

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

13

C.A. No. 1977/89 .. Date of decision: 13.5.92
Sh. Phool Singh Kardam .. Applicant
Sh. Ranjan Mukherjee .. Counsel for the applicant
Versus
U.O.I. & Ors. .. Respondents.
.. Counsel for the Respondents.

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HON'BLE SH. JUSTICE RAM PAL SINGH, VICE CHAIRMAN (J)
HON'BLE SH. I.P. GUPTA, MEMBER (A)

J U D G E M E N T

(Delivered by Sh. I.P. Gupta, Member(A))

This is an application filed under Section 19 of Administrative Tribunals Act, 1985. The applicant was appointed as Upper Division Clerk in the office of the erstwhile Accountant General, Central Revenue on 27.11.56. He was transferred to erstwhile AGCW&M, New Delhi on 1.11.61 and thereafter consequent upon departmentalisation of accounts with effect from 1.7.76, he was transferred to the Principal Accounts Office, Ministry of Works & Housing, New Delhi. While in the office of the AGCW&M, the applicant was promoted as Senior Accountant with effect from 6.2.70. The next promotion of the Senior Accountant is to the post of Jr. Accounts Officer. By virtue of an office order issued by the Ministry of Urban Development, the applicant was promoted as Jr. Accounts Officer, Ministry of Urban Development, Allied Accounting Organisation with effect from 31.1.1981. The promotion was for a period of 4 months or till further orders or till such time the regular and qualified JAOs were available. Before expiry of 4 months, the applicant was

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reverted with effect from 23.4.81. The applicant was again promoted as JAO with effect from 25.8.81. He proceeded on leave on 31.3.84 and while on leave he was again reverted. The applicant was again promoted as JAO with effect from 25.4.84. This promotion again was purely on ad-hoc basis till further orders or till such time the regular qualified JAOs were available. Thereafter, the applicant has been continuing as JAO without interruption.

2. The relief sought for by the applicant is that his services from 3.2.81 as JAO should be taken into consideration for purposes of future promotion or in the alternative his service with effect from 25.4.84 as JAO be taken into consideration for purposes of future promotion, since, there was no interruption from 25.4.84.

3. The learned counsel for the applicant contended that the services of the applicant were regularised from 25.11.86 vide order dated 11.12.86 (Annexure-R4) ^{and} his ad-hoc services followed by regularisation should be counted for purposes of promotion. He further contended that the promotion of the applicant though ad-hoc was under Rule 5(4)(b)(1) of the CCAS Rules, which says that when qualified persons are not available, the post may be filled by promotion from common seniority list from Sr. Accountant and Selection Grade Divisional Accountants who have rendered not less than 10 years service on the basis of selection by merit.

The applicant was not promoted against any temporary vacancy. ^{according to the applicant} The regularisation from 25.11.86 ^{was} without any justifiable reason and the services should have been regularised from an earlier date namely, 3.2.81 or at the worst from 24.5.84.

4. The learned counsel for the respondents argued that:-

- (i) While regular appointments are governed by statutory recruitment rules, the ad-hoc appointments are governed by administrative instructions.

(ii) The J.A.O. examination is a technical examination mainly designed to test candidate's ability in financial and accounting rules. A provision has been made in Rule 5(4)(b) of the Recruitment Rules, opening a limited avenue for promotion of Senior Accountants with a minimum of 10 years service in the grade by making "selection on merit" without passing the J.A.O. examination. Rule 5(4) provides that decision regarding number of vacancies to be filled up by qualified candidates and the exempted Senior Accountants is to be taken on each occasion by the Government. The individual Ministries/Departments do not have the power to decide allocation of vacancies between qualified candidates and the exempted Senior Accountants.

(iii) The salient points of difference between the regular appointments and ad hoc appointments are given below:-

	<u>Regular appointment under the Recruitment Rules</u>	<u>Ad hoc appointment outside the Recruitment Rules</u>
Authority competent to process the appointments	First Respondent	Individual Ministries/Departments
Eligibility	Either the candidate should have passed JAO Examination or should have been "Exempted". The candidates are selected purely on merit.	The appointment is based on seniority subject to fitness only. There is no element of merit.
Probation	As prescribed in the Recruitment Rules.	No probation is prescribed.
Field of consideration	Combined seniority list of all "cadres".	Confined to seniority list of individual Ministry/Department only. It is a purely ad hoc arrangement as specified by the appointment.

(iv) In 1985, the respondents decided to fill 21 posts by promotion of Senior Accountants to JAOs. 63

officials were considered, including the applicant, on 17.2.86. The proceedings of the DPC were placed before us. 21 officers were selected. They were either senior to the applicant or had gradings superior to him. The applicant was not selected. He was again considered along with others in November 1986 (12.11.86). His name was included in the panel and his promotion was regularised from 25.11.1986.

5. The short point to be determined in this case is whether the services of the applicant on ad hoc basis from 3.2.81 or 25.4.84 as J.A.O. should be taken into consideration for the purpose of seniority and promotion.

6. The learned counsel for the applicant cited several cases. He contended that in the case of Direct Recruit Class-II Engineering Officers' Association and Ors. vs. State of Maharashtra and Ors. (AIR 1990 S.C. 1607), it was held that if the initial appointment is not made by following the procedure laid down in 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.

7. The above citation has to be read in its fuller context. In the case of Direct Recruit Class II Engg. Officers Association vs. State of Maharashtra (supra), it was also held that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment. 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. The present application does not relate to a case of initial appointment not being made according to procedure alone. The applicant's ad hoc appointment was made without

considering the claims of seniors in the cadre which is a central cadre for purposes of promotion.

8. In the case of Delhi Water Supply & Sewage Disposal Committee vs. R.K. Kashyap (A.T.R. 1989 (1) S.C. 314), it was held that the length of service in ad hoc appointment or stop-gap arrangement made in the exigencies of service without considering the claims of all the eligible and suitable persons in the cadre ought not be reckoned for the purposes of determining the seniority in the promotional cadre. In the case of Rajbir Singh and Ors. vs. Union of India (AIR 1991 S.C. 518), quoted by the learned counsel for the applicant, the applicant was qualified to be promoted. He was promoted after holding tests and finding him qualified to be promoted. The case of the present applicant is not on all fours with that of Rajbir Singh. The applicant in the present case was considered when, according to seniority, his turn for inclusion in the zone of selection came and he was not found fit in the first instance and later when he ^{was} found fit, his promotion was regularised from 25.11.1986.

9. The case of T.S. Gopi vs. Deputy Collector of Customs & Ors. (A.T.R. 1990 (1) C.A.T. 390), quoted by the learned counsel for the applicant, would indicate that here it was held that ad hoc service followed without interruption by regularisation counts for seniority only if the ad hoc appointment was made after considering the claims of all eligible candidates.

10. In sum, the law on the point is well settled that ad hoc service when initial appointment was made in accordance with the rules would count for seniority and promotion, but ad hoc and fortuitous service de hors

the rule would not count.

11. In the conspectus of the aforesaid facts and arguments, the application is bereft of merit and is dismissed, with no order as to costs.

I.P. Gupta
(I.P. GUPTA) 19/5/92
MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)
VICE-CHAIRMAN (J)