

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 557/94
~~T.A. No.~~

199

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DATE OF DECISION 23/11/95

<u>Dr. D.R. Lohar</u>	Petitioner
<u>Sh. B.B. Raval</u>	Advocate for the Petitioner(s)
Versus	
<u>U.O. T. B. Anr.</u>	Respondent
<u>Sh. Madhav Pawar</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.R. Adige, Member (A)
The Hon'ble Mr. Dr. A. Vedavalli, Member (T)

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No.

Dr. A. Vedavalli
Member (T)
23/11/95.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.No.557/94

10

Dated this the 23rd Day of November, 1995.

Hon'ble Shri N.V. Krishnan, Acting Chairman.
Hon'ble Dr. A.Vedavalli, Member(J).

Dr. D.R. Lohar,
S/o Shri U.R. Lohar,
C/o 66 (iii)d Kali Bari Road,
New Delhi
and employed as:
Senior Scientific Officer (Chemistry)
in the Homoeopathic Pharmacopoeia Laboratory,
Ministry of Health & Family Welfare,
Government of India ...Applicant

By Advocate: Shri B.B. Raval.

versus

1. Union of India through
Secretary,
Ministry of Health and Family Welfare,
Government of India,
Nirman Bhawan,
New Delhi.
2. The Chairman,
Union Public Service Commission,
Government of India,
Dholpur House,
Shahjahan Road,
New Delhi. ...Respondent.

By Advocate: Shri Madhav Panicker.

O R D E R
(Hon'ble Dr A. Vedavalli, Member (J))

Dr. D.R. Lohar, the applicant, is working
as Senior Scientific Officer (Chemistry) in the
Homoeopathic Pharmacopoeia Laboratory in the Ministry
of Health and Family Welfare, Government of India
(respondent No.1). He is aggrieved by the rejection
of his representation dated 21.9.92 regarding
regularisation of the period of his adhoc services
and counting for in situ promotion by a letter dated
nil issued in March 1993 by respondent No.1
(Annexure-A). The said letter has been challenged by
him in the present OA.

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2. The facts of the case, briefly, are as under:-

The applicant was appointed as a Scientific Officer in the Laboratory, Ghaziabad, w.e.f. 19.10.79 in a temporary capacity on the recommendation of the UPSC by respondent No.1 by an order dated 12.12.79 (Annexure A-2). He was appointed substantively on the said post w.e.f. 20.10.81 by an order dated 7.11.85 (Annexure A3) on adhoc basis. Thereafter, he was appointed as Senior Scientific Officer (Chemistry) in the pay scale of Rs.3000-4500 on adhoc basis on the recommendation of the Departmental Promotion Committee for a period of six months w.e.f 3.7.87 or till the post is filled up on regular basis, whichever is earlier, by an order dated 10.7.87 (Annexure A4). The period of his appointment was further extended by several orders (Annexures A-5, A-6, A-7 and A8) upto 7.3.90 on the same terms. Thereafter, he was appointed in regular temporary capacity to the said post of Senior Scientific Officer (Chemistry) w.e.f. 8.3.90 until further orders by an order dated 10.4.90 on the recommendation of the Departmental Promotion Committee. The said order (Annexure A9) was issued in the name of the President of India.

3. While so, the Ministry of Health and Family Welfare (Department of Health) notified "Department of Health (Group 'A' Gazetted Non-Medical

Scientific and Technical Posts) In Situ Promotion Rules, 1990 under the proviso to Article 309 of the Constitution on 28.11.90 (Annexure A-12).

4. The applicant submitted a representation dated 3.1.92 (Annexure A-13) to respondent No.1, requesting, inter alia, for grant of all the benefits of adhoc service for the purpose of in situ promotion. His grievance stated in the said representation briefly is that when the Ministry of Health (R1) prepared a list of all eligible officers who completed 10 years of service in any scale for grant of two promotions, his name was left out on the plea that he had already got one promotion. He requested for the incorporation of his name in the said list and consideration of his candidature in the next list for in situ promotion w.e.f. 1.11.89 (period of adhoc service in the scale of Rs.3000-4500) when he completed 10 years of service in the Central Government. A memorandum in reply dated 28.5.92 was given to the said representation by Respondent No.1 intimating, inter alia, that the dates fixed for the purposes of in situ promotion are (a) Scale of Rs.3000-4500 w.e.f. 15.11.89 and (b) Scale of Rs.3700-5000 w.e.f. 1.4.95 and that the date of appointment of the applicant as Senior Scientific Officer was not 3.7.87. The correct date should have been 8.3.90 because 3.7.87 was the date of his appointment as Senior Scientific Officer (Chemistry) while he was still holding the post of Scientific Officer (Chemistry) (Annexure A-14). The applicant replied to the above memorandum clarifying the

(3)

position and asked for sympathetic consideration and for the matter to be taken up before the higher authorities (Annexure A-15). Later on, he submitted a representation/appeal to the Secretary, Ministry of Health and Family Welfare (Respondent No.1) regarding regularisation of his adhoc services and counting it for in situ promotion (Annexure A-16). When the said representation/appeal was rejected by Respondent No.1 by the impugned Annexure-A order dated nil in March, 1993, the present OA was filed by the applicant. The applicant has sought for the following reliefs in this OA:-

(i) To quash the impugned letter at Annexure 'A' being ultravires the laid down law and, therefore, also violative of the Fundamental Rights of the applicant guaranteed under Articles 14, 16 and 21 of the Constitution of India.

(ii) Consequent to relief at (i) being granted, direct the respondents to consider the applicant for IN SITU promotion from the date he is eligible after counting his adhoc service towards the regular one and also promote him from the date, if any of his junior is promoted superseding him with all consequential benefits like arrears of pay and allowances, seniority etc.

(iii) Award exemplary cost for this application with a further request to pass any other order/orders or direction/directions or grant any other relief/reliefs as deemed fit in the light of the facts and circumstances of the case.

5. The main contention of the applicant is that though he was appointed as Senior Scientific Officer (Chemistry) on adhoc basis, it was continuous and according to the regular procedure after due recommendation by the DPC and the order was also issued in the name of the President of India and



hence, he is entitled to regularisation of his services from the date of his adhoc appointment. In support of his contention, he relied upon the decision of the Supreme Court in 'The Direct Recruit Class-II Engineering Officers' Association versus State of Maharashtra (JT 1990 (2) SC 264).

6. The respondents, inter alia, have raised a preliminary objection that there is no prima facie case and no cause of action accrued to the applicant. They have submitted that one post of Senior Scientific Officer was created in 1985 and was lying vacant since its creation. Due to non-framing of recruitment rules, the vacancy could not be filled up. The draft recruitment rules framed in 1987 were referred to the Department of Personnel and Training for approval. In the meanwhile, it was decided to fill the post on adhoc basis as per the provisions of the draft recruitment rules ie. by promotion, failing which, by transfer on deputation (including on short term contract basis), failing both, by direct recruitment. Dr. D.R. Lohar who was the senior most officer in the feeder grade and was also eligible for consideration for promotion was accordingly selected for the post by the Departmental Promotion Committee for Group 'A'. He was appointed as Senior Scientific Officer on ad hoc basis w.e.f. 3.7.87. The recruitment rules for the post has been finally approved by the UPSC in July 1989 and were notified on 4.12.89. Thereafter, on the basis of recommendations of UPSC Dr. D.R. Lohar was appointed to the post of Senior Scientific Officer.

(Chemistry), Homoeopathy Pharmacopoeia Laboratory, Ghaziabad, in the scale of pay of Rs.3000-4500 in regular capacity w.e.f. 8.3.90. Since according to instructions issued by the Cabinet Secretariat, Department of Personnel and Administrative Reforms (memorandum No.22011/3/75-Estt.(D) dated 29.10.75) (Annexure-I to the counter affidavit filed by the respondents), the services rendered by the applicant on adhoc basis in the grade concerned would not count for the purpose of seniority in that grade for eligibility for promotion to the next higher grade. Hence, the respondents contended that the action taken by them is in order. They have prayed for the dismissal of the OA stating that the applicant is not entitled for any of the reliefs as claimed by him.

7. The applicant in his rejoinder has contended that the preliminary objections raised by the respondents is not sustainable as, inter alia, they have admitted his seniority in the feeder cadre and eligibility for consideration for promotion, and he was in fact selected to the post by a regularly constituted DPC and the appointment was also issued in the name of the President of India. The applicant further submitted that the post in question was a promotion post and the post that he was holding is Scientific Officer (Chemistry) in the feeder cadre of Senior Scientific Officer (Chemistry) and that he was the senior most with 7-1/2 years regular service in the feeder post against 5 years regular service required for regular promotion and hence, he was eligible for promotion on regular basis at the time

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of adhoc appointment itself. He referred to the Ministry of Home Affairs Office Memorandum 23/27/68-Estt.(B) dated 26.12.68 read with Department of Personnel and Administrative Reforms Office Memorandum No.23/51/71-Estt.(B) dated 25.9.72 and submitted that the Department/Ministry after making the adhoc appointment should finalise the recruitment rules within a maximum period of 6 months. But in this case, the Ministry took about 3 years to finalise the recruitment rules which speaks volumes about the efficiency and care for the employees' future prospects by the respondents. He had further referred to the revised instructions on adhoc appointment issued by the Department of Personnel and Training OM.No.38036/8/87-Estt.(D) dated 30.3.88 and stated that the persons whose adhoc promotions have been made on seniority-cum-fitness basis as per the direction of the Court and Tribunals must be given seniority by the Government after taking into consideration the period of services rendered on adhoc basis. He had also referred to several instruction and guidelines relating to the regularisation of adhoc services when the appointment is by promotion of the officer in the feeder grade. The applicant broadly reiterated the various averments made by him in the OA.

8. We have heard the learned counsel for the parties at length and have perused the relevant documents and materials placed on record.





9. So far as the preliminary objection raised by the respondents is concerned, we find that the same is not sustainable since the impugned Annexure-A order issued in March, 1993 clearly indicates that the representation of the applicant dated 21.9.92 for regularisation of the period of adhoc service and counting for in situ promotion was in fact rejected by respondent No.1 and hence a cause of action did arise on that date of rejection and the present application has been filed against the said order. We, therefore, proceed to consider the matter on merits.

10. The applicant has relied strongly on the decision of the Hon'ble Supreme Court in the Direct Recruit Class-II Engineering Officers' Association versus State of Maharashtra (JT 1990 (2) SC 264) in support of his case. It was held by the Court in the aforesaid decision, inter alia, (at para-13) thus:-

".....If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointment as in the present case. To hold otherwise will be

18

discriminatory and arbitrary. This principle has been followed in innumerable cases and has been further elaborated by this Court in several judgements including those in Baleshwar Dass versus State of U.P. and others: (1981) 1 SCR 449, and Delhi Water Supply and Sewage Disposal Committee and others versus R.K. Kashyap and others (1989) Supp.I SCC 194 with which we are in agreement. In Narender Chadha and others versus Union of India and others (1986) 1 SCR 211, the officers were promoted although without following the procedure prescribed under the Rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointment in the service."

11. The above principles laid down by the Supreme Court have been followed in a number of later decisions including the case of Masood Akhtar Khan versus State of Madhya Pradesh (1990) 3 JT 295 and Keshav Chandra Joshi versus Union of India (AIR 1991 (SC) 284).

12. While so, it is admitted by the respondents that the post of Senior Scientific Officer (Chemistry) in question was created in 1983 and filled originally as per the draft recruitment rules and the applicant who was appointed to the said post was the senior most officer in the feeder cadre and was also eligible for promotion. Accordingly, he was selected for the post by the Departmental Promotion Committee and on their recommendation, the Presidential order appointing him on adhoc basis to that post was issued on 10.7.87 (Annexure A-4). The



subsequent orders extending the period of the applicant's appointment further upto 7.3.90 (Annexures A5, A6, A7 and A8) more or less on similar terms were also issued in the name of the President. From 8.3.90, the applicant on the recommendation of the Departmental Promotion Committee was appointed to the post in regular temporary capacity until further orders (Annexure A-9) dated 10.4.90).

13. It is, therefore, obvious that the initial appointment of the applicant to the post and its extension from 10.7.87 onwards upto the regular appointment though termed as adhoc was as per the Draft Recruitment Rules after selection by the Departmental Promotion Committee and the relevant orders were also Presidential orders. There is no mention in the aforesaid orders relating to the initial appointment and its extension thereof that the adhoc service will not count for seniority, eligibility for promotion etc. as required under the provisions of the O.M. dated 29.10.75 (supra) itself, though in a routine way, it is mentioned that such an appointment will continue till a specified period or till the post is filled up on a regular basis, whichever is earlier. The officiation of the applicant in the said post till his regular appointment was also continuous without any break.

14. Moreover, the respondents in their MA.557/94 have furnished certain clarifications/information in response to this Tribunal's order dated 24.3.95. It was submitted by

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20

the respondents, inter alia, that UPSC was consulted regarding the adhoc appointment of the applicant but were informed that the UPSC (Exemption from Consultation) Rules do not contemplate obtaining their concurrence for any adhoc appointment. That apart, the method of recruitment as provided under the draft recruitment rules as well as the regular recruitment rules notified on 4.12.00 is by promotion, failing which, by transfer or deputation (including short-term contract), failing both, by direct recruitment (Scientific Officer (Chemistry), Scientific Officer (Pharmacopoeia) with 5 years regular service in the grade). There is no change in the recruitment rule relating to appointment by promotion. The applicant in the present case, admittedly, has been considered for the said post under the draft recruitment rules, selected and appointed by the President on an adhoc basis. It is also clarified that no person is affected by the applicant's promotion on ad hoc basis as per the Draft Recruitment Rules as he was the only candidate who fulfilled the regular length of service of 5 years in the grade condition. The officer immediately Junior to him (Mrs. Manicha Sanyal Sarkar) did not fulfil the requirement of that condition.

15. Having considered all the above circumstances, we are of the view that the applicant was appointed on an adhoc basis, only on the ground that the recruitment rules were not finalised. However, it is not ad hoc in the sense that it is

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arbitrary. There were draft recruitment rules. All eligible persons were considered by the PPC and the applicant was selected. The respondents have confirmed that no other person was affected by his adhoc promotion in terms of the draft recruitment rules. Hence, though the applicant was appointed on an adhoc basis w.e.f. 3.7.1987, that appointment has all the trappings of a regular appointment. In the circumstance, we are satisfied that the ratio of the Supreme Court's decision in Direct Recruit's case extracted in para 10 squarely applies to the claim of the applicant. Accordingly, he should be deemed to have been regularly appointed on the post of Senior Scientific Officer (Chemistry) in the pay scale of Rs.3000-4500 from 3.7.87. Therefore, the impugned order at Annexure A rejecting the representation is quashed. We direct that for the purpose of in situ promotion the applicant shall be deemed to have been regularly appointed on the post of Senior Scientific Officer (Chemistry) w.e.f. 3.7.87. O.A. disposed of accordingly. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member(J)
23/11/95

/s/

(N.V. Krishnan)
Acting Chairman