

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 1689/2000

NEW DELHI, THIS THE 4th DAY OF JAN. 2002

Hon'ble Sh. Kuldeep Singh, Member (J)
Hon'ble Sh. Govindan S. Tampi, Member (A)

Sh. D K Vijh,
Executive Engineer (Civil)
Quality Assurance, Technical Audit Cell,
Department of Telecom,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi

.....Applicant

(By Advocate S N Anand)

VERSUS

1. Union of India through Secretary
Department of Telecom.
Min. of Comn. Sanchar Bhawan, 20 Ashoka Road,
New Delhi
2. Sr. Dy Director General (BW)
Deptt. of Telecom Services,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.

.....Respondents

(By Advocate Sh. S. Mohd. Arif)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Relief sought in this OA is the regularisation of
the service of the applicant as Executive Engineer
(Civil) from 27.10.1978 with consequential benefit
including promotion.

2. S/Shri S.N. Anand and S. Mohd. Arif,
learned counsel represented the applicant and the
respondents respectively during the oral submissions.

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3. Brief relevant facts are that the applicant who joined the respondents (Deptt. of Telecommunications) on 4.7.1962, as Section Officer (redesignated as Jr. Engineer) became first on Assistant Engineer and thereafter an Executive Engineer first on ad-hoc basis on 27.10.1978, and was regularised as such on 20.3.1997. In the seniority list of 11.1.1999, he was shown as having been promoted on 20.3.1997, totally obviating his 19 years of ad hoc service. His representation for getting the ad-hoc period regularised was of no avail. In the meanwhile OAs No. 878 and 887/1999 filed by two of his colleagues, S/Shri P.V. Damodaran and P. Srinivasan, similarly placed, before the Bangalore Bench of the Tribunal had been allowed on 3.8.1999, with direction for the grant of regularisation of the ad-hoc service and consequential benefits. This applicant, who has retired on 30.9.2000, after instituting the OA had sought the extension of the benefit of the above judgement to him s well. The applicant pleads that as he was similarly placed as his colleagues who have got the benefit of the Tribunal's judgement, he is also entitled for the same. It is a settled proposition in service law that continuous and uninterrupted ad-hoc service followed by regularisation had to be taken into consideration for determining seniority as his ad-hoc promotion was not a stop gap arrangement but one made against a regular vacancy. The applicant also avers that a number of decisions of the Hon'ble Apex Court viz. Chandrakishore Singh Vs. State of Manipur & Others [(1999) 8 SCC 287], Direct Recruit Class II Engineer Association Vs State of Maharastra (1990) 2 SCC 715) duly support his case. During the hearing before us Shri Anand, learned counsel reiterated

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the pleas and also relied upon the decision of the Hon'ble Apex Court in Inder Pal Yadav & Others Vs. UOI and Others [1985 (2) SLR 28 (SC)], to the effect those who are "similarly situated are entitled to similar treatment if not by anyone else at the hands of the Court".

4. Stoutly defending the action of the respondents and reiterating their pleadings, Shri Mohd. Arif, their learned counsel, pleads that not having been a party in the OAs before Bangalore Bench the applicant cannot get the benefit of the decision therein. Even otherwise the said decisions are under challenge before the Karnataka High Court and therefore, has not reached finality. The applicant's case was similar to that of M.K. Shanmughan & Anr. Vs. UOI and Others [AIR 2704 S.C) decided by the Hon'ble Apex Court on 25.4.2000 wherein the benefit of ad-hoc service was not granted to the appellants, applicants in this case should also therefore fail. It is pointed out that those including the applicants were promoted as Ex. Engineer on ad-hoc basis, as there was prolonged litigation regarding seniority in the feeder cadre of Asstt. Engineer, before various Benches of the Tribunal and the seniority had to be revised repeatedly. Regular DPC could not be held from 1976 to 1997. It was in the said circumstances, ad-hoc promotions were ordered to carry on with the work and the same could not, in any way, be considered as having granted any right to the applicant for seniority, a fact which has been specifically mentioned in the concerned promotion orders. After finalising the seniority list in the feeder cadre of Asstt. Engineers/Asstt. Ex. Engineers, UPSC was approached to

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hold DPC for promotion to the grade of Ex.Engineer, against the vacancies from 1976 to 1993-94, which was done in February 1997, but on the basis of year-wise panels. In view of DOP&T's instructions in OM No. 22011/5/86-Estt dated 10.4.1989, while promotion will be made as per the order in the consolidated select list, such promotion will have only prospective effect even in cases where the vacancies relate to earlier years. Hence the promotion of the applicant as Ex. Engineer only from 20.3.1997, the date of approval by the UPSC, though the selection was against the vacancy for an earlier year. This was the only correct step to have been taken and it cannot be called in question, according to Shri Arif, learned counsel.

5. We have considered the matter. What the applicant seeks is the grant of regularisation of his ad-hoc service of nearly 19 years with consequential benefits, on the basis of the decision of the Bangalore Bench of the Tribunal dated 3.8.1999 in OAs 878 and 887/1999, respondents refer to the decision of the Hon'ble Apex Court to repel the request. Facts are undisputed that the applicant has been promoted to the post of Ex.Engineer (Civil) in the respondents' organisation on 26.10.1978, on ad-hoc basis and has been holding the post continuously for over 18 1/2 yearstill his regularisation by the impugned order dated 17.4.1997. It is also admitted on all hands that he has been posted, though on ad-hoc basis against a regular vacancy of 1978. He is similarly placed as S/Shri P.V. Damodaran and P. Srinivasan who had moved Bangalore Bench of the Tribunal, having been promoted as ad-hoc Ex. Engineer in 1978 and as regular Ex. Engineer in 1997, by the same orders.

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That being the case, the benefit of inclusion of the continuous and interrupted ad-hoc service, for computing the service for purposes of seniority, granted to S/Shri Damodaran and Srinivasan should come to the applicant. Tribunal's view represents the position in law laid down by the Hon'ble Apex Court in the decisions starting from Direct Recruit Class II Engineers case (supra) to Rudra Kumar Sain's case [2000 SCC (L&S)] and we bow to it. Respondents had relied upon the decision of the Hon'ble Supreme Court in M.K. Shanmugam's case (supra) refers. However, in the very decision, the Hon'ble Apex Court has observed that if the ad-hoc selection or recruitment was subject to the same process as it had been made in the regular appointment and that the same was not a stop gap arrangement, the benefit of inclusion of ad-hoc service in total service could be permitted. The present case is squarely covered by the said decision as it was not at all a stop gap arrangement and it was a promotion against a regular vacancy. The applicant is therefore, correctly entitled to the benefit of regularisation of his ad-hoc service with consequential benefits. He would also be entitled for consideration of promotion, by the above regularisation, even if one person junior to him has got promotion as Superintending Engineer. Grant of this benefit would not hurt anyone, as the applicant has retired on superannuation in September, 2000 and would only give the applicant some pensioner benefits. Granting that would be rendering justice.

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6. Respondents have averred that they had appealed against the decisions of the Bangalore Bench in the OAs referred to above. But as the decisions have not been stayed or modified, they hold the field as of now.

7. In the result, the application succeeds and is accordingly allowed. The impugned order dated 11.4.1997 is quashed and the respondents are directed to treat the applicant as having been promoted w.e.f. 26.10.1978 on regular basis and consider his case for promotion as Superintending Engineer from the date on which his junior was promoted as Superintending Engineer and if found fit, promote him and grant him monetary benefits. He would, however, be only entitled to notional promotion and fixation of pay and allowance, but would be entitled for monetary benefits on retirement ^{on} promoted posts. This exercise should be completed within three months from the date of receipt of a copy of this Order. No costs.

(GOVINDAN S. TAMPI)
Member (A)

Patwal/

(KULDEEP SINGH)
Member (J)