

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

23

OA No.972/89

Date of decision: 12th Oct-92

Mrs.Rita Mitra ...

Applicant

versus

Union of India through
the Director,
National Sample Survey Organisation,
Field Operation Division,
Department of Statistics,
Ministry of Planning &
another. ...

Respondents

CORAM: THE HON'BLE SH.T.S.OBEROI, MEMBER(J)
THE HON'BLE SH.P.C.JAIN, MEMBER(A)

For the Applicant ...

Sh.P.P.Khurana,
Counsel.

For Respondent No.1 ...

Sh.P.H.Ramchandani,
Senior Counsel.

For Respondent No.2 ...

Sh.B.B.Raval,
Counsel.

1. Whether local reporters may be allowed to see the judgement? *Yes*.
2. To be referred to the reporter or not? *Yes*.

JUDGEMENT

(DELIVERED BY HON'BLE SH.T.S.OBEROI,
MEMBER(J))

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, an Assistant Librarian in Field Operation Division of the National Sample Survey Organisation, in the Department of Statistics, Ministry of Planning, Government of India, is aggrieved of the non-consideration of her case, for promotion as Librarian Grade I, in spite of her possessing the requisite qualifications etc., and in spite of the recruitment to the next post being by promotion or deputation on

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transfer, failing which, by direct recruitment, as per recruitment rules. She has prayed for the following reliefs:-

- (i). To allow the application with costs.
- (ii) To issue a writ of certiorari or any other appropriate writ or order, striking down the amended provision in 1985 Rules prescribing the method of recruitment as promotion/transfer on deputation failing which by direct recruitment and to hold as correct the original provision in the Rules of 1974 made vide which the post is to be filled up by promotion alone.
- (iii) To issue appropriate writ or order striking down as unconstitutional. The recruitment of 5 years regular service instead of 5 years service in the grade of Assistant Librarian for Departmental candidates.
- (iv) To issue appropriate order/orders, direction/directions.
 - (a) declaring that the applicant was entitled to be considered eligible for promotion to the post of Librarian Grade I on and from 17.11.1986 by continuing her so-called ad hoc service as Assistant Librarian or, in the alternative, by counting her service as Library Assistant too.
 - (b) Restraining the respondents from filling up the post by the alternative method of direct recruitment.
 - (c) Directing the respondents to fill up the post of Librarian Grade I by the method of promotion by holding DPC and by considering the name of the applicant, considering her eligible by counting her ad hoc service in the Grade of Assistant Librarian or by counting her service as Assistant Librarian and Library Assistant and after selecting, promoting her from 1987 when the post fell vacant, with consequential relief.
 - (d) Alternatively, declaring the applicant eligible for the post in the matter of direct recruitment from the point of view of age and call her for interview.

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(e) To pass such order/orders, direction/ directions as may be deemed proper in the facts and circumstances of the case."

2. The applicants' case briefly is that she joined the office of the respondents as Library Assistant on 25.1.1977. At that time, she possessed the requisite qualification i.e. a certificate in Library Science, which was prescribed for appointment to the post of Library Assistant. Later on, he was promoted as Assistant Librarian in the pre-revised scale of Rs.425-700 with effect from 17.11.81. The said promotion was, however, termed as ad hoc. Subsequently, vide another order dated 22.12.84, her appointment to the said post of Assistant Librarian was made regular with effect from 7.12.84. The next promotion from the post of Assistant Librarian was to that of Librarian Grade I, in the pre-revised scale of Rs.550-900. The rules for the said post were notified on 20.9.74, which provided for filling up of the said post 100% by way of promotion. Subsequently, these rules were amended on 24.7.85 which changed the mode of filling of this post by promotion/transfer on deputation, failing which by direct recruitment. In the meantime, the applicant also added to her qualification by acquiring a diploma in Library Science from Punjabi University, Patiala, in 1986 and also a degree in B.Lib.Sc. in 1988

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from Madras University, and thus having equipped herself with the prescribed qualifications for the appointment to the post of Librarian Grade I, as per the amended recruitment rules of 1985, she lays a claim to the said post, in the office of Respondent No.1, which fell vacant in 1984, consequent upon the promotion of the then incumbent to the post of Assistant Director(Documentation). Since, however, no candidate was found eligible for promotion in the first channel, the post was filled up by deputation, which continued for a period of three years, and again fell vacant in 1987. As earlier claimed by the applicant, she fulfilled, all the requirements for the post of Librarian Grade I, but instead of offering the same post to her, the respondents resorted to the method of direct recruitment through U.P.S.C. and advertisement to that effect was issued in the Employment News dated 23.7.88, inviting applications from the candidates, from the open market. The applicant also applied for the said post, and submitted an application for the same, which though acknowledged, was not followed with any further action, from the U.P.S.C. Representations to that effect to the concerned authorities, also brought forth no reply, and hence this OA. After filing of the present OA, vide order dated 9.5.89, on a request

27

for interim stay, the same was initially granted for a period of 14 days, extended from time to time, and is still in force. On a Misc. Petition from an intervener, who, in response to his application submitted to the U.P.S.C. for the post of Librarian Grade I, was duly selected and offered the post, an order to dispose of the OA finally was passed on 6.1.92, by another Bench of this Tribunal.

3. The applicant has broadly urged her claim for promotion to the post of Librarian Grade I, on the basis of the long experience gained by her, by serving, firstly, as Library Assistant and then Assistant Librarian in the same department, submitting that instead of giving some advantage or premium on this account, the amended recruitment rules have introduced a more stringent requirement, so far as the case of a departmental candidate, for promotion from the post of Assistant Librarian to that of Librarian Grade I, is concerned, inasmuch as the requirement of 5 years' regular service in the post of Assistant Librarian forms a condition precedent besides other requirements. She has also urged that as would be seen from the factual details of her case narrated in the OA, the promotion from the post of

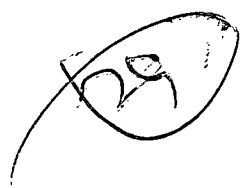
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28

Library Assistant to that of Assistant Librarian is continuous, and though initially, for the period from 17.11.81 to 6.12.84, her service as Assistant Librarian ~~was~~ ^{which was} termed as ad hoc, ~~which~~ was followed with regular service with effect from 7.12.84 and that the spell of ad hoc service could not be regularised earlier because the recruitment rules had not been finalised by the respondents, and for this lapse on the part of the respondents, she should not be made to suffer and allowing the entire spell as Assistant Librarian, including the so called ad hoc service, she should be considered for promotion to the post of Librarian Grade I.

4. In the counter filed on behalf of Respondent No.1, a preliminary objection was raised regarding the representation of Union of India having not been correctly made through the Secretary of the Department concerned rather than through the Chief Executive Officer of the National Sample Survey Organisation, an MP seeking appropriate amendment in this regard, was moved by the applicant which, after hearing the parties, was duly allowed. The respondents had, however, opposed the applicant's claim, stating that at the time the applicant was promoted as Assistant Librarian on 17.11.81, her appointment

28



as such, was ordered as ad hoc, pending finalisation of the recruitment rules in the newly created post of Assistant Librarian. These rules were later notified on 2.10.82, which provided that the post of Assistant Librarian was a promotional post to be filled on non-selection basis from the grade of Library Assistant with three years' regular service and possessing, inter - alia, certain essential as well as desirable qualifications. The applicant did not possess one of the essential qualifications of having a degree or equivalent diploma in Library Science, from a recognised University or Institution, at that time, her case for appointment to the post of Assistant Librarian on regular basis could not be considered, and had, therefore, to be ordered only on ad hoc basis. These recruitment rules were later on amended vide notification dated 27.10.84, whereby Library Assistants in the Field Operation Division, with the 5 years service rendered in grade, became eligible for appointment to the post of Assistant Librarian. The applicant accordingly became eligible for appointment as Assistant Librarian on regular basis with effect from 7.12.84, by an order dated 22.12.84. Thus, on 17.9.87, on repatriation of the incumbent holding the post of Librarian Grade I, to his parent department, and the post

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30

having fallen vacant in Field Operation Division, the applicant was not eligible for appointment to the post of Librarian Grade I, having not put in the requisite number of years' regular service as Assistant Librarian. The vacancy was accordingly circulated amongst all Ministries/ Departments of Government of India, as a resort to filling the said post by transfer on deputation, as the next alternative provided for in the rules. No candidate came forward for the said post for appointment on deputation basis and accordingly, the post had to be advertised for being filled by direct recruitment. The eligibility of the applicant for the post of Librarian Grade I, according to the respondents, is to be reckoned on the relevant date when it fell vacant, which she having not possessed, would not be considered for the same. It was further averred on behalf of the respondents that the applicant having applied for the post, in response to the advertisement by the U.P.S.C., she had accepted the validity of the rules in question, and therefore could not later go against or challenge the same, by taking a contrary stand. On the other hand, because of the process of recruitment set in motion, by way of advertisement, referred to earlier, one Shri Satyender Kumar was eventually offered the post in question, and as per letter dated 5th May, 1989 (pages 74-75 of the paper-

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book) was directed to join by 29.5.1989. On Misc. Petition to join as intervener/respondent, the same was allowed and he was arrayed as Respondent No.2 in the O.A. He has also filed counter, to which rejoinder has also been filed, on behalf of the applicant. Respondent No.2, vide counter filed by him, has asserted his claim for appointment to the said post pointing out certain shortfalls in the case of the applicant, in the matter of her not possessing the requisite qualification etc.

5. We have heard the learned counsel for the parties and have carefully perused the material on record. Broadly speaking, the case has to be judged from various aspects, which emerged from the material on record as well as arguments addressed by the learned counsel for the parties, such as: whether the applicant's claim to get the period of her service counted for the purpose of promotion, to make the requisite spell of 5 years' service, for promotion as Librarian Grade I, can be allowed. In that regard while pressing the applicant's claim, the learned counsel relied upon the judgement in the case of 'The direct recruit class II engineering officers' association & ors. Vs. State of Maharashtra & Ors. (JT 1990(2) SC 264 (relevant clause (B) of paragraph 47)', to urge that the applicant having put in continuous service uninterruptedly

32

till her regularisation in the post of Assistant Librarian, was entitled to be given the benefit of entire service as such^{and} therefore, was within her rights to be considered for promotion as Librarian Grade I. This was resisted by the learned counsel for the respondents on the ground that, as earlier mentioned, her first appointment as Assistant Librarian was without the recruitment rules having come into force, and, therefore, in the circumstances, was not eligible to be taken into account for making up the requisite spell of 5 years for promotion as Librarian Grade I. The learned counsel for the applicant also apportioned the blame for not bringing the rules well in time urging that for this lapse on the part of the respondents, the applicant should not be made to suffer. However, considering the facts and circumstances of the case, in the face of the explanation given by the respondents in this regard, it may be stated that some time in the process of finalisation of the recruitment rules is bound to be consumed, and for that reason, the respondents cannot be held liable, and the fact remains that applicant's appointment as Assistant Librarian was ad hoc and would not, therefore, be reckonable for being considered for her promotion as Librarian Grade I. In this regard, reference may be invited

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37

to the case reported in JT 1992(2) SC 491 (Union of India through Chandigarh Administration(U.T.) Chandigarh & Anr. Vs. Sh.S.K.Sharma, Professor of Civil Engineering, Punjab Engineering College, Chandigarh), recently decided by the Supreme Court, wherein ad hoc period of service was not allowed to be counted for such purpose. The applicant herself applied for the post of Librarian Grade I, when it was advertised through the U.P.S.C. which would go to show that she herself was lukewarm with regard to the merits of her own case, and having not succeeded in that channel, chose to press for her claim, by way of the present OA. Further, having herself chosen to fall in line with the procedure of recruitment, initiated by the U.P.S.C, and applying for the same, she would not be entitled to challenge the same, having not eventually succeeded in that process, as held in a case reported in 1989(2) (CAT) 577(Brij Kishore Dubey and ors. Vs.U.O.I & anr) that a party submitting to a jurisdiction, cannot be allowed later to repudiate or get out of the same.

6. After carefully considering the contentions urged before us, as briefly discussed above, we do not find force in the applicant's claim which accordingly is dismissed. In consequence,

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Respondent No.2 who was given the offer to join the post of Librarian Grade I, vide order dated 5.5.89 by 29.5.89, would now be at liberty to join the said post as early as possible. He would be entitled to his pay and allowances from the date he joins, and in the peculiar circumstances of the case, would not be subjected to any bar of age, if at all, in the meantime if the same has its play. The OA is disposed of on the above lines with no order as to costs.

Clec 12/10/92
(P.C.JAIN)
MEMBER(A)

12-10-92
(T.S.OBEROI)
MEMBER(J)