

Central Administrative Tribunal, Principal Bench

OA No.979/1994

New Delhi, this 30th day of July, 1999

(7)

Hon'ble Shri A.V. Haridasan, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

Smt. Savita Sharma
w/o Shri V.K. Sharma
1343, Gulabi Bagh, Delhi .. Applicant

(By Shri Sarvesh Bisaria, Advocate)

versus

1. Chief Secretary
Govt. of NCT of Delhi
5, Sham Nath Marg, Delhi

2. Estate Officer
Maulana Azad Medical College .. Respondents
New Delhi

(By none)

ORDER

Hon'ble Shri S.P. Biswas

The applicant is seeking to quash the order at Annexure A-1 dated 17.2.94 by which her claim for regularisation of her services as Laboratory Assistant (LA for short) from 14.8.78 has been considered and rejected by the Chief Secretary, Government of N.C.T. of Delhi.

2. The main plank of applicant's attack is that she was appointed as LA in the grade of Rs.260-430 and was offered appointment by A-2 order dated 14.8.78 following regular selection procedures held by the Staff Selection Board (SSB). The applicant joined her service as LA in MAMC on 14.8.78 on the terms and conditions mentioned in the offer of appointment dated 29.7.78 and continued working in that capacity for some time. However, the respondents kept on changing the nature of appointment of the applicant from time to time in the manner as mentioned hereunder:

Q.P.

(i) 7.10.78 .. Appointment of the applicant changed from temporary to purely ad hoc basis.

(ii) 20.2.79 .. Nature of appointment again changed as temporary basis on probation for one year.

(iii) 9.6.79 .. Changed the nature of appointment again from temporary to ad hoc basis by amending the letter dt. 20.2.79.

Despite all these avoidable orders, without any reasons, the applicant claims to have continued working without any break.

3. The applicant would further argue that according to the Recruitment Rules, she became eligible for promotion in the cadre of Lab. Technician (LT) in the year 1986. Respondents, however, did not consider her name for promotion as LT in 1986. As per applicant, this was because her seniority in the cadre of LA was wrongly counted from April, 1980. Applicant further submits that she was selected as LT on promotional post against direct recruitment quota in 1987 and since then she has been working as such. In other words, she should have been promoted as LT on the basis of DPC held in 1986 as a departmental candidate had her seniority position in the cadre of LA was decided in time. The said promotion was thus denied merely on the plea that she has been superceded in seniority and has been granted seniority only from 24.4.80 instead of 14.8.78.

4. In the counter, respondents have submitted that the applicant was appointed on regular basis as LA w.e.f. 24.4.80 and prior to that she was working on purely ad hoc basis against a reserved post though duly selected by SSB. Respondents have also denied of having changed the nature of job of the applicant four times as alleged by her.

5. The issue that falls for determination is the legality of applicant's claim to count her seniority as LA from the date of her initial appointment to the said post w.e.f. 14.8.78.

6. We have heard the learned counsel for the applicant. Since none appeared on behalf of the respondents, even on second call, this application had to be decided on the basis of the pleadings by the learned counsel for the applicant as well as materials furnished by the respondents in their counter.

7. The position of law for determination of seniority in such matters is now well settled. We find that the applicant was appointed as LA on being recommended by a duly constituted Selection Board i.e. SSB. We also find that as per the communication at A-2 the applicant was offered appointment on temporary basis from 14.8.78 against a regular vacancy. The appointment, as offered, was shown as temporary because of the fact that she was required to undergo probation for a period of one year. The principles that are required to be applied for determination of seniority/ counting of past service in such cases has been settled by the Hon'ble Supreme Court in a Constitution Bench judgement of Direct Recruit Class II Engineering Officers Assn. Vs. State of Maharashtra, AIR 1990 SC 1607. Paras 44(a) and (b) are relevant in this connection. They are reproduced as hereunder:-

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

of
P

10

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

8. We find that the case of applicant's appointment as LA was the one with due procedure of law and against a permanent vacancy. The requirement of applicant having continued in service uninterruptedly is also fulfilled. There is no claim by the respondents that there are others, senior to the applicant, who could claim seniority over her having continued in the said post longer than the applicant.

9. In view of the position of law as aforesaid, the application deserves to be allowed and we do so accordingly, with the following directions:

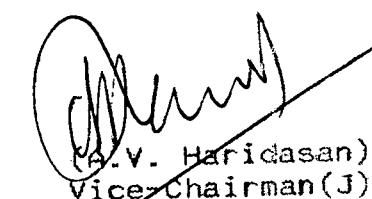
(i) Annexure A-1 order dated 17.2.94 shall stand set aside;

(ii) Applicant shall be eligible to count her seniority as LA with effect from 14.8.78 on the basis of her selection by SSB;

(iii) Respondents shall consider applicant's candidature for promotion as LT as of 1986 by holding a review DPC. This shall be done within a period of three months; and

(iv) There shall be no order as to costs.


(S.P. Biswas)
Member(A)


(A.V. Haridasan)
Vice-Chairman(J)