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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 328/1989 .
T.A. No.

199

DATE OF DECISION 31.12.1990.

<u>Shri Maman Singh Jain</u>	Petitioner
<u>Shri R.P.Bheroi</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Anr.</u>	Respondent
<u>Sh.K.S.Dhingra, Sr.A.O.</u>	XAdvocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K.Rasgotra, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓


 (AMITAV BANERJI)
 CHAIRMAN
 31.12.1990.

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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.**

REGN.NO. O.A. 328/89.

DATE OF DECISION: 31.12.1990

Shri Maman Singh Jain. ... Applicant.

VERSUS

Union of India & anr. ... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant.

Shri R.P. Oberoi,
Counsel.

For the Respondents.

Shri K.S. Dhingra,
Senior Administrative
Officer (Dept. Official)

(Judgement of the Bench delivered by
Hon'ble Mr. I.K. Rasgotra, Member(A))

The issue for our consideration agitated in this Application is counting of ad hoc service from the date of continuous officiation even when the applicant was not eligible for promotion nor was the post available for his regularisation in the promotee quota at that time.

The applicant, Shri Maman Singh, has filed this Application under Section 19 of the Administrative Tribunals Act, 1985 challenging the rejection of the representation of the applicant regarding re-fixation Statistical Assistant of seniority as/(Stats Assistant) by counting his ad hoc service vide Order No. A/27148/SL/CAO/P-2 dated 22.11.1988 (Annexure-I). The case of the applicant in brief is that he was promoted as Statistical Assistant

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on local basis in Air Headquarters from 20.5.78 to 15.8.78 against a leave vacancy in the Directorate General, Armed Forces Medical Service(DG-AFMS). He was again promoted as Stats Assistant on ad hoc basis w.e.f. 17.8.1978 vide Order dated 19.9.78 (Annexure-VI) in the Air HQs. There was no common roster for promotion covering all Directorates/departments at that time. He continued to officiate in the said post thereafter without any break and uninterruptedly.

He, therefore, contends that his promotion was not a stop-gap arrangement but was against a regular vacancy. The common roster of Armed Forces HQ Organisation in respect of Statistical Assistants was introduced on 27.4.85 and the applicant was retained in the Air HQs. The promotion order provided that the appointment as Officiating Statistical Assistant (Common Roster) in the inter service organisation is subject to a period of probation for two years. The recruitment rules for the posts of Statistical Assistant, Senior Computer and Computer in Armed Forces HQs were published vide S.R.O. No. 220 dated 30.7.1987.

These rules superseded the earlier rules framed by the various Directorates and Organisations separately. The Air HQs Rules prior to July, 1987 were notified vide S.R.O.-I dated 7.12.1983. The 1983 rules superseded the 1977 rules published vide S.R.O. 152 dated 15.4.1977. The applicant joined on transfer in the branch of Adjutant General(Medical) on 14.3.1988 and a combined seniority list of Statistical Assistants was published by the Respondent No. 2 on 12.1.1988. The applicant figured in the seniority list at Serial No. 15 and the date of his appointment

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is shown as 27.4.1985. The applicant submitted a representation claiming that his date of promotion should be deemed to be 17.8.1978 as he has been continuously and uninterruptedly working in that grade.

He was, however, informed vide Order dated 19.4.1988 that his seniority has been shown correctly w.e.f. 27.4.1985. He made a further representation on 16.5.1988, which has been rejected vide the impugned order dated 22.11.1988 (Annexure-I). By way of relief, the applicant has prayed that the impugned order dated 22.11.88 (Annexure-I) be quashed and that the respondents be directed to amend the seniority list of Stats Assistants AFHQ (Common Roster) by showing his date of appointment on regular basis as 17.8.1978 i.e. date from which he had officiated on ad hoc basis uninterruptedly.

Shri R.P. Oberoi, the learned counsel for the applicant, submitted that at the time of ad hoc promotion in 1978, the applicant was governed by 1977 Recruitment Rules published vide S.R.O. 152 of 15.4.1977. According to these rules, Senior Computers with minimum three years service in the grade were eligible for promotion as Stats Assistant. The recruitment rules were revised in 1983 when Senior Computers with 5 years regular service were made eligible for promotion to the grade of Stats Asistant (Rs.425-700). The common roster in the cadre of Stats Assistant etc. was established in 1985 although the relevant recruitment rules were notified vide S.R.O. 220 dated 30.7.1987. The learned counsel submitted that the applicant was

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promoted as Stats Assistant against a regular vacancy which was caused by the deputation of another Stats Assistant. Such a promotion cannot be termed as stop-gap arrangement as it continued for almost over 8 years without any interruption. To fortify his case, the learned counsel cited a catena of judicial pronouncements listed in the margin below.* Further, the learned counsel relied on the decision of the Hon'ble Supreme Court in the case of The Direct Recruit Class-II Engineering Officers Association Vs. State of Maharashtra (JT 1990(2) SC P-264) and Masood Akhtar Khan Vs. State of M.P. (JT 1990(3) SC 295).

Shri K.S. Dhingra, Senior Administrative Officer in the office of Respondent No. 2, appeared on behalf of the Respondents. Referring to the written statement on behalf of the Respondents, he submitted that the applicant was promoted as Senior Computer on ad hoc basis on 16.6.1972. He was regularised as Senior Computer on the basis of the recommendations of the DPC on 12.5.1978. He was appointed ad hoc Statistical Assistant w.e.f. 17.8.1978, subject to the conditions that he would not have any claim for appointment to the Stats Assistant on regular basis nor would his service be reckoned for seniority. Shri Dhingra further submitted that at the time of promotion in August, 1978, the applicant had no claim for promotion, first, he had not put in requisite service of 5 years in the grade of Senior Computer and consequently, he was promoted on ad hoc basis against the vacancy which was caused due to the deputation of regular incumbent elsewhere.

*M.P.Singh & Ors. Vs. U.O.L & Ors.(ATLT 1989(1),P-655), U.O.L Vs. M.P. Singh (AIR 1990 SC 1098), Y.V. Rangaiah Vs. J. Sreenivasa Rao (AIR 1983 SC 852), P. Mahendru Vs. State of Karnataka (AIR 1990 SC 405).

Besides, the recruitment rules notified in 1977 for the Air HQs also made the provisions that the 50% of the vacancies will be filled by promotion failing which by direct recruitment and 50% by direct recruit. The recruitment rules were revised in 1983 which too retained recruitment for the post of Stats Assistant from the two sources viz., 50% by promotion from Senior Computers with 5 years regular service in the grade, failing which by transfer/transfer on deputation and failing both by direct recruitment. The applicant became eligible for promotion in his quota only in 1983. In 1985, one vacancy of Stats Assistant falling in promotion quota became available. Accordingly, the applicant was promoted after convening a DPC on regular basis when he had also completed regular service of 5 years in the grade.

He was assigned seniority in the grade of Stats Assistant consequent to his regular promotion w.e.f. 27.4.1985 in the Air HQs DGAFMS. Consequent to the introduction of common roster in the three service HQs and other Directorate etc., the recruitment rules were amended vide S.R.O. 220 dated 30.7.1987. These rules came into effect from 29.8.1987 and consequently a combined seniority roll in the grade of Stats Assistant was circulated among all concerned in terms of Office Note No. A/27148/SL/CAO/P-2 dated 12.1.1988.

Shri Dhingra submitted that the applicant had no claim for regularisation against the post of a direct recruit. He had to wait for his regular promotion in accordance with the roster against the slot in the promotee

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quota. Shri Dhingra relied on the corollary of conclusion 'A' in the case of The Direct Recruit Class II Engg. Officers Association Vs. State of Maharashtra(Supra).

Shri Dhingra also submitted that the Application is bad in law for non-joinder of parties. The applicant should have impleaded all the persons who are likely to be affected in case the Application was allowed. In support of his contention, he cited the case of S.L. Khanna Vs. Punjab Electricity Board (SLJ 1975 P-27) and Prabodh Verma Vs. State of U.P. (AIR 1985 SC 167).

Besides, he cited the following cases listed in the margin below*.

To further fortify his case, Shri R.P.Oberoi, the learned counsel for the applicant, submitted that it has been conceded by the respondents that the 1977 rules were applicable at the time of his ad hoc appointment as Senior Computer . The learned counsel stressed that the provision under Col. 11 of the Schedule to SRO 28 dated 14.1.1977 (1977 Rules) stated that the Senior Computer in Air HQ with 5 years service in the grade would be eligible for promotion to the post of Stats Assistant.

The provision in the rule is of "5 years service". The rule does not spell out whether it should be regular or ad hoc. He averred that the continuous uninterrupted service is as good as regular service and since the word 'regular' is not mentioned in the recruitment rules it cannot be allowed to be imported into the rule either explicitly or implicitly by the respondents.

We have heard Shri K.S. Dhingra, S.A.O., in the office of the Chief Administrative Officer, Ministry of Defence and the learned counsel for the applicant. It is not necessary to examine a large

*Robin Gurung Vs. State of Sikkim & Ors (SLJ 1983(1),P-538) ,P.D. Aggarwal & Ors. Vs. State of U.P. & Ors.(1987(4)ATC 272), Parkash Chand Vs. State of H.P. & Ors.(1985(3)SLR 188), Gonal Bihimappa Vs. State of Karnataka & Ors(1987(5)ATC 205),

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number of judicial pronouncements cited by Shri K.S. Dhingra, S.A.O., who pleaded the case of the respondents and Shri R.P. Oberoi, the learned counsel for the applicant. All these cases have been discussed by the Constitution Bench of the Supreme Court and the law has been laid down clearly and succinctly by the Hon'ble Court keeping in view the various decision given by the Court in the judgement in the case of The Direct Recruit Class II Engg. Officers Association Vs. State of Maharashtra (Supra). In our view, the case of the applicant falls under Clause 'A' of the said judgement, which is reproduced below:

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

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 ad hoc promotion of the applicant was not made according to the Rule, is obvious from the fact that at the time of initial promotion the applicant was not considered by the DPC along with the others for promotion. Further, the 1977 rules also prescribe recruitment from different sources in a fixed ratio. In paragraph 3 of the said judgement this point has been elaborated by their Lordships of the Supreme Court by observing "During the period 1960-1970 adequate number of direct recruits were not available, and a large number of promotees, therefore, had to be appointed to officiate as Deputy

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Engineers on continuous basis. These appointments were made after following the procedure applicable to regular promotions including consultation with the Public Service Commission". The promotions in question were, therefore, made in accordance with the rules. This is not so in the case before us. Their Lordships further in paragraph 21 of the said judgement observed as under:

"Further, if a rule fixing the ratio for recruitment from different sources is framed, it is meant to be respected and not violated at the whims of the authority. It ought to be strictly followed and not arbitrarily ignored. This, of course, may not prevent the Government from making slight deviations to meet the exigencies. If it is discovered that the rule has been rendered impracticable, it should be promptly substituted by an appropriate rule according to the situation".

The applicant was promoted purely on ad hoc basis, even when he was not eligible, against a vacancy arising from deputation of another Officer w.e.f. 17.8.1978. Even at the time under the 1977 Rules, there was a fixed ratio for recruitment from different sources. The ad hoc promotion of the applicant, therefore, in a situation like this is covered by the expression "slight deviation" to meet the exigency of the situation.

The view expressed above also finds support in the judgement cited by the Hon'ble Supreme Court in the case of Masood Akhtar Khan Vs. State of M.P.(1990(2)SCALE,P-142). Following the judgement of the Constitution Bench, the Hon'ble Supreme Court declined to allow the counting of 5 years service of the Assistant Engineers in the Public Health Department on the ground that it was only the latter selection made in 1977 by the Public Service Commission,

which was made according to the Rules. The earlier selection made in 1972 was "temporary till further orders for six months or for a fortnight till after the selection of candidates by the Public Service Commission". The Hon'ble Supreme Court took the view that although the word 'Ad hoc' is not mentioned in the advertisement or in the appointment letter, the word 'temporary' is mentioned there and read with the rest of the contents they leave no doubt that the appointments were as and by way of stop-gap arrangement pending the regular selection by the Commission.

The learned counsel for the applicant had referred to the eligibility conditions for promotion referring only to "5 years service in the grade". The words 'phrases and expression' in such cases have to be read in overall context as no fixed connotations can be attributed to such expressions. (Baleshwar Das Vs. State of U.P., 1981(1)SCR 449). In the circumstances, we cannot be persuaded to believe that the omission of the word 'regular' in the expression 5 years service in the grade would mean inclusion of ad hoc service. Had that been the intention of the legislature, the 1983 rules and the 1987 rules would not have introduced the word 'regular' in the 5 years service in the grade. The 1983 and 1987 Rules converted the intent of the legislature into the expression to avoid the possibility of any misconstruction.

We, therefore, hold that the expression '5 years service in the grade' contains the intent of '5 years regular service in the grade' as reading it otherwise would lead to chaotic results.

In the result, we do not find any merit in the Application which is accordingly dismissed with no order as to costs.


(I.K. RASGOTRA)
MEMBER(A)
31/12/1990


31/12/90
(AMITAV BANERJI)
CHAIRMAN