

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.No.200 of 1989

Dated this the 11th of February, 1994.

Shri C.J. ROY, Hon. Member(J)
Shri P.T. Thiruvengadam, Hon. Member(A)

Shri Lajpat Rai,
S/o Late Shri Vishan Dass,
R/o 234, Lodi Road Complex,
New Delhi 110 003
By Advocate: None.

... Applicant

versus

Union of India through

1. The Secretary,
Ministry of Science and Technology,
Technology Bhawan, New Mehrauli Bhawan,
New Delhi 110 016.
2. Director General of Meteorology,
India Meteorological Department,
Mausom Bhawan, Lodi Road,
New Delhi 110 003.
3. Director,
Regional Meteorological Centre,
India Meteorological Department,
Mausom Bhawan, Lodi Road,
New Delhi 110 003.

... Respondents

By Advocate: Shri M.L. Verma

O R D E R (Oral)
(delivered by Hon. Member(J) Shri C.J. ROY)

This is an old matter of 1989 peremptorily posted for final hearing today. None present for the applicant inspite of the matter being passed over twice. Even on earlier occasions, we find from the record that neither the applicant nor his counsel has put in appearance. We feel that the applicant is not interested to prosecute the case any more, and therefore, proceed to dispose of the matter/based on the submissions advanced by the learned counsel for the respondents, and the materials available on record.

5

2. This OA is filed by the applicant who is working as Scientific Assistant under respondent No.1. He has claimed for the following reliefs:-

- (a) to set aside/quash the office order dated 9.1.89 (Annexure A-5) herein, as the same is illegal, void-ab-initio.
- (b) to declare the applicant to be on aforesaid short-term promotion since September 1988 till he is found entitled for the same on the basis of seniority along with all perks and benefits as attached with short-term promotion with retrospective effect.

The claim of the applicant is that he is working on the basis of requirement of the department, which needs manpower to discharge the functions round the clock and therefore, adhoc arrangement and short term promotions are being made even from lower cadre on the basis of seniority. He avers that this practice is followed since 15 years. He has produced the annexure A-1 guidelines and states that ^{respondents have} ~~he has~~ been strictly adhering to it for the purpose of short-term promotion to the cadre of P.A. from the cadre of S.A. and the basis of selection is nothing but local seniority in the cadre of S.A. beyond. His extention ~~1~~/r 89 days as per the Annexure A-5 order is of subject to the availability /vacancies in Delhi and he will continue to hold the short term promotional post till the same is expressly withdrawn. He has been getting the aforesaid short-term promotion regularly and the last order which was received by him extending his tenure in promotion cadre was (Annexure A -3 dated 18.7.88 which pertain to the period of 1.6.88 to 28.8.88/.

According to the applicant, subsequent to the expiry of the tenure period as stated in the Annexure A-3 order, no further order for short-term promotion in this discipline has been given to him. He files Annexure A-4 order, showing the names of the Scientific Assistants and states that his colleagues at S.No.31 to 40 were juniors to him in the local seniority. He has not protested because he was expecting similar extension order for the same period in respect of section he is working with. Failing to receive such extension order for short-term promotion, he filed this OA praying for the above mentioned reliefs.

3. The respondents have filed their counter stating that the appointment is made purely on temporary basis and therefore, the applicant has no legal or vested right to claim against the regular promotees, whom he has not made parties and that their rights will be affected if a decision is given in favour of the applicant. They have also taken objections on some other grounds across the bar, but however, are not being pressed. They deny the allegations that short term promotions are made purely on local basis. The candidates are required to fulfil the eligibility conditions and the instruction of the Department of Personnel and Training OM No.28036/8/87-Estt(D) dated 30.3.1988. They also deny that

②

the short term promotion given to the applicant is based on the seniority list. As per the instructions of the Department of Personnel and Training, short term officiation/ promotion should be made as per the Annual Confidential Reports, Vigilance clearance, fitness and suitability of the applicant to the said post. They assail that the applicant has no case and therefore be dismissed.

4. In the rejoinder, the applicant has stated that the aggrieved persons could not be impleaded in this case because if a decision is taken in favour of the applicant, it would adversely affect the interests and rights of the regular promotees. The promotion is only based on seniority and not as per the instructions of the Department of Personnel and Training dated 30.3.1988.

5. We have heard the learned counsel for the respondents and perused the documents available on record. The Annexure A-1 order dated 14th October, 1986 is the internal correspondence seeking information of the eligible persons for short term promotion in the cadre of P.A. and S.A. in order to eliminate the possibility of a senior person being left out in one office, while his junior gets short-term officiation in other office at the same station. The Annexure A-2 order dated 3rd October, 1987 is the appointment order of the applicant, ^{and two other colleagues} to officiate as Prof. Assts. for the period 17.7.87 to 30.8.87 at Headquarter station (in the case of applicant) or until further orders — *certified*

whichever is earlier against officiating vacancies of Prof. Asstts. at the stations under this establishment. If further states that the short term officiation has been made purely/local arrangements without prejudice to the claim of persons senior to them. The Annexure A-3 is ^{also} the office order of appointment of the applicant along with 13 other colleagues dated July 1988, in which the name of the applicant stands at Sl.No.14 to officiate as Prof. Asstts. for the period mentioned against their names from 1.6.88 to 28.8.88 (89 days) or until further orders whichever is earlier against officiating vacancies of P.A. at the station under this establishment besides other terms being the same. But in the subsequent orders dated 29th September, 1988 and 9th January 1989 the name of the applicant does not find place(Annexures A-5 and A-6).

6. The short point involved in this case for decision is whether the applicant has the right to get the relief claimed for by him in the OA. It is alleged in the counter that the appointments of the applicant to officiate as Professional Assistant on purely/local arrangements till regular appointments are made, cannot be considered to be conferring vested rights on him. This condition has been made clear in every order issued to him. Subject to this condition, the applicant has also accepted and served in the short term assignment on purely/local arrangement against the officiating vacancy. Further, the officiation promotion is made

after taking into consideration seniority-cum-fitness depending upon the ACR, vigilance clearance etc. and also the conditions of suitability. The persons appointed vide Annexure A-5 order (supra) have fulfilled all the above conditions and therefore, it cannot be questioned by the applicant.

7. The Office Memorandum of the Department of Personnel and Training dated 30th March, 1988 in regard to the adhoc appointment under revised instructions clearly mentions the procedure to be followed. The relevant portion of the OM reads as under:-

- 4.(ii) If the appointment proposed to be made on an adhoc basis involves the approval of the Appointments Committee of the Cabinet, this may be obtained prior to the appointment/promotion being actually made.

8. The name of the applicant was not referred to the Appointments Committee because of his shortcoming being recorded in the ACR for the period 1.4.87 to 31.3.88 as mentioned below:-

'His work is good but he is in the habit of making false and malicious allegations against his superior officers.'

This seems to be the adverse remark communicated to the applicant. Therefore, it follows that the applicant has not fulfilled the required condition as deemed necessary for adhoc promotion. The instructions of DP&T of 30th March, 1988 in this regard further states that:-

- 4(iii) Where adhoc appointment is by promotion of the officer in the feeder grade, it may be done on the basis of seniority-cum-fitness even where promotion is by selection method as under:-

- (a) Adhoc promotions may be made only after proper screening by the appointing authority of the records of the officer.
- (b) Only those officers who fulfil the eligibility condition prescribed in the recruitment rules should

be considered for adhoc appointment. If, however, there are no eligible officers, necessary relaxation should be obtained from the competent authority in exceptional circumstances.

- (c) The claims of Scheduled Castes and Scheduled Tribes in adhoc promotions shall be considered in accordance with the guidelines contained in the Department of Personnel & A.R. Office Memorandum No.36011/14/83-Estt. (SCT) dated 30.4.1984 and 30.9.1983.

It is clear from the above, that the approval of the Appointments Committee is a *sin qua non* for claiming as a matter of right the appointment for adhoc promotion since even after the adhoc promotion, the approval of the Appointments Committee is required.

9. The OA is also bad in law for not joining the parties mentioned in the Annexure A-5 order who are regularly selected for appointment on adhoc basis following the above instructions and guidelines.

10. Under these circumstances, we feel that the applicant has not made out a case for our interference. The OA is, therefore, dismissed as devoid of merit with no order as to costs.

P. T. Thiruvengadam
(P.T. THIRUVENGADAM)
MEMBER(A)
11.2.94

kam110294

C. J. Roy
(C.J. ROY)
MEMBER(J)
11.2.94