

Central Administrative Tribunal, Principal Bench

OA No. 2277/97

19

New Delhi this the 1st day of September, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman(J)
Hon'ble Mr. Govindan S. Tampi, Member (Admnv)

Shri R.N. Ram,
S/o late Sh. Jhuri Ram,
R/o P-68, Sanjay Nagar,
Sector 23, Ghaziabad (UP).

...Applicant

(By Advocate Shri G.D. Bhandari)

-Versus-

1. Union of India through
its Secretary,
Deptt. of Supply,
Ministry of Commerce,
Nirman Bhawan, New Delhi.
2. Director General,
National Test House,
11/1, Judges Court Road,
Alipore, Calcutta-700027.
3. The Director,
National Test House (Northern Region),
Kamala Nehru Nagar
Ghaziabad.
4. The Chairman,
U.P.S.C. Dholpur House,
Shahajan House,
New Delhi.

...Respondents

(By Advocate Sh. K.C.D. Gangwani)

O R D E R (ORAL)

By Justice V. Rajagopala Reddy:

Heard the learned counsel for the applicant and the respondents. The applicant was initially appointed as a Scientific Officer (Mechanical). As per the recruitment rules his next promotional post was Assistant Director (Mechanical), subsequently re-designated as Scientist 'SB' (Mechanical). The applicant was promoted on ad hoc basis w.e.f. 8.6.92 for a period of one year or till such time the post was filled up on regular basis, whichever was earlier. The ad hoc appointment was further extended for

(2)

20

one year upto 15.6.94 on the same condition. His appointment was regularised by order dated 25.3.97. The grievance of the applicant is that he was entitled to be regularised with effect from the date of his initial appointment in 1992. The learned counsel for the applicant contends that a substantive post was available in 1992 and he was appointed as per the rules, though on ad hoc basis. Hence, he should have been appointed on regular basis in 1992 itself and the ad hoc appointment was illegal. It is also his grievance that as he belongs to SC community, he should have been appointed against a ST vacancy as no ST candidate was available.

2. In the reply the respondents state that in the direct recruitment quota one vacancy against a newly created post was available reserved for ST and the same was proposed to be filled up on ad hoc basis because the reserved category direct recruit candidate did not join. Hence, a fresh requisition was placed by the Union Public Service Commission (UPSC) in 1992. Pending selection of regular direct recruit incumbent it was filled up on ad hoc basis temporarily by promotion. In the year 1990 a vacancy arose in the direct recruit quota for SC candidate but as no SC candidate was found suitable for recommendation, the UPSC advised the department to submit a fresh requisition after six months for making another attempt in this regard. Pending selection of a direct recruit candidate it was proposed to fill up two vacancies on ad-hoc basis by promotion. Accordingly the applicant was promoted on ad hoc basis to the erstwhile post of Assistant Director (Mechanical) for a period of one year from the date of his taking over charge or till regular direct recruit incumbent

became available, whichever is earlier, against the direct recruitment vacancy earmarked for SC candidate. It is, therefore, contended by the learned counsel for the respondents that there was no clear vacancy for promotion of a SC candidate and the applicant was only appointed as a temporary measure against the direct recruit quota by way of promotion.

3. We have given careful consideration to the contentions raised in this case. A perusal of the orders dated 8.6.92 and 14.6.93 makes it clear that the appointment was on ad hoc basis for a period of one year or till such time the post was filled up on regular basis, whichever is earlier. It was made clear that the ad hoc appointment will not confer any right or claim for regular appointment in the said post nor will it count towards seniority. In the regularisation order dated 25.2.97 it was clearly stated that consequent upon the recommendations of the UPSC which was duly accepted by the competent authority the applicant has been promoted with effect from the date of his assumption charge. A perusal of these orders clearly shows that the initial appointment of the applicant was only ad hoc, as it does not show that the promotion was effected after considering the claims of all eligible officers and on the recommendations of the UPSC which is the appropriate authority for recommending promotion to the posts of Scientist 'SB'. Subsequently, when he was regularised, the applicant was considered by the UPSC for promotion and accepting the recommendations of the UPSC by the competent authority the promotion was given to him on regular basis. Thus, the applicant was appointed as per the recruitment rules only in 1997 when he was regularised with effect from

22

the prospective date. Though the applicant has asserted that he was considered as per the rules, these orders do not reveal any such consideration as regards the ad hoc appointment of the applicant in 1992. On the other hand, from a perusal of the reply, it is clear that in 1992 in fact there was no vacancy against the promotion quota. The applicant was appointed against a vacancy reserved for direct recruitment, which was proposed to be filled up as a temporary measure on ad hoc basis by way of promotion. Law is well settled that unless the promotion was effected after considering the claims of all the eligible candidates by the appropriate authority and as per the rules the ad hoc promotion cannot confer any right in the incumbent for counting the said period for the purpose of regularisation vide The Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra & Others, JT 1990 (2) SC 264. and State of West Bengal v. Aghore Nath & Others, 1993 (3) SCC 371. We have also recently decided on the similar issues in OAs-1784/97, 1785/87 and 1787/97 on 22.8.2000 (which both of us are members of Bench), where it has been held that the ad hoc service cannot be counted for regularisation and seniority.

4. In the circumstances the claim of the applicant that he was entitled to be appointed in the first vacancy in 1992 which arose against the promotion quota will not arise, as he has been regularised only in 1997. The initial appoint of 1992 in the reserved vacancy has no relevance for the purpose of regularisation. The learned counsel for the applicant places reliance upon the judgement of the Supreme Court in Writ Petition (Civil) No.490 of 1987 Rudra Kumar Sain & Ors. v. Union of India & Ors. in

support of his contention that the ad hoc service should be counted for the purpose of regularisation. The Supreme Court observed:

"In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be 'fortuitous/ad hoc/stop-gap' are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous."

(emphasis supplied)

5. There is no dispute with this proposition, as it has already been held in the The Direct Recruits' case (supra) and the same has been reiterated in this case. It has been clearly stated that the appointment made with the approval and consultation of the appropriate authority and continued for a long time, cannot be held to be purely on ad hoc basis. In the instant case the initial appointment was not made with the approval and consultation of the competent authority or as per the rules.

6. In the circumstances, the OA fails and is accordingly dismissed. No costs.

(Govindan S. Tampi)
Member (Admny)

'San.'

(V. Rajagopala Reddy)
Vice-Chairman (J)