

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1891/97

New Delhi, this the 30th day of July, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Sh. Dan Singh
S/o Sh. Mohan Singh,
R/o D-526, Kidwai Nagar,
New Delhi. Applicant
(By Advocate: Sh. D.R. Gupta)

Vs.

1. Chief Commissioner of Income Tax
CR Bldg. I.P. Estate
New Delhi.
2. Additional Commissioner of
Income Tax,
(HQRS Personnel) CR Bldg.
I.P. Estate, New Delhi. Respondents
(By Advocate: Sh. V.P. Uppal)

O R D E R

Hon'ble Shri T.N. Bhat, Member (J)

The applicant in this OA who had been appointed on ad hoc basis as LDC some time in the year 1981 but was regularised only in the year 1994 whereafter he was promoted as UDC on ad hoc basis w.e.f. 25.8.94, is aggrieved by the order dated 22.7.97 by which his services have been regularised w.e.f. 22.7.97 instead of the date of his initial ad hoc promotion as UDC w.e.f. 25.8.94.

2. The applicant claims the following reliefs:-

"(a) To allow the application with cost to respondent.

(b) To direct the respondents to treat the applicant as a regular LDC since the date of his ad hoc appointment i.e. 24.10.81 as has been done by the same

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respondent in respect of Shri Rampal Singh, A.S.Bisht, C.S.Rawat and Veer Singh who were juniors to the applicant on the same orders.

(2)

- (c) To direct the respondent to assign appropriate seniority to the applicant in the grade of LDC by treating him as regular one from the initial date of his appointment as LDC w.e.f.: 24.10.81.
- (d) To direct the respondents to consider the applicant for promotion against the post of UDC on regular basis w.e.f. the date of his initial promotion on ad hoc basis w.e.f. 25.8.93 as has been done in the case of S.S.Bisht, C.S.Rawat, Veer Singh and Ram Pal Singh who are similarly situated to the applicant herein.
- (e) To direct the respondent to take into consideration the period of ad hoc service rendered by the applicant prior to regularisation w.e.f. 2.3.94 in computing the eligible period as LDC for regular promotion to the post of UDC and on that basis to treat him as regular UDC from the date his junior has been promoted.
- (f) To direct the respondent to consider the case of applicant in regular promotion to the post of UDC from the date his juniors have been promoted and to grant him consequential benefits such as promotion to the cadre of Tax Assistant.

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(g) Any other relief which the Hon'ble Tribunal may deemed fit just and proper to meet the ends of justice." (3)

3. According to the applicant the entire ad hoc service put in by him from the year 1981 to the year 1994 was required to be taken into account for regularising his services first as LDC and later as UDC. It is further averred by him that four similarly situated persons who were appointed as LDCs on ad hoc basis subsequent to the appointment of the applicant have been regularised retrospectively from the date of their initial promotion on ad hoc basis and that, therefore, the applicant also should have similarly been granted regularisation from the year 1981.

4. The plea taken by the respondents is that the initial appointment of the applicant as LDC on ad hoc basis had been made de hors the rules and since at that time no regularly selected person from the direct recruitment quota was available, appointment was given to the applicant on ad hoc basis with a clear stipulation that this would not give him any right to claim regular appointment on that basis. Referring to the appointment order, a copy of which has been annexed by the applicant to the OA, the respondents' counsel argues that it was clearly stated that the persons appointed to officiate as LDCs vide that order should note that they are liable to reversion to their original posts as soon as the regular nominees either from the Surplus Cell or from the Staff Selection Commission "report for duties to this charge". It was only in the year 1994 that a post in the promotion

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quota became available and the applicant was regularised against that vacancy. The respondents have further taken the plea of limitation and state that since the orders allegedly overlooking the claim of the applicant had been passed some time in the year 1995-96 the applicant ought to have come to the Tribunal within one year from the date of passing of those orders.

(A)

5. As regards the persons named by the applicant in the OA as having been regularised from their original dates of promotion on ad hoc basis the respondents have taken the plea that this was done in pursuance to a judgment of the Tribunal in which the applicant was not a party.

6. Another plea taken by the respondents is that for promotion to the post of UDC one of the essential qualifications is 3 years regular service as LDC and that since the applicant's service as LDC were regularised only in the year 1994 he could not be promoted on regular basis before the expiry of 3 years from the aforesaid date.

7. The applicant has filed rejoinder in which apart from reiterating the contentions made in the OA the applicant has referred to some judgments of the Tribunal according to which juniors to the applicant have been regularised from the date of their initial appointment as LDC on ad hoc basis. The applicant seeks the benefit of those judgments. But, strangely enough, copies of the judgments the benefit of which the applicant seeks have not been produced.

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8. We have heard the learned counsel at length and have given our careful consideration to the rival contentions made by them.

(5)

9. It is not disputed that when the applicant was initially appointed on ad hoc basis as LDC there was no post available in the 10% quota belonging to promotees. The vacancy available was from the direct recruitment quota. Since no regularly selected person from the direct recruitment quota or from the Surplus Cell was available the applicant was granted ad hoc promotion. It was only when a vacancy in the quota to which the applicant belonged became available that the respondents regularised the service of the applicant as LDC in the year 1994. In our considered view neither the judgment in the Direct Recruit Class II Engineering Officers Association vs. State of Maharashtra, (1990) 13 ATC 248, nor the one reported as (1994) 26 ATC 737 would be applicable to the applicant. It is not disputed that for claiming promotion to the post of UDC one of the essential requirements is that the employee should have completed 3 years regular service. This averment made by the respondents in their counter reply has not been denied by the applicant in his rejoinder. What the applicant claims is that since he has worked on ad hoc basis as LDC for a number of years and was eventually regularised he should have been deemed to have more than 3 years regular service as LDC. We are afraid, this contention cannot be accepted, for the simple reason that the applicant was actually regularised only in the year 1994 when a regular vacancy in the quota to which the applicant belonged became available. It is not the case of the applicant that any vacancy in that quota had

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become available earlier and the applicant was deliberately not regularised when the vacancy became available. The Apex Court has held in the judgment reported as 1995 (2) Supreme Court Service Law Journal 185 that appointment against the quota rule would not entitle a person to regularisation. (b)

10. The applicant having been confirmed only in the year 1994 he could not claim promotion on regular basis prior to completion of 3 years after that and the respondents have rightly regularised his services in the next higher post, i.e., the post of UDC from the year 1997 and no fault can be found with this action of the respondents.

11. As already mentioned, there is no evidence on the record to show that any person junior to the applicant has been granted regularisation from the initial date of ad hoc promotion nor is it clear from any document on the record as to what were the circumstances under which their services were so regularised. For aught we know the persons who according to the applicant were junior to him in terms of their dates of appointment might have been direct recruits who had been appointed on regular basis prior to the regularisation of the applicant's service against 10% promotion quota. If that were the case then the applicant cannot claim to be senior to those persons.

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12. In view of what has been held and discussed above, we find no merit in this OA. The OA is accordingly dismissed, leaving the parties to bear their own costs.

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(S.P. BISWAS)
Member (A)

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(T.N. BHAT)
Member (J)