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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.522/97

DATE: 13-09-2000.

Hon'ble Mr.Justice V.Rajagopala Reddy, VC (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

In the Matter of:

Sh. Parvez Kumar S/O Shri Sain Dass, age about
45 years, resident of 2121 Katra Gokul Shah,
Bazar Sita Ram, Delhi-110006 and working as
Lower Division Clerk in the office of Development
Commissioner (Handicrafts), Ministry of Textiles,
Govt. of India, West Block No.7, R.K.Puran,
New Delhi-110066. **Applicant**
(By Adv.: Sh. Gyan Prakash)

V/S

1. Union of India through Secretary, Ministry of Textiles, Govt. of India, Udyog Bhavan, New Delhi.
2. Development Commissioner (Handicrafts), West Block-7, R.K.Puran, New Delhi.
3. Shri Girish Chandra U.D.C., Office of Dy. Commissioner (Handicrafts), West Block No.7, R.K.Puran, New Delhi-110066.
4. Shri Lalla Ram U.D.C. in the office of the Regional Director office of Development Commissioner(Handicrafts) B-46, Mahanagar Extn. Lucknow.
5. Shri B.K.Dass U.D.C. In the office of Regional Director office of Development Commissioner (Handicrafts), B-46, Mahanagar Extension, Lucknow. **Respondents**
(By Adv. K.C.D.Gangwani)

ORDER (ORAL)

By Hon'ble Mr. Justice, V.Rajagopala Reddy, V.C. (J):

The applicant has through this OA seeking a direction that he should have been regularly appointed as LDC w.e.f. 16.6.80 for assigning seniority in the post of LDC. He has been appointed as Store Keeper-cum-Accounts Clerk (SKAC) w.e.f. 3.5.78 at Varanasi at Carpet Weaving Training Centre in UP. He was, however, transferred and posted as LDC in the Operational Assistance Cell of the Carpet Scheme at New Delhi on 16.6.80 and continued as LDC and subsequently, has been promoted as UDC. Aggrieved by the action of the respondents in treating him as adhoc LDC and questioning the order dated 13.3.85 whereby Sh. Girish Chander, Smt. Vijay Laxmi Nair and Sh. Rakesh Babu have been regularised as LDCs and also seeking a direction to regularise him as LDC w.e.f. 16.6.80, he had approached the Tribunal by filing OA-1628/87. The Tribunal vide its order dated 18.3.93, directed the respondents to consider the case of the applicant also for regularisation as his case being not dissimilar to that of Girish Chander and Rakesh Babu. Accordingly, the respondents, in their proceedings dated 13.5.85, regularised the applicant as LDC in the Operational Assistant Cell w.e.f. 13.5.85, the date when other two SKACs were regularised. Respondents issued the final seniority list of LDCs on 14.3.96, reflecting the applicant's date of rgularisation and he was shown at Sl.No.5. Aggrieved by his placement in the list, he filed the OA as stated supra.

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2. Sh. Gyan Prakash, learned counsel for the applicant vehemently contends that as there were no recruitment rules as on the date of his appointment as LDC, he could not have been appointed following the rules. His appointment, therefore, could not be termed as 'adhoc'. Hence, the date of appointment should have been taken as the date of regular appointment. It is alternatively contended that he was entitled for counting the adhoc period of service from 1980 to 85 when he was regularised as the vacancy was neither a 'stop gap' nor a short term vacancy.

3. Sh. K.C.D. Gangwani, learned counsel for the respondents raises a preliminary objection on the principle of res-judicata. He also contends that the applicant was initially appointed to the post of SKAC and on his request, he has been transferred to Delhi alongwith two others in 1980 and drew the salary against then post of LDC and subsequently, after the recruitment rules have been notified in 1985 for LDCs, his transfer has been regularised w.e.f. 1985 in the post of LDC alongwith two others as similarly placed two other persons have been regularised from the said date. It is, therefore, contended by the learned counsel for respondents that the applicant cannot seek any benefit of the service from 1980 to 85 as he was working on adhoc basis from the said date.

4. We have given careful consideration to the contentions raised by the learned counsel on either side. The seniority of the applicant is the only dispute in

this case. He rests his case on two grounds: (i) the initial appointment as LDC was a regular appointment and (ii) even if it is adhoc, period from 1980 should be counted for the purpose of assigning seniority. But it must be borne in mind that he had approached the Tribunal in 1987 itself in OA-1628/87, claiming two reliefs, one was, that he should be regularised w.e.f. 16.6.80 in the post of LDC and the other was, that in any event he was entitled for the same benefit as was given to the other similarly placed persons, who have been regularised in 1985. Considering the facts and the circumstances of the case, the Tribunal found that he was only entitled for the same benefit as was given to the other two similarly placed persons, i.e., in other words, the direction was to consider the case of the applicant for regularisation w.e.f. 13.3.85. By implication, it should be held that the Court declined to grant the prayer of the applicant as regards regularisation w.e.f. 16.6.80 and this order has become final. He cannot, therefore, file the present OA seeking the same relief. What has been declined by the Court in the earlier OA, cannot be sought once again. The question of seniority of the applicant directly depends upon the claim of the applicant that he should have been appointed regularly w.e.f. 16.6.80 and the same cannot be granted in this OA.

5. Learned counsel for the applicant relies upon the judgement of the Hon'ble Supreme Court in S.K.Mathur & Ors. Vs. Union of India & Ors. 1998 (1) SCSLJ 493 and judgement of this Tribunal in Sh. Arvind Kumar Gupta Vs. U.O.I. & Ors. 1980 ATJ (2) 35 in support of his

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contention regarding computing the seniority from the date of his initial appointment in the transferred post of LDC. As stated supra, it cannot be agitated in this case as the Tribunal in the earlier OA, has declined the same.

6.1 In view of the above discussions the OA fails and is dismissed. We do not order costs.



(S.A.T. Rizvi)
Member (A)



(V. Rajagopala Reddy)
Vice Chairman (J)

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