

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

O.A. No. 957/1989
T.A. No.

199

DATE OF DECISION18.12.1990.

<u>Shri Braj Mohan Jha</u>	<u>Petitioner</u>
<u>Shri Ajit Pudiserry</u>	<u>Advocate for the Petitioner(s)</u>
Versus	
<u>Union of India</u>	<u>Respondent</u>
<u>Shri P.P. Khurana</u>	<u>Advocate for the Respondent(s)</u>

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? —

AB
 (AMITAV BANERJI)
 CHAIRMAN
 18.12.90.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.957/89

Date of Decision: 18.12.1990

Shri Braj Mohan Jha

Applicant

Versus

Union of India

Respondents

Coram

Hon'ble Mr. Justice Amitav Banerji, Chairman

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

For the applicant

Shri Ajit Pudiserry,

Counsel

For the respondents

Shri P.P. Khurana, Counsel

(Judgement of the Bench Delivered by

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

The short question for consideration is whether the applicant can be deemed to be regularly promoted from 27.8.1976, the date on which he took over as Junior Hydrologist, Rs.650-1200 on promotion on adhoc and temporary basis, conferring on him eligibility for consideration for promotion to the post of Senior Hydrologist in accordance with the relevant provision of the Recruitment Rules.

2. In the application filed by Shri Braj Mohan Jha, under Section 19 of the Administrative Tribunals Act, 1985, he has challenged the order No. 25-266/88GW dated 29.3.1989 of the respondents rejecting his request to count the service rendered by him from August, 1976 to September, 1982 on adhoc basis for the purpose of seniority and promotion.

The applicant was recruited as Senior Technical Assistant in Hydrology in the Central Ground Water Board (CGWB) w.e.f. 10.4.1973 which post he held till

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26.8.1976. He was appointed as Junior Hydrologist w.e.f. 27.8.1976 purely on adhoc and temporary basis vide order dated 12th August, 1986 in the grade of Rs. 650-1200/- Group 'B' Gazetted. The Recruitment Rules Rules 1975 for the said post provided for recruitment of $33\frac{1}{3}\%$ by promotion failing which by direct recruitment and $66\frac{2}{3}\%$ by direct recruitment. The total number of posts of Junior Hydrologists were 6 and accordingly 2 posts were to be filled by promotion and 4 by direct recruitment. According to the petitioner 2 posts belonging to the promotion quota were filled by promoting one Mr. M.E. Chandrasekharan and the petitioner Braj Mohan Jha vide order dated 12.8.1976 on purely adhoc and temporary basis. He, however, contends that he was fully eligible for regular promotion against a vacancy available within the promotion quota and as such the promotion of the applicant on adhoc and temporary basis was violative of the fundamental rights of the petitioner. The applicant made representations to the respondents for his regularisation but his request was rejected vide the impugned order dated 29.3.1989 (Annexure-I). He was, however, regularised as Junior Hydrologist on 25.9.1982 on regular basis on the recommendations of DPC and assigned seniority from that date. The said order No. 1670 of 1982 dated 7.10.1982 (Annexure E)provides that on the recommendations of the DPC, Shri B.M. Jha working as Junior Hydrologist on adhoc basis is promoted on regular basis w.e.f. 25.9.1982 till further order. "His appointment as Junior Hydrologist would however be reversible and he would stand reverted as STA (H) in case Shri M.E. Chandrasekharan who is presently working with Government of Kerala revert back during the period of his lien."

The applicant further contends that according to the recruitment rules 50% of posts of senior

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Hydrologists are to be filled by direct recruitment and 50% by promotion and that had his adhoc service been counted as regular he would have come up for promotion as Senior Hydrologist after 1984. He relies on the following judicial pronouncements to fortify his case (paragraph 5 (A) of the OA).

- i. S.B. Patwardhan & Ors. Vs. State of Maharashtra (1977) (3) SCR 775;
- ii) Baleshwar Das Vs. State of Up (1981 (1)SCR 449);
- iii) Pran Krishan Goswamy Vs. State of West Bengal (1985 Suppl. SCC 221);
- iv) Narender Chadha Vs. U.O.I. & Ors. of the Tribunal: AISLJ Vol.XXVII(1988(1)CAT 513; AISLJ 1987(3) CAT
- v) K.L. Bhadwa Vs. U.O.I.
- vi) S.C. Kachhwana Vs. U.O.I.
- vii) K.N. Mishra Vs. U.O.I.

3. The respondents in their written statement have found justification for not promoting the applicant on regular basis on account of the fluid nature of the cadre structure, as a number of posts were sanctioned varied from time to time as they were project based.. It has been further submitted that the Junior Hydrologists were recruited under the 'failing which' clause i.e. direct recruitment in view of the non-availability of the eligible candidates in feeder category. There were however two vacancies earmarked for reserved category which could not be filled as requisitioned number of candidates were not available through the UPSC. Under these circumstances, the departmental candidates were promoted on adhoc basis.

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The respondents have also contended that the posts of Junior Hydrologists were sanctioned for specific periods in 1973, 1974 and 1975 for different projects and they were likely to be abolished after closure of the projects. Consequent to the closure of the Upper Jamuna Project 2 posts of Junior Hydrologists were abolished on 31.8.1977 and a decision was taken to keep in abeyance filling up of the 2 posts of Junior Hydrologist. It was under these circumstances that the appointment of officers including the petitioner Shri Jha continued on adhoc basis. In 1982, however, regular posts of Junior Hydrologists became available and the DPC was convened and Shri B.M. Jha was promoted on regular basis.

4. As the recruitment in the grade of Junior Hydrologists were made from 2 sources, we directed the respondents to submit the profile of the 7 posts between the direct recruits and the promotee officers for the post of Junior Hydrologists to appreciate the rival claims. The learned counsel for the respondents willingly agreed to submit the required profile and to produce the relevant record as may be required by the Court. When the case came up for hearing Shri Arun Sharma learned counsel for the respondents filed the Note No.6-95/73-CH-Estt/Vol II with a table indicating the position of direct recruits and promotees against the posts. The learned counsel for the respondents submitted that Shri B.M. Jha was promoted against the 10th vacancy which falls in the promotee quota on adhoc basis pending convening of DPC. For facility of reference we are extracting the said table interfacing an additional column giving date of resignation of the officer as given in R-2 of the counter:

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Point No.	Whether direct or pro- motion quota post	Name of officer appointed	whether filled by promotion or Direct rectt.	Resigned /proce- ded on deputa- tion
1	2	3	4	5
1	Promotion	Sh.M.M.Lal Sehgal	Appointed	25.3.80
2	Direct	Sh.G.D. Ojha	-do-	7.7.77
3	Direct	Sh.S.P.Bagade	-do-	17.4.78
4	Promotion	Sh.Prakash Narain	-do-	7.4.77
5	Direct	Sh.P.V. Rao	-do-	31.8.76
6	Direct	Shg. C.S.Ramasesha	-do-	31.1.81 (Deputa- tion)
7	Promotion	Sh. K.K. Bhagat	-do-	31.3.81 (Deputa- tion)
8	Direct	-	-	
9	Direct	-	-	

The above table shows that Point No. 1,4, & 7 fell in promotion quota and Points No. 2,3,5,6,8 and 9 fell in direct recruitment quota. It is further seen that Point No.1 and Point No.4 promotion quota posts had been filled under the 'failing which' clause i.e. by direct recruitment, as none is stated to be eligible for promotion from the feeder category. This means that out of the 9 posts, 8 posts are held by direct recruits and only one post by a promotee.

On a query from the Bench, if the points No. 1&4 could not be filled up by exercising the provision for relaxation of rules as provided in the recruitment rules, no satisfactory answer could be elicited. Neither the applicant nor the respondents have filed a complete copy of the Recruitment Rules.

5. Further the learned counsel for the applicant drew our attention to Annexure R-2 filed by the respondents with their counter affidavit and submitted that the position projected by the learned counsel for the respondents does not obtain on the ground level. The

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ground reality is that all the posts shown to have been filled up by the respondents are lying vacant as all the incumbents have resigned/left service long before the applicant was promoted on regular basis. We have interfaced the date of resignation of the incumbents of the posts in column No.5 in the table in paragraph 4 above.

It would be seen from the table in paragraph 4 that holders of Point No.1 and Point No.4 Shri M.M. Lal Sehgal and Shri Prakash Narain resigned on 25.3.1980 and 7.4.1977 respectively. Further Shri P.V. Rao resigned on 31.8.1976. There was, therefore 2 clear vacancies in the promotion quota available from 31.8.1976, 7.4.1977 and 25.3.1980 onwards. The direct recruitment quota posts, also remained vacant consequent to resignation/deputation etc., the first one falling vacant on 31.8.1976.

In this view of the matter the applicant instead of being promoted on purely temporary and adhoc basis w.e.f. 27.8.1976 could have been considered for promotion on regular basis by convening the DPC in accordance with the recruitment rules in 1977, deeming his adhoc promotion against a vacant direct recruitment post..

6. We have heard the learned counsel of both the parties and discussed their submissions in the context of the record placed before us. In view of denouement as has emerged in the preceding paragraph we do not propose to go into the details of the judicial pronouncements cited by the applicant.

We are of the view that the applicant was promoted on regular basis by the DPC w.e.f. 25.9.1982 and it will not serve any useful purpose at this stage to

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direct the respondents to convene a review DPC to consider the applicant for promotion to the post of Junior Hydrologists. The ends of justice will be met if the period of adhoc promotion as Junior Hydrologist in the case of the applicant w.e.f. 27.8.1976 is counted for the purposes of seniority and promotion etc. Accordingly we order and direct that the respondent shall count the period of adhoc period of officiation of the applicant as Junior Hydrologist for the purpose of seniority and eligibility for consideration for promotion to higher grade.

There will be no orders as to the cost.


(I.K. Rasgotra)
18/12/1990
Member (A)


(Amitav Banerji)
Chairman

/SKK/