

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.437 of 1989

Date of decision: 5-11-93.

B.D.Verma.....Applicant

vs

Union of India.....Respondent.

Coram:

The Hon'ble Mr Justice S.K.Dhaon, Vice Chairman.

The Hon'ble Mr B.N.Dhondiyal, Member(A).

For the applicant: Mr Atul Sharma, Advocate.

For the respondent: Mr M.L.Verma, Advocate.

J U D G M E N T

(delivered by Mr B.N.Dhondiyal, Member(A))

Shri B.D.Verma, the applicant, is aggrieved by the impugned order dated 7th July, 1988 issued by the Central Water Commission, rejecting his representation for counting his adhoc service as Research Assistant for the purpose of seniority.

2. The applicant was appointed as Junior Computer in the Ministry of Irrigation and Power on 2nd July, 1959 and was promoted subsequently on adhoc basis as Senior Computer on 26th July, 1962. He was confirmed as Junior Computer on 7th July, 1966. On 17th September, 1974, he was promoted to the next higher post, i.e., Research Assistant on adhoc basis and the appointment was w.e.f.1st September, 1974. He continued to function as Research Assistant on adhoc basis till 31st December, 1984 when he was regularised as Research Assistant with effect from 7th January, 1985. At the time of his adhoc appointment as Research Assistant, he was the seniormost Senior Computer

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in line for being promoted as Research Assistant. The delayed regularisation of his services as Research Assistant has adversely affected his seniority and in the seniority list issued by the Ministry of Water Resources on 17th January, 1986, he has been placed junior to direct recruits, namely, Shri Bansilal Bapurao and Shri Rashid Ahmed Mian, who joined the Ministry as Research Assistant only in December, 1985. Also, the petitioner has been placed on probation for a period of two years with the result that even after serving as Research Assistant on adhoc basis for more than 10 years, he had to wait for confirmation. He submitted a number of representations and also requested that the benefit of the judgment of this Tribunal in cases of similarly situated colleagues may be extended to him. However, in their letters dated 7th and 13th July, 1988, it has been mentioned that the judgment of the Tribunal is applicable only in cases of the petitioners and cannot be uniformly applied to similarly placed persons. Later on, with M.P.No.2965/92, the applicant has filed copies of judgment of this Tribunal dated 5th September, 1990 and 31st March, 1993 and the seniority lists notified on 1st January, 1986 and 11th October, 1991, showing that since the benefit of the judgment in case of Shri Harpal Singh and Shri Jaswinder Singh has not been extended to him, they have become senior to him in these seniority lists. He has prayed that he be given the benefit of accreditation of his adhoc service as Research Assistant for the period from 1st September, 1974 to 31st December, 1984.

3. The main averments made in the counter filed by the respondent are these. The applicant has filed a very belated application by asking relief w.e.f 1st September, 1974 till 31st December, 1984, as such

the application is liable to be rejected.

Sh. B.D. Verma was appointed as Research Assistant on adhoc basis initially on 1st September, 1974 and continued as such against the chain vacancies of adhoc appointments of EAD/Assistant Directors from time to time. The post of EAD, in whose chain Shri Verma was promoted, was also not regularised. Since there was only one regular vacant post in the grade of Research Assistant and one of the Senior Computers vis., Shri B.N. Babbar, was promoted as Research Assistant on regular basis w.e.f. 27th October, 1978, there was no other regular vacancy in the grade against which the applicant could be promoted. His appointment had therefore to be continued on adhoc basis.

There was a merger of statistical and scientific cadre of three different wings/organisations under the Ministry of Water Resources and the combined seniority list could be finalised only in the year 1984. Accordingly, after meeting all the requirements, orders promoting Senior Computers to the grade of Research Assistants were issued in January, 1985 promoting the applicant on regular basis with effect from 7.1.1985. According to the recruitment rules, the post of Research Assistant is to be filled 50% by promotion of Senior Computers and 50% by direct recruitment through the Public Service Commission. Hence, the direct recruits, namely, S/ Shri Bansilal Bapurao and Rashid Ahmed Mian were rightly placed in the slots reserved for direct recruits. Under the rules he is to clear his probation period of two years from the date of his regular appointment.

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4. We have gone through the records of the case and heard the learned counsel for the parties. The learned counsel for the applicant has heavily relied on the judgments given by this Tribunal on September 5, 1990 in case of Harpal Singh and another vs. Union of India and others and on 8th April, 1993 in case of Shri Jaswinder Singh vs. Union of India and others. In these cases S/Shri Harpal Singh and Jaswinder Singh were appointed as Research Assistants on prevalent grades on officiating basis and were given the benefit of continuous officiation for counting their seniority for the purpose of eligibility for promotion to the next higher grade with effect from the date of their adhoc promotion. On the other hand, the learned counsel for the respondents has relied on the decision dated 13/14th September, 1993 in OA No.727 of 1987 in case of I.K.Sukhija and others vs. Union of India and others. In this case, the Tribunal had occasion to examine the applicability of propositions (a) and (b), laid down by the constitution Bench of the Supreme Court in Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others, AIR 1990 SC 1607 as interpreted in subsequent judgment in case of Keshav Chandra Joshi and others vs. Union of India and others, AIR 1991 SC 284. Proposition (A) lays down that 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. Proposition (B) was interpreted as applicable to the cases only where the appointment is made

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deliberately in disregard of the rules and the incumbent allowed to continue in the post for long periods of about 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the authority to relax the rules. It was held that the applicants could be given the relief if their cases ^{are covered} either by proposition(A) or proposition(B).

5. The records produced by the respondents show that till the seniority list was quashed by the Ministry, no meeting of the D.P.C. could be held till 30th January, 1984. As the applicants have not served on adhoc basis, for a period of 15 to 20 years, they are not covered under these ~~in the~~ propositions. This application, therefore, fails and is dismissed without costs.

B.N. Dhoundiyal
(B.N.Dhoundiyal) *Spn/1983*
Member(A).

S.K. Dhaon
(S.K.Dhaon)
Vice Chairman

/sds/