

(14)

Central Administrative Tribunal
Principal Bench: New Delhi

1. O.A. No.53/94

New Delhi this the 10th Day of June, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. B.S. Hegde, Member (J)

Balbir Mohan,
S/o Dr. Jagdish Chand,
R/o 19/265, D.M.S. Colony,
Hari Nagar, New Delhi.

...Applicant

(By Advocate Shri R.P. Oberoi)

2. O.A. No.54/94

1. Sh. R.P. Sharma,
S/o Sh. P.S. Sharma (late)
working as Senior Analyst
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110 008.

2. Sh. R.P. Singh,
S/o Sh. R.K. Singh,
working as Senior Analyst,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110 008.

...Applicants

(By Advocate Sh. R.P. Oberoi)

Versus

Union of India through:

1. The Secretary,
(Department of Animal Husbandary
and Dairying), Ministry of
Agriculture, Krishi Bhawan,
New Delhi.

2. The Chairman,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110008.

...Respondents

ORDER ()

Mr. N.V. Krishnan:-

These two OAs raised the same question and similar reliefs have been claimed therein based on an earlier judgement of the Tribunal. They are, therefore, being disposed of at the admission stage itself by this common order.

2. The case of the applicant in OA-54/94 was taken up for consideration. The case of the applicant

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R.P. Sharma therein was taken into account. He was appointed in the Delhi Milk Scheme as Bacteriological Assistant in 1964. The next post of promotion is Senior Analyst/Quality Control Officer. The dispute relates to promotion to this post.

3. 25% of the posts are required to be filled up by promotion. The Bacteriological Assistants with three years service are eligible for such promotion. Admittedly he became eligible on 9.4.67. However, he was given ad hoc promotion only on 8.5.72.

4. This applicant then filed OA-137/87. He contended that though regular vacancies were available when he became eligible for consideration, he was not promoted. He, therefore, prayed for the following reliefs:-

- i) that he may be given regular appointment as Senior Analyst w.e.f. 1968 when three posts were available and one was to be filled up by promotion.
- ii) Ad hoc appointment from 12.5.72 may be treated as regular appointment with all consequential benefits.

5. Finding that a similar matter has already been disposed of by this Tribunal in OA-893/87 - Ram Swaroop Vs. Union of India decided on 18.11.88, OA-137/87 was also disposed of with the following directions:-

- "a) The respondents shall ascertain if there were vacancies available for being filled up by promotion by selection on dates earlier than 3.12.1984.

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- b) If regular vacancies did exist before 3.12.1984 the respondents shall, if the petitioner was within the zone of consideration on those respective dates, get his case examined by the DPC and if he is found fit and suitable for promotion to grant him the deemed date of promotion.
- c) If deemed date of promotion is accorded earlier than 3.12.1984 the petitioner shall be granted all other consequential benefits, flowing from such a decision."

It may be stated that during the pendency of the O.A. the applicant was regularised w.e.f. 3.12.84. That is the relevancy of this date mentioned in the direction.

6. After this decision, review DPCs were held. and the applicant R.P. Sharma has been regularised from 12.5.72, i.e., the date of his initial ^{ad hoc} appointment. The contention is that as vacancies existed even prior to 12.5.72, the DPC should examine whether R.P. Sharma should not be appointed on a regular basis from an earlier date.

7. We felt that the order of the Tribunal cannot be interpreted to mean that the applicant should be given appointment from ^{a, even} date before he was actually given ad hoc appointment. The learned counsel argued this point. We have heard him at length. We are not, however, satisfied about the merits of the claim now made.

8. We are of the view that if the applicant had a grievance that he ought to have been appointed in 1968 itself he should have instituted the necessary legal proceedings when he was given only ad hoc appointment on 12.5.72. Not having done so, such a claim would be barred by limitation.

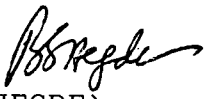
9. This point would very well have been in the minds of the Bench which heard the O.A. of the applicant earlier. However, that point was not pressed only because of the fact that in the reply of the respondents it was admitted that though the applicant has been regularised only from 3.12.84, there were regular vacancies from earlier dates when he could not be regularised because the DPC could not meet for one reason or another. It is in the light of this submission that a direction was given, following the earlier decision in OA-893/87 in the case of Ram Swaroop which was also a similar case that the respondents should hold a review DPC to examine whether the applicant should be promoted from a date earlier than 3.12.84 when vacancies were available.

10. We are unable to accept the applicants' contention that this direction means that the applicants should be considered even for vacancies that existed prior to the date of their ad hoc appointments. In the first place, as pointed out above, they did not claim in time for regular appointment from earlier dates when the ad hoc appointment was notified. In the second place, the direction of the Tribunal is not that the applicant should be considered for the earliest vacancies which arose prior to 3.12.84 when they became eligible. In OA-137/87 in the case of R.P. Sharma, he made a specific prayer for appointment with effect from 1968 (i.e. the earliest date when he became eligible for appointment). Yet, the direction in that case did not either refer to this prayer or direct respondents to give him promotion from the earliest date when he became eligible. It only required the

respondents to consider him for regular vacancy that existed before 3.12.1984. In the circumstances, we find it necessary to read in that order a limitation that this should not be in respect of any vacancy that arose before the ad hoc appointment was made.

12. In O.A. 53/94 the applicant claims that he was qualified for regular appointment by promotion from 26.04.68. He was promoted on ad hoc basis as Senior Analyst on 11.05.72 (Annexure V & VI) in pursuance of the earlier orders of the Tribunal in 3 cases mentioned therein including O.A.137/87. The regularisation has been done on the basis of the vacancies which existed prior to 3.12.84, as directed in O.A. 137/87 referred to in Para 5 above. The claim for regularisation from the date when the applicant claims to be eligible for promotion cannot be sustained, on the same ground as mentioned in respect of O.A.54/94. Hence this O.A. also has no merit.

13. For the reasons, both the O.As i.e. (O.A.53/94 and O.A. 54/94) are dismissed. A copy of this order be placed in both the O.As.


(B.S. HEGDE)
MEMBER (J)
Camp Bombay


15/6/94
(N.V. KRISHNAN)
VICE CHAIRMAN (A)

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