

Central Administrative Tribunal  
Principal Bench

O.A. No. 1442 of 2000

New Delhi, dated this the 17 November, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri S.P. Chopra,  
S/o late Shri N.D. Chopra,  
R/o 77A, MIG Flats, Shivam Enclave,  
Jhilmil Phase II,  
Delhi-110032. . . Applicant

(Mrs. Meera Chhibber)

**Versus**

1. Union of India through  
the Secretary,  
Ministry of Commerce & Industry,  
Dept. of Industrial Policy & Promotions,  
Udyog Bhawan, New Delhi.
2. Secretary,  
Dept. of Personnel & Training,  
Lok Nayak Bhawan, New Delhi.
3. Secretary,  
Union Public Service Commission,  
Shahjahan Road,  
New Delhi.
4. Shri Rahul Mahna,  
C/o Ministry of Commerce  
& Industry. . . Respondents

(By Advocate: Shri S.K. Gupta)

**ORDER**

MR. S.R. ADIGE, VC (A)

Applicant impugns respondents' order dated 24.7.2000 (Annexure P-1) promoting Respondent No.4 on ad hoc basis as S.O. and in the process reverting applicant as Assistant. He seeks a direction to respondents to convene regular DPCs and make regular promotions to the post of S.O. He also seeks a direction to respondents to consider only such of the candidates for regular promotions, who were eligible as per Recruitment Rules by having 8 years of regular

service as Assistant on the date of vacancy. (61)

2. It is not denied that Respondent No.4 is senior to applicant in the cadre of Assistants. By order of Respondent No.1 dated 17.6.97 (Annexure P-V) applicant was appointed to officiate as S.O. on purely ad hoc basis, or till the post was filled up on regular basis, whichever was earlier w.e.f. 16.6.97 to 31.7.97 i.e 45 days. It was made clear that this ad hoc appointment could be terminated without giving any notice or without assigning any reason. It was further made clear that the adjustment of applicant and others mentioned in order dated 17.6.97 was being made consequent to the existing incumbents being transferred/appointed elsewhere/proceeding on leave. By subsequent order dated 5.9.97 (Annexure PVI) applicant was again appointed to officiate as S.O. on ad hoc basis for a further period ~~of~~ <sup>from</sup> 1.8.97 to 30.9.97 on the same terms and conditions as contained in order dated 17.6.97. This was followed by yet another order dated 5.11.97 appointing applicant and others as S.O. on ad hoc basis for a further period from 16.6.97 to 30.9.97; another order dated 9.2.98 followed on the same lines for the period 1.10.97 to 31.1.98; another order dated 30.4.98 followed on the same lines for the period 1.2.98 to 30.6.98; yet another order dated 7.8.98 on the same lines for the period 1.7.98 to 30.9.98; yet another order dated 5.11.98 on the same lines for the period 1.10.98 to 31.12.98; yet another order dated 16.4.98 on the same lines for the

period 1.1.99 to 31.3.99; yet another order dated 5.8.98 on the same lines for the period 1.4.99 to 30.6.99; yet another order dated 26.11.99 on the same lines for the period 1.7.99 to 31.10.99; yet another order dated 21.1.2000 on the same lines for the period 1.11.99 to 31.3.2000. No orders are on record continuing applicant's ad hoc appointment as S.O. beyond 31.3.2000.

3. It is thus clear that applicant was being appointed as S.O. on ad hoc basis for periods upto 3 months at a time, ~~so as to~~ <sup>which</sup> gave him a continuous spell as S.O. from 16.6.97 onwards.

4. It is also clear that these appointments of applicant as S.O. on ad hoc basis were not made by the cadre controlling authority, which administers the CSS Rules, 1962 (Annexure P-III) but by Respondent No.1 itself in accordance with the instructions contained in DP&T's O.M. dated 30.3.98, which sets out the conditions under which ad hoc appointments could be made. Para 2(v) of those instructions provided for ad hoc appointments to be made from officers on the approved panel in case where short term vacancies are caused by regular incumbents proceeding on leave for 45 days or more, study leave, deputation etc. of less than one year duration. Para 4(1) of this O.M. lays down that the total period for which such appointment/promotion could be made was not to exceed one year, and where it became necessary to extend the ad hoc appointment beyond one year, DP&T's approval was to be obtained.

Para 4(iii) provided that where ad hoc appointment was by promotion from feeder grade, it was to be done on the basis of seniority-cum-fitness; and only those who fulfilled the eligibility conditions prescribed in the Recruitment Rules was to be considered for ad hoc appointment.

(1)

5. The eligibility conditions for promotion to the grade of S.o. from the feeder grade of Assistant are contained in Rule 13 (2)(a) CCS Rules 1962 which require officers of Assistants grade to have rendered not less than 8 years approved service in the grade.

6. It is not denied that Respondent No.4 though senior to applicant in the cadre of Assistants, did not have the eligibility condition of 8 years of approved service in the grade, when the short term vacancy of S.O. became available w.e.f. 1.6.97, and hence he could not be promoted against that vacancy, and it is applicant who admittedly was his junior, but possessed the eligibility condition of 8 years approved service in the grade who was promoted w.e.f. 1.6.97.

7. It is also not in doubt that Respondent No.4 who was a direct recruit had acquired the eligibility qualification of 8 years of approved service in the grade of Assistant well before the date of the impugned order dated 24.7.2000.

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(12)

8. Continuation of applicant now as S.O. on ad hoc basis while denying Respondent No.4 promotion to that post on ad hoc basis although he is admittedly senior to applicant in the grade of Asst. and has also acquired the eligibility qualification of 8 years approved service in the grade of Assistant, and where promotion to the post is to be based on seniority-cum-fitness, would mean not only violating DP&T's O.M. dated 30.3.88, but would be illegal and arbitrary, in as much as a junior would be holding the higher post on ad hoc basis, while his senior was denied ad hoc promotion to that post, although the ad hoc promotion is to be made on the basis of seniority-cum-fitness subject to fulfilment of certain eligibility conditions, which Respondent No. 4 had come to fulfil, and was also found fit for promotion.

9. The main ground taken by Mrs. Chhibber <sup>not</sup> during hearing was that an ad hoc employee could be replaced by another ad hoc employee, and respondents' orders themselves stated that applicant would continue till he was replaced by a regular employee. It was also contended that Respondent No.4 who had acquired eligibility of 8 years approved service in 1999/2000 could not be appointed on ad hoc basis to a vacancy which had occurred in 1997.

2

(B)

10. While it is no doubt true that normally an ad hoc employee should not be replaced by another ad hoc employee, this cannot be construed in a manner to perpetuate a situation where a person who is admittedly senior to an ad hoc employee, and has subsequently acquired eligibility for consideration for promotion, is denied the promotion, merely because his junior is occupying the post on ad hoc basis. The junior ad hoc employee has to make way for his senior. Furthermore the argument that Respondent No.4 could not be appointed in 2000 to a vacancy which occurred in 1997 has also no merit. From Para 2 above, we see that applicant was being appointed afresh each time, on some vacancy or the other. Respondents' counsel informs us that there are a large number of officers of S.O. rank in respondent organisation, one or other of whom was on leave, deputation etc., and it is clear that applicant was adjusted as S.O. on ad hoc basis against these vacancies, which gave him a continuous spell from 16.6.97 onwards.

11. In the result the impugned order dated 24.7.2000 warrants no interference. We are supported in our view by the C.A.T., P.B. order dated 30.4.2000 in O.A. No. 2398/99 N.K. Dudeja Vs. U.O.I. & Others and order dated 10.7.2000 in O.A. No. 938/2000 S.K. Sharda Vs. U.O.I. & Others which are fully applicable in the facts and

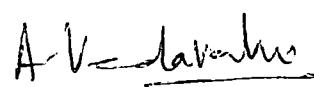
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circumstances of the present case. We are informed that the aforesaid order dated 10.7.2000 in Sharda's case (supra) has been appealed against in the Delhi High Court, where it has been stayed, but till the same, is quashed and set aside, its ratio would remain operative.

12. In so far as holding of regular yearwise DPCs and making regular promotions are concerned, respondents' counsel informed us that the matter is in hand. We would expect the competent authorities to take appropriate action in the matter in accordance with rules and instructions expeditiously.

13. Subject to what has been stated in Para 12 above the O.A. is dismissed. Interim orders dated 2.8.2000 which have been extended from time to time are vacated. No costs.



(Dr. A. Vedavalli)  
Member (J)



(S.R. Adige)  
Vice Chairman (A)

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