

(P) (9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2516/2000

Thursday, this the 19th day of April, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

1. S.R.Gautam
S/O Late Shri J.P.Gautam
Aged 56 years
R/O Flat No.1181, Laxmibai Nagar, N.Delhi
2. Rakesh Bhushan,
S/O Late Shri Bharat Bhushan
Aged 48 years,
R/O 139, Ram Nagar, Delhi-51.
3. V.Swaroop,
S/O Shri B.S.Sharma
Aged 54 years,
R/O Sector IV-391, R.K.Puram
New Delhi-22.
4. Praveen Punj,
S/O Shri M.R.Punj,
Aged 42 years,
R/O L-II/131-A, DDA Flats Kalka Ji,
New Delhi-110 019.
5. Amita Sharma,
W/O Shri Ashwani Sharma
Aged 40 years,
R/O E-16, Green Park Extension, New Delhi

(By Advocate: Shri A.K.Behera) ..Applicants

VERSUS

1. Union of India
Through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.
2. The Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi- 110 001.
3. Chief Commissioner of Income Tax - I,
Income Tax Office,
C.R. Building,
New Delhi.
4. Director Income Tax (System)
ARA Building, Jhandewalan Ext.,
New Delhi.

(By Advocate: Shri R.S.Agarwal) ..Respondents

(2)

O R D E R (ORAL)Hon'ble Shri Justice Ashok Agarwal:-

Whether service rendered during the period of deputation till the date of absorption can be counted for considering the eligibility of the applicants for promotion from the post of Programme Assistant/Console Operator, later ~~been~~ re-designated as Data Processing Assistant Grade "A" to that of Programmer, ^{later} ~~(redesignated Assistant Director as A.B.(Systems))~~ is a short question which has been raised in the present OA. Applicants on various dates from 1983 to 1991 were placed on the posts of Programme Assistant/Console Operator on deputation. They all have been later absorbed on 14.9.1995 in the post of Data Processing Assistants Grade "A" (DPA Gr. "A"). They are now aspirants for promotion to the post of Assistant Director (Systems) which is the re-designated post for Programmer. Recruitment rules in respect of the aforesaid ~~posts~~ ^{promotion} have been annexed as Annexure A-1. The same shows that 50% of the aforesaid promotional posts are to be filled by promotion failing which by transfer on deputation (including short-term contract)/transfer and 50% by direct recruitment. ^{provides that} ~~The Note~~ ^{provides that} The provision of "transfer" will not operate when the departmental candidates become eligible for promotion. As far as eligibility for promotion is concerned, the same is provided in Column 12 which is insofar as is relevant provides as follows:-

"12. Promotion :

Programme Assistants/Console Operators with five years' regular service in the grade.



Transfer on deputation: (including short-term contract)/transfer:"

2. As far as the applicants are concerned, they have not completed the aforesaid five years' service from the date of absorption. They, however, claim that they are entitled for considering the periods spent on deputation for considering their eligibility. If this is done, they would be eligible for promotion. Aforesaid controversy need not detain us any longer as the same is covered by the decision rendered both by the Supreme Court as also by this Tribunal. In the case of K. Madhavan & Another Vs. Union of India & Others, reported as (1987) 4 SCC 566, the Apex Court has ruled as under:-

"10. The 1975 Rules which are relevant for the purpose do not explain what is meant by the expression 'on a regular basis'. The expression has created some ambiguity in the eligibility clause giving rise to this controversy. There can be no doubt that when a person is appointed to a post against a permanent vacancy on probation, his appointment is on a regular basis, but when a person is appointed to a post on a purely temporary or on an ad hoc basis, the appointment is not on a regular basis. The expression "on a regular basis" in the 1975 Rules cannot, in our opinion, be interpreted to mean as on absorption in the CBI as SP. The general principle is that in the absence of any specific provision to the contrary, the length of service from the date of appointment to a post should be taken into consideration for the purpose of either seniority in that post or eligibility for the higher post. As no explanation has been given in the 1975 Rules of the said expression, we do not think it desirable to deviate from the established principle of computing the length of service for the purpose of seniority or eligibility for the higher post from the date of appointment. In our view, therefore, the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradistinction to appointment on ad

hoc or stopgap or purely temporary basis. Respondent 5, in our opinion, satisfied the eligibility test of the 1975 Rules for consideration for the post of DIG...."

3. This Tribunal in the case of Sridhar Prakash vs. Union of India & Anr. (OA-871/95), decided on 5.9.1995 has, after placing reliance on the aforesaid decision of Supreme Court, observed as under:-

"4....A person appointed by way of transfer on deputation cannot be considered to be an adhoc employee. Transfer on deputation is also a method of recruitment according to the recruitment rules. Therefore, the applicant though on transfer on deputation was appointed regularly to the post of Sub-Inspector which carried a pay scale of Rs.380-560. Though the applicant was absorbed in service only on 25.8.1984 and probably entitled to seniority in that grade only with effect from that date his services rendered prior to absorption as a deputationist being regular service has to be treated as regular service in determining eligibility for promotion. Even if the applicant was holding a lien on a post in the parent department which has a different pay scale does not alter the position. We are, therefore, of the considered view that the five years period for determining his eligibility should be reckoned from 10.2.1982 and not from 25.8.1984. We are supported in taking this view by the dictum of the ruling of the Hon'ble Supreme Court in Shri K.Madhavan Vs. UOI held in 1987 Vol.(4) SCC 566 where it was held that the services rendered on deputation prior to regular absorption can be treated as regular service for the purpose of eligibility for promotion.

5. In view of what is stated above, we are of the considered view that the view taken by the respondents that the applicant did not have the requisite length of service for being considered for the post of Inspector for which the vacancies arose in the year 1987 and 1988 is fully unsustainable...."

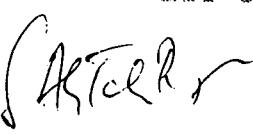
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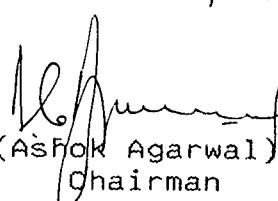
4. If one has regard to the aforesaid decisions, a conclusion, in our view, is irresistible that the appointment of the applicants to the post of Programme Assistant/Console Operator (DPA Gr. "A") on deputation will have to be considered as an appointment on regular basis. The same will, therefore, have to be counted for the purpose of considering their eligibility for promotion to the post of Programme Assistant Director (System).

5. For the forgoing reasons, the present OA succeeds and is accordingly allowed in terms of following prayer clauses 8 (ii) (iii):-

- "ii) Declare that the service rendered by the applicants as Programme Assistant/ Console Operator from the date of their initial deputation to the date of their absorption is regular service for the purpose of being considered for promotion as Programmer, Group "A"/Assistant Director System;
- iii) Direct the respondents to consider the applicants for promotion as Programmer Group "A"/Assistant Director System from the date, if found fit by the DPC/review DPC with all consequential benefits;"

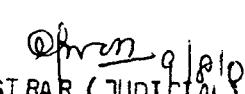
Paraphrased
by (iii) below by virtue
of order dt 6/8/01
reproduced below


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

/sunil/

- iii) Direct the respondents to consider the applicants for promotion as Programmer Group 'A'/ Assistant Director, System from the due date and to promote them as such from the said date, if found fit by the DPC/review DPC with all consequential benefits."


D.Y. REGISTRAR (JUDICIAL)