reply of Respondent 5 has also taken a similar stand that the applicant was not entitled to count her services from 29.3.79 to 2.8.82 or being placed senior to him in the combined seniority lists. A number of cases have been referred to in the reply and we have also considered the submissions made by Shri M.L. Sharma, learned counsel.

7. A preliminary objection of jurisdiction was taken by the respondents. However, in view of the Tribunal's order dated 1.8.1997 we need not go further into this issue. Another preliminary objection taken by the respondents is that of limitation. They have submitted that a seniority list had been published as early as 1.7.1982 followed by the seniority lists of 1.4.1995 and 1.4.1996. They have also submitted that even to the seniority list published by memo dated 29.6.1995 the applicant has admitted that she has made a *detailed* representation only on 4.8.1995, in continuation of her letter dated 4.7.1995 which did not contain any objections. Therefore, as per note to the memo dated 29.6.1995 the seniority list of 1.4.1995 has to be treated as final. They have also submitted that repeated representations do not extend the period of limitation as the cause of action has arisen as early as 1.7.1982 when the first seniority list was issued. They have submitted that she being in the administration was well aware of the same.

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and they have drawn attention to the note put up by her soon thereafter dated 20.7.1982 in which she has given the names of eligible candidates for consideration for appointment to the post of Office Superintendent in the Laboratory. However, we find that by the memo dated 11.7.1997 Respondent 4 had sent her representation dated 9.2.1996 to Respondent 3 for necessary action at their end and in the circumstances of the case this cannot be considered to be a case of repeated representation which is barred by limitation. In the facts and circumstances of the case, the bar of limitation urged by the respondents is not applicable and is accordingly rejected.

8. Coming to the merits of the case, the main question for consideration is whether the office order dated 25.4.1979 appointing the applicant as Head Clerk in a purely temporary capacity in the vacancy created by the appointment of Shri Y.K. Dutt to the post of Office Superintendent for the period of one year w.e.f. 29.3.1979 and until further orders can be considered as an appointment according to the rules. Interpreting the judgement in *The Direct Recruit Class-II Engineering Officers' Association and Ors. Vs. State of Maharashtra and Ors.* (AIR 1990 SC 1607), in the case of *State of West Bengal & Ors. Vs. Aghore Nath Dev & Ors.* (1993(3) SCC 371), a three judge Bench of the Supreme Court held as follows:

"That to enable his seniority to be counted from the date of initial appointment the incumbent of the post has to be initially appointed according to rules. Thus where initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority".

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The learned counsel for the applicant has relied on the judgement of the Supreme Court in I.K. Sukhija's case (supra). In this case the Supreme Court has held as follows:

"What emerges from the above discussion is that the promotions of the appellants as AEs (Elect.) were not contrary to any statutory recruitment rules. Even if we proceed on the basis that in the absence of statutory rules the draft recruitment rules of 1969 were applicable, what we find is that the appellants were eligible for promotions and their cases were duly considered by the DPC. They were promoted after they were found suitable by the DPC and their promotions were made according to their placement in the merit list and not according to their seniority. When the appellants were promoted, though on ad hoc basis, clear vacancies were available in the promotion quota. The only reason for making their appointments as temporary and ad hoc was that the draft recruitment rules could not be finalised till 1975. There was no unusual spurt in the construction activity between 1970 and 1977 which necessitated giving of urgent temporary promotions. For all the reasons stated above, it is not possible to accept that the appointments of the appellants as AEs, though temporary and ad hoc, were by way of stop-gap arrangements only".

(emphasis added)

The appeals filed by the appellants were allowed and the judgement of the Tribunal was set aside holding that the appellants are entitled to get their seniority counted from the dates they were initially promoted as AEs (Elect.).

9. We have also seen the other judgements relied upon by the applicant. The respondents have submitted File No. CIPL/1120 for our perusal which contains the Office Order dated 25.4.1979, the minutes of the DPC held on 29.3.1979 and the statement of case. The DPC had met to consider the question of promotion to the post of Head Clerk and UDCs in the Laboratory. In the statement of case, it is stated that as per the recruitment Rules the post of Head Clerk which is a selection post has to be filled from amongst the UDCs with 5 years service in the grade. In the seniority list of UDCs, the applicant's name is placed at Serial No. 1

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showing her date of appointment as UDC on regular basis as 15.12.1971, and Shri Rajendra Prasad, UDC at Serial No. 2.

The DPC found that the applicant was the only eligible candidate for consideration for promotion to the post of Head Clerk. It is also noted that as the vacancy occurred on a point reserved for SC candidate and no SC candidate fulfilled the requirements of the recruitment rules, the DPC recommended that the reservation may be carried forward and the vacancy be filled by a general candidate. Accordingly, the DPC had recommended promotion of the applicant to the post of Head Clerk w.e.f. 29.3.1979. Although from the minutes of the DPC held on 29.3.1979 it appears that the applicant had been recommended for promotion to the post of Head Clerk in the vacancy w.e.f. 29.3.1979, however, we find that in the office order dated 25.4.1979, the applicant had only been given promotion on a purely temporary capacity in the vacancy created by the appointment of Shri Y.K. Dutt to the post of Office Superintendent on deputation for a period of one year and until further orders. This order does not show that there was a clear vacancy against which the applicant had been appointed. Subsequently, another Office Order has also been issued dated 4.8.1982 again promoting the applicant as Head Clerk on the recommendation of the DPC w.e.f. 3.8.1982. The respondents have submitted that the DPC proceedings leading to the later order dated 4.8.1982 are not available.

10. The question, therefore, arises as to why Office Order dated 4.8.1982 if as the applicant claims she already stood promoted on regular basis from 29.3.1979? It is also relevant to note that even after the Office Order dated 4.8.1982 was issued in which it has been clearly stated that

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the applicant has been promoted as Head Clerk in the scale of Rs. 425-700 w.e.f. 3.8.1982 in a temporary capacity and until further orders, the applicant has not raised any objection as to why this order was required, if as she claims she has already been appointed in that post by the earlier office order dated 25.4.1979. It is also seen that the Office Order dated 25.4.1979 is not exactly in terms of the recommendations of the DPC minutes of 29.3.1979 because in the minutes itself there is no mention at all of the appointment of Shri Y.K. Dutt to the post of Office Superintendent, CGHS Ahmedabad, on deputation basis in which vacancy the applicant has been promoted and posted as Head Clerk for one year and until further orders w.e.f. 29.3.1979. The office order dated 25.4.1979 has been issued under reference No. CIPL/1120 from the same file that has been submitted by the respondents for our perusal. It may be mentioned here that this file was submitted when Shri M.K. Gupta, learned counsel for the applicant, submitted that the respondents have taken the relevant files from the applicant, which were earlier in her custody in her official capacity as Head Clerk, under due receipts.

11. The applicant herself has attached a copy of the seniority list of Technical Assistants/Head Clerks as on 1.7.1982 but without the covering note in which Shri R.C. Saxena's name appears at Serial No. 3 and is shown to have been appointed as Technical Assistant on regular basis w.e.f. 5.10.1979. The applicant's counsel has very vehemently submitted that the combined seniority of 1982 was never circulated, and so she could not have raised any objections earlier. The office order relied upon by the applicant dated 25.4.1979 clearly states that the applicant is promoted on a

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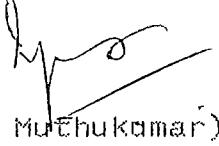
purely temporary capacity in the vacancy of Shri Y.K. Dutt for one year and until further orders. From the file CIPL 1120 we are unable to come to a conclusion that the DPC has been held in accordance with the relevant Rules or that the Office Order dated 25.4.1979 has been issued in terms of the DPC recommendations. In the DPC proceedings, there is no indication of zone of consideration of all eligible officials for promotion and the grading of the officials considered, and this is stated to be a promotion by "Selection" method as per Recruitment Rules. Therefore, in the circumstances of the case, we are unable to accept the contention of Shri M.K. Gupta, learned counsel that when the office order dated 4.8.1982 was issued promoting the applicant again to the post of Head Clerk w.e.f. 3.8.1982, she could keep mum and there was no need for her to ask why such an order was required to be issued again because the seniority as such was not in issue then. This also leads us to the conclusion that the earlier Office Order dated 25.4.1979 was not an appointment against a clear vacancy or in accordance with the rules.

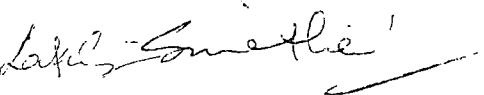
12. In the facts and circumstances of the case, the judgement of the Supreme Court in I.K. Sukhija's case (supra), will not assist the applicant to count her continuous officiation in the post of Head Clerk towards seniority from 29.3.1979. We have also considered the other submissions made on behalf of the applicant, but find no justification to interfere in the case.

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13. In the result, we find no merit in this application and it is accordingly dismissed. No order as to costs.


(K. Muthukumar)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

"SRD"