

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No. 659/89

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DATE OF DECISION 7.12.90

A.K.Singh Petitioner

T.C.Agarwal Advocate for the Petitioner(s)
Versus

Union of India and others Respondent

M.L.Verma Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
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 ?

O R D E R

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 29.3.89 filed under

Section 19 of the Administrative Tribunals Act, the applicant who has been working as Assistant Recordist in the Films Division of the Government of India has prayed that he should be regularised against the post of Recordist with effect from the date of his initial appointment i.e., 27.8.84 with all consequential benefits. His apprehension is that the respondents are likely to revert him in pursuance of the Department of Personnel's O.M. of 30.3.88 destroying adhoc appointment. The applicant joined the post of Assistant

Recordist on 25.7.79 and was promoted as Recordist with effect from 27.8.84 in accordance with the order dated 7.11.84 on a purely adhoc basis. According to him the post of Recordist fell vacant due to deputation of the regular incumbent and since he has been continued beyond one year the adhoc appointment has to be construed to be regular. The applicant is number 2 in the Seniority List of Assistant Recordist and he fulfils the requisite conditions in the Recruitment Rules both for direct Recruitment as well as for promotion. Having held the post of Recordist continuously for 5 years he has a vested right to hold the post. He has cited a number of rulings of the Hon'ble Supreme Court to support his claim.

2. The respondents have stated that the applicant was appointed as Recordist on an adhoc basis when he was not even eligible for consideration for promotion to that post against promotion quota prescribed in the Recruitment Rules.. The above was made in the exigencies of service. The vacancy was to be filled up by direct recruitment. The post of Recordist is to be filled up 50 percent by Direct Recruitment and 50 percent by promotion by selection of Assistant Recordist with seven years of regular service. Since the applicant was no.2 in the Seniority List the claim of number 1 who is on deputation cannot be ignored for promotion as Recordist.

The vacancy to which the applicant was appointed on adhoc basis was to be filled up by direct recruitment but because of the ban on direct recruitment it was temporarily filled up on adhoc basis by the appointment of the application with effect from 27.8.84. His position in the All India Seniority List of Assistant Recordist was 5th but since he was locally available he was appointed to the post of Recordist on an adhoc basis. The applicant had to be reverted on the basis of the Ministry of Personnel's O.M. of 30th March, 1988 but the reversion was stayed under the Interim Orders of this Tribunal dated 31.3.89 in this case. The applicant became eligible for promotion to the post of Recordist on 25.7.86. Subsequently panels for the post of Recordist were drawn up on 6.5.87 and 6.12.88. The applicant was considered for the unreserved vacancy in 1988 and the D.P.C. recommended the name of the applicant for appointment to the post of Recordist against any unforeseen or short-term vacancy which may occur during the validity period of the panel. The respondents have indicated that since reserved category candidate have declined the reserved vacancy the applicant's case has been under consideration for promotion against that vacancy on regular basis.

3. In the rejoinder the applicant has argued that since his adhoc appointment did not specify any limit of time, it cannot be taken to be adhoc. He has cited a number of rulings of the Hon'ble Supreme Court to support his claim of being considered to be a regular appointee to the post. He has also seek protection from being reverted under Article 311(2) of the Constitution of India.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In PD Aggarwal Vs. State of U.P., 1987(3) SCC 622 the Hon'ble Supreme Court held that adhoc stop gap arrangements does not count for seniority. The Hon'ble Supreme Court in C.Radhakrishna Reddy and others Vs. State of Andhra Pradesh and others, 1990(1) SLR 136 held that officiation in excess of the promotion quota does not count for seniority. Since in the instant case before us the applicant has been officiating on adhoc basis against a direct recruitment ^{Vacancy} quota, his services cannot count for seniority. The Constitution Bench of the Hon'ble Supreme Court in Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra and others, JT 1990(2) SC 264 held that adhoc /stop gap appointments made de hors Recruitment Rules does not count for seniority. In D.N. Aggarwal and others Vs. State of M.P. and others

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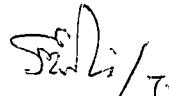
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1990 SCC (L&S) 314 Hon'ble Supreme Court held that adhoc service when the person is ineligible even though followed by regularisation will not count for seniority. Similar views were expressed by the Hon'ble Supreme Court in Masoor Aktar Khan and Others Vs. State of M.P. and others, JT 1990(3) SC 295. For similar reasons the applicant as an adhoc promotee cannot be regularised against a direct recruitment vacancy or against the Recruitment Rules ^{or by} overlooking the claims of his eligible seniors. If he is regularised or deemed to have been regularised from the date of his initial appointment ^{de hors} the Rules it will give him the right of seniority setting at naught the spirit of the aforesaid rulings.

5. In the conspectus of facts and circumstances and without prejudice to the applicant's rights of being regularised in accordance with law, we dismiss the application without any order as to costs.


7.12.1990
(G. SREEDHARAN NAIR)

VICE CHAIRMAN


7.12.1990
(S.P. MUKERJI)

VICE CHAIRMAN

7.12.90

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