

(13)

IN THE CENTRL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Regn. No.

Date of decision 22.5.92

1. OA 1068/89 - Rjinder Singh
2. OA 1067/89 - Rajender Prshad
3. OA 1069/89 - Ram Sharm
4. OA 1184389 - Shehjad Khan

Applicants

Shri Shyam Babu

Counsel for the applicants

vs.

Lt. Governor, Delhi Admn.

Respondents

Mrs. Avnish Ahlawat

Counsel for the respondents

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chair man(J).

The Hon'ble Mr. I.P. Gupta, Member (A).

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

(Judgment of the Bench delivered by Hon'ble Shri I.P. Gupta, Member (A).)

J U D G M E N T

These four OAs are being dealt with together as they are similar in nature.

2. The applicants in the OAs were appointed as members of Delhi Police Force between 1968 and 1974. They were promoted as Head Constables (Assistant Wireless Oertor) (in short HC (AWO)) between 1973 and 1979 after passing AWO test. They appeared in the BRT examination and passed Grade III BRT examination between 1979 and 1982. They were promoted as ASI (RT) on ad hoc basis on different dates between October 1982 and Nov. 1983. The promotion order mentioned that "with the prior approval of the Commissioner

of Police, Delhi, the applicants who had passed Basic Radio Technicians Course are promoted to the rank of Radio Technicians (ASI) on purely temporary and ad hoc basis under Rule 19(1) of the Delhi Police (Promotion and Confirmation) Rules, 1980. They shall not be entitled to claim any right for regular appointment or seniority or for appointment to such or any equivalent post and shall be liable for reversion any time. On promotion, they are allocated to Communication Unit." The applicants also passed Grade II examination of Radio Technicians but while applicants in OAs 1067 and 2069 had passed Gr. II exam. prior to ad hoc promotion as ASI (RT), applicants in OAs 1068 and 1184 passed later in May 1985 and April 1990 respectively. Applicants in OAs 1067, 1068 and 2069 have since passed Gr. I BRT examination also. The applicant in OA 2069 was reverted on 25.3.88 as HC (AWO) and promoted ~~as~~ as ASI (WO) on 25.3.88 itself.

3. The contentions of the learned counsel for the applicants are that:-

(i) The recruitment rules for the post of ASI (RT) provided that the posts shall be filled by promotion failing which by direct recruitment. In case of recruitment by promotion or transfer, the grades from which promotion or transfer is to be made are "personnel of Delhi Police/Delhi Armed Police, upto the rank of Sub Inspector (inclusive) possessing the qualifications prescribed for direct recruitment and of fitter electrician, fitter engine, etc. etc. with 3 years service in the grade and after having passed BRT course conducted by the Directorate of Coordination and Police Wireless. The claim of the applicants is that they fulfil the qualifications as of direct recruits.

(ii) The ad hoc appointment was not fortuitous or stop gap, it has continued for 9 long years and is still continuing under the interim orders issued by the Tribunal.

(iii) All the appointments on ad hoc basis of the applicants were prior to 31.7.86 when the new recruitment rules came into force (Delhi Police Rules were promulgated in December, 1980, but Recruitment Rules of ASI (RT) were not substituted prior to 31.7.86.)

(iv) They have no experience of operational side and after having served on the technical side for 9 years, if they are reverted, they will not be of much use on the operational side and further more, they will have to pass various courses again on the operational side though they have qualified in the courses on the technician's side.

(v) Since they were promoted on ad hoc basis from the operational side to the technical side, it should be presumed that their appointment as ASI on the other wing, namely, technical wing was by transfer of their services from the operational wing to technical wing.

(vi) There has been discrimination in the sense that Mohd. Yaseem who was similarly placed was allowed to officiate as ASI (Radio Technician) with effect from 2.2.80 and as regular. he is still continuing and his services have been treated /

(vii) The case of Narender Chadha vs. U.O.I. (AIR 1986 (Vol. 73) S.C. 638) was quoted. Para 14 says; inter alia,

"But, we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post. But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results."

In the case of Upendra Nath Ojha vs. U.O.I. & Ors. (1986

(3) S.L.J. (CAT) p. 358), it was observed:

"7 Though in the present case the petitioner has not served for fifteen/twenty years yet the service rendered for seven years continuously officiating in the higher post undoubtedly brings him within the principles laid down by Their Lordships in the aforesaid judgement especially because the services of the petitioner was found to be satisfactory and he was found to be suitable to the said post far less to speak of the petitioner being never reverted from the higher post."

In the case of Miss Anita Bose vs. Union of India & Ors.

(1986 (2) SLJ (CAT) p. 259), the head note reads:

"(i) Reversion after 3 years of officiating after selection - Applicant joined service in 1974, came on transfer on own request to Calcutta in 1975 - Granted quasi permanent status - Allowed to appear in promotion test - Passed and promoted - Applicant in fact was not eligible for test - If reversion order on the plea of ineligibility in order - No, not after many years of her working. (Paras 4 and 6)"

Further, it has been observed therein that:

"Even if the acts of the parent department were in violation of the said Rule, they cannot go back on these acts after so many years and after allowing the applicant to continue in the promoted post for more than three years. To allow the Deptt. to go back on their own orders and acts in this manner will be against the principles of natural justice and equity and fair-play."

In the case of A.N. Jha vs. U.O.I. & Ors. (1987 (1) SLJ

(CAT) p. 281), the following head note appears:

"(ii) Ad-hoc promotion for a long period - Applicant promoted ad-hoc in 1975 - Promotion continued for years together - Held it creates some sort of vested right." (Para 5)"

4. The applicants have prayed for the relief that their services should be regularised as ASI (RT) with effect from the dates they have been working in the said posts on ad hoc basis and counted for seniority and the respondents should be directed to amend the new Recruitment Rules and provide channels of promotion of HC (AWO) as ASI (RT), otherwise declare the rules as ultra vires.

5. The learned counsel for the respondents contended that :-

(i) The applicants at their own request had appeared in the selection test of BRT. The Department used to consider the request of the employees, as regards improving their qualifications, wherever it was possible provided it did not hamper the work. According to the recruitment rules, presently in force, they are not in the feeder posts for promotion as ASI (RT). The new Rules 17.B(vii) of the Delhi Police (Appointment and Recruitment) (Amendment) Rules, 1986, provide that the feeder posts for promotion in the rank of Radio Technicians (ASI/SI) is from amongs Workshop Asstt. ASIs <sup>been</sup> having/ promoted from the cadre of Fitter Electrician HC, Fitter Engine HC and

Fitter Battery HC with BRT course conducted by the DCPW, MHA, New Delhi or from amongst confirmed Fitter Battery HC, FitterEngine HC and Fitter Electrician HC with 3 years service in the Grade and having passed BRT course conducted by the DCPW, MHA, New Delhi, are eligible for regular promotion to the rank of Radio Techn. (ASI/SI).

The feeder posts as per rules 17.B. (iii) for promotion to the rank of Wireless Operator (ASI/SI) are from amongst confirmed Head Constables, Asstt. Wireless Operator/TPOs with 5 years service in the Grade who have passed Grade-II proficiency test for wireless operators conducted/approved by the Directorate of Coordination (Police Wireless) or from confirmed Telephone Exchange operators with 5 years service in the grade and having passed Grade-III and thereafter Grade-II proficiency test of Wireless Operator Course conducted/approved by the DCPW; they are eligible for promotion to the rank of ASI (WO) failing which from amongst confirmed Head Constables (AWO/TOPS) and Telephone Exchange Operators having passed Grade-III course conducted by the DCP/Comn. Delhi with 8 years service in the grade subject to the condition that they shall pass Grade II Wireless Operator course conducted by DCPW, MHA, New Delhi, within a period of 3 years from the date of promotion otherwise they shall be reverted to their substantive rank of Head Constables. As such, the petitioners should wait for their promotion to the rank of ASI (WO) in their own cadre as per their own service seniority as no Head Constable, Asstt. Wireless Operator of the same service seniority has been promoted to the rank of Wireless Operator (ASI/SI) so far, in the Communication Unit of Delhi, Police. In fact, no individual can have two channels of promotion, i.e. (i) in the operational side and (ii) in the technical side. The petitioners are from the operational side (HC (Asstt. Wireless Operator) con-

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firmed). The attempt of the petitioners is that having base on the operational side, they are trying to get into the technical side. Ad hoc promotion given to them was purely on ad hoc basis and with no right for regularisation which has been made clear in the promotion orders.

6. Let the facts and arguments in this case be analysed. The position that emerges is that -

(i) Applicants in OA No. 1067 and 1069 had passed Grade II prior to their ad hoc promotion and fulfilled all the eligibility conditions of the prevailing Recruitment Rules. Though they belonged to operational side, the respondents promoted them on technical side on ad hoc basis. The learned counsel for the applicants contended that none on the technical side were eligible. This was not specifically contradicted by the respondents. In fact, it appears that even direct recruitment was resorted to in 1986, 1988 and 1989. The qualified direct recruits have been absorbed. The main arguments of the learned counsel for the respondents were that -

(a) their promotion channel was on the operational side and (b) the promotion was not by a regular D.P.C. As regards (a), it may be mentioned that the Recruitment Rules at the time ad hoc recruitments were made, entitled not only personnel on technical side but also personnel of Delhi Police/DAP possessing the qualifications prescribed for direct recruitment. The applicants fulfilled the qualifications. Nothing has been shown to substantiate that while making ad hoc promotions, the claims of suitable and eligible persons were not taken into reckoning. Even if the ad hoc promotion was not by prescribed DPC, though the applicants fulfilled all eligibility conditions, the respondents cannot go back after so many years (9 years or so) and take the plea that DPC was not held. It is true that only ad hoc appointment, which is not de hors the rules, can create vested rights, but non-holding of DPC for 9 years or so and denying the benefit to the

applicants will be against the principles of natural justice. Further, the learned counsel for the applicants quoted the cases of Mohd. Yaseen and Krishnanand who were promoted as ASI (RT) w.e.f. 2.2.80 though they too were on operational side.

(ii) As far as applicants in OA 1068 and 1184 are concerned, they did not fulfil the eligibility condition. Further, if there was a qualified hand on that date in the feeder category, he is entitled to be considered in preference to his unqualified senior. In their cases also their ad hoc promotion was without consideration by D.P.C. The learned counsel for the applicants quoted the cases of Lachman Singh, Fateh Singh and Rajendra Singh who were appointed as ASI (RT), though they had not passed Grade II examination. He cited the order dated 19.1.90 in OA 99/1988 (Paramjeet Singh Chhillar vs. Delhi Admn. & Ors.) where it was observed that the contention of the applicant that Grade I qualification acquired by the applicant in Armed Forces cannot exempt him from passing RT Grade I/Grade II Test of DCPW. The learned counsel for the respondents said that the aforesaid three officials were recruited as Direct Recruits and they had served in Armed Forces and according to Directory of Equation, the qualification they had in Army was treated as equivalent to Grade II. The counsel added that the case of Paramjeet Singh Chhillar (supra) related to payment of proficiency pay of Rs. 20 and Rs. 40/- p.m. on passing Grade II and Grade I proficiency tests. Therefore, the Tribunal had observed in the same case that the equation of service trades with civil trades is for the purpose of registration with the employing agencies for suitable placement.

7. In the consequence of the aforesaid facts, arguments and analysis in these particular OAs, we direct that:-

(1) The applicants in OA 1067 and OA 1069 should be regularised as ASI (RT) from the dates of their ad hoc

promotion, if on that date none else in the feeder posts had the prescribed qualifications, according to Recruitment Rules then prevailing. There is no denying the fact that the applicants were then eligible in the feeder posts.

(2) If others with the prescribed qualifications were available on those dates in the feeder posts, a DPC should consider them along with others eligible as if the DPC was sitting on those dates (dates of ad hoc promotion of applicants as ASI (RT)) and the DPC should draw up a panel and regularisation be done according to panel from appropriate dates. This direction we give since ad hoc appointment without/

(3) The applicant in OA No. 1068 should be similarly considered for regularisation, i.e. in the manner indicated at (1) and (2) above but only from a date on or after the date of passing Grade II examination, as this was a prerequisite for promotion, unless there has been any instance where non-passing of Grade II examination was dispensed with. It cannot, however, be held that such dispensation was made when a candidate was appointed as Direct Recruit and had qualifications similar to those in the Recruitment Rules according to Directory of Equations of Service Trades with Civil Trades in case of ex-servicemen. If there has been a dispensation, otherwise too the applicant in OA 1068 should be considered from the date of ad hoc promotion in the manner indicated at (1) and (2) above.

(4) The claim of the applicant OA No. 1184 is bereft of merit since he did not have the eligibility condition till 1990 and by then the new Recruitment Rules had come into force under which he was not eligible. If, however, any relaxation in regard to Grade II examination was given to anyone other than that/virtue of Directory of Equations to a direct recruit, the applicant's case may be considered for similar relaxation for purposes of regularisation from the date of ad hoc promotion in the manner as at (1) and (2) above.

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/considering the claims of all eligible and suitable persons ought not be reckoned for seniority in promotional cadre - DWS & Sewage Disposal Committee vs. R.K. Kashyap (ATR 1989(1) SC 314) and T.S. Gopi vs. Dy. Collector of Customs & Ors. (ATR 1990 (1) CAT 390).

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(5) The request for amending the rules is ~~also~~ bereft of merit, since any direction for amendment of Recruitment Rules to provide for inclusion of a category in the feeder posts would be an encroachment in the domain of the Legislature or the Executive.

(6) The contention of the learned counsel for the applicants that the applicants are to be treated as on transfer to the post of ASI (RT) has also no justification, more so when the applicants have themselves referred to the term 'promotion' in their applications.

(7) The orders rejecting the representation of the applicants in OA Nos. 1067, 1069, 1068 and 1184 are quashed and the respondents are directed to reconsider their cases in the manners indicated above.

8. With the aforesaid directions and orders, the four OAs are disposed of with no order as to costs. The directions in (1), (2), (3) and (4) should be carried out early, preferably within four months.

*I.P. Gupta*  
(I.P. GUPTA)  
MEMBER (A)  
22/5/92

*Ram Pal Singh* 22.5.92  
(RAM PAL SINGH)  
VICE-CHAIRMAN (J)