

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 138/ 1988.
T.A. No.

DATE OF DECISION February 3, 1989.

Shri S. K. Handa

Petitioner Applicant.

In person.

Advocate for the Petitioner(s)

Versus

Union of India and Others

Respondents.

Shri M. L. Verma

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. K. Kartha, Vice-Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether to be circulated to other Benches? *No*

kaushal kumar
(KAUSHAL KUMAR)
MEMBER (A)

p.k.kartha
(P. K. KARTHA)
VICE-CHAIRMAN.

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 138/1988.

DATE OF DECISION: 3.2.1989.

Shri S.K. Handa Applicant.

V/s.

Union of India and
Others Respondents.

CORAM: Hon'ble Mr. P.K. Kartha, Vice Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

For the Applicant In person.

For the Respondents Shri M.L. Verma, Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member).

JUDGEMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was Deputy Educational Adviser (Technical) in the Ministry of Human Resource Development at the time when he filed this application and who has since been appointed as Director (Technical) in the same Ministry with effect from 1.9.1988, has challenged his non-consideration for and non-promotion to the post of Joint Educational Adviser (Technical) in the same Ministry.

2. The applicant had joined the Central Educational Advisory Service in 1954 as a Technical (Compilation) Assistant. He was promoted to the post of Deputy Educational Adviser (Technical) on an ad-hoc basis in April, 1977 and was also regularised in the said post in December, 1982. A post of Joint Edu. Adviser (Technical) fell vacant on 1st January, 1987 consequent upon the retirement of the previous incumbent. The Recruitment Rules for the post of Joint Edu. Adviser (Technical) provide for filling up the said post by promotion from amongst the incumbents of the posts of Additional

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Apprenticeship Adviser (Technical) / Director (Technical) with 5 years' regular service in the grade or 9 years' combined regular service in the feeder post of Additional Apprenticeship Adviser (Technical) / Director (Technical) and the lower post of Deputy Edu. Adviser (Technical). Since the applicant was neither holding any of the feeder posts of Additional Apprenticeship Adviser (Technical) / Director (Technical) nor did he fulfil the prescribed requisite experience, he was not considered for promotion to the post of Joint Edu. Adviser (Technical). The Recruitment Rules also provide for filling the post by transfer on deputation in case the method by promotion fails and the post was filled through the appointment of Respondent No.3. His appointment was made subject to the outcome of this application vide interim order of this Tribunal passed on 9.2.1988.

3. The case of the applicant is that even though he was not holding the post of Director (Technical) at the time when the vacancy of Joint Edu. Adviser (Technical) arose, the post of Deputy Edu. Adviser (Technical) which he in fact was holding is interchangeable with the non-functional post of Director (Technical) and the requirement of his not holding the post of Director (Technical) was a mere technicality which should not have stood in the way of his candidature being considered for the post of Joint Edu. Adviser (Technical). The second leg of his argument is that the entire ad-hoc service which he had rendered as Deputy Edu. Adviser (Technical) from April, 1977 onwards should have been counted for computation of the period of service and experience as prescribed in the rules for purposes of his promotion not only to the post of Director (Technical) but also the next higher post of Joint Edu. Adviser (Technical). In case his ad-hoc service were to be taken into account, he would have been eligible for promotion to the next higher post of Director (Technical) in 1982

A. J. Biju

(Technical), the applicant did not fulfil the eligibility

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when he had completed 5 years' service as Deputy Edu. Adviser (Technical) and further he would also have been eligible for consideration for the post of Joint Edu. Adviser (Technical) in January, 1987 when he had completed more than 9 years' service as Deputy Edu. Adviser (Technical). On a representation by the President of the Central Education Advisory Officers' Association, the Ministry informed him inter-alia vide letter dated 15.12.87 (Annexure I) that "....The circumstances in which the decision was taken in consultation with the UPSC for filling up the vacancy in the grade of Joint Educational Adviser (Technical) (which became available w.e.f. 1st Jan., 1987 due to retirement of Dr. D.C. Biswas) by transfer on deputation, have already been explained to you in details in this Department's letter of even number dated 22nd June, 1987. At this stage, therefore, it is regretted that it is not possible to accept your request for stopping further processing of the recommendation of the UPSC for filling up the vacancy by transfer on deputation. ..."

4. The reliefs prayed for by the applicant are as follows: -

- (i) To quash the impugned letter dated 15.12.1987 (Annexure I) with directions to the respondent to forthwith stop any action for recruitment of a candidate on deputation to the post of Joint Educational Adviser (Tech) and also to stop the selected candidate from joining this post.
- (ii) to declare that the entire period of service rendered by the applicant as Deputy Educational Adviser (Tech) from 17th April, 1977 including the so called ad-hoc service is on regular basis and direct the respondent No.1 and 2 to consider the applicant for promotion to the post of Joint Educational Adviser (Tech) lying vacant since 1st January, 1987.
- (iii) To quash the recommendations of Respondent No.2 in selecting Prof. S. K. Srivastava respondent No.3 for appointment as Joint Educational Adviser (Tech) and in consequent thereof to quash his appointment as such.

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5. The case of the respondents is that as per the Recruitment Rules for the post of Joint Edu. Adviser (Technical), the applicant did not fulfil the eligibility

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criteria inasmuch as he was not holding either of the feeder posts, namely, Additional Apprenticeship Adviser (Technical) or Director (Technical) and he also did not fulfil the prescribed experience of five years' regular service in the grade of Additional Apprenticeship Adviser (Technical) or Director (Technical) nor nine years' combined regular service in the grade of Additional Apprenticeship Adviser (Technical) / Director (Technical) and Deputy Educational Adviser (Technical).

6. The applicant was admittedly not holding either of the feeder posts of Additional Apprenticeship Adviser (Technical) or Director (Technical) and to this extent he did not fulfil one of the eligibility criterion as per the Recruitment Rules. The other point for consideration and determination in this case is whether the ad-hoc service rendered by the applicant in the post of Deputy Edu. Adviser (Technical) should have been counted for consideration of his candidature for promotion to the post of Joint Edu. Adviser (Technical).

7. The revised schedule to the Ministry of Education & Culture (Department of Education) Joint Educational Adviser (Technical) (Amendment) Recruitment Rules, 1983 made under the proviso to Article 309 of the Constitution notified on 24th May, 1983 prescribe under column 10 thereof regarding methods of recruitment as follows: -

"By promotion failing which by transfer on deputation (including short-term contract)"

Column 11 of the Schedule prescribes the eligibility criteria for promotion as follows: -

"Promotion"

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Additional Apprenticeship Adviser (Technical) / Director (Technical) with 5 years' regular service in the grade failing which Additional Apprenticeship Adviser (Technical) / Director (Technical) with 9 years combined regular service in the grade of Additional Apprenticeship Adviser (Technical) / Director (Technical) and Deputy Educational Adviser (Technical). "

The eligibility criteria for promotion to the post of Director (Technical) are laid down in column 12 of the Schedule to the Ministry of Education & Culture (Department of Education) Additional Apprenticeship Adviser / Director (Technical) Recruitment Rules, 1984 framed under the proviso to Article 309 of the Constitution and notified on 25th May, 1984. Column 12 thereof under the heading "PROMOTION" reads as follows: -

"Deputy Educational Adviser (Technical)
with 5 years' regular service in the grade."

8. As already stated above, the applicant was not holding the post of Additional Apprenticeship Adviser (Technical) or Director (Technical) at the time when the vacancy of Joint Educational Adviser (Technical) arose on 1st January, 1987 and, therefore, he did not fulfil the first eligibility criterion of holding the prescribed feeder post. The contention of the applicant who argued his case in person that the post of Director (Technical) is interchangeable with that of Deputy Educational Adviser (Technical) and, therefore, this was a mere technical condition prescribed in the Recruitment Rules, cannot be sustained since the post of Director (Technical) is a higher post carrying a higher pay scale as well. There are also Recruitment Rules regulating promotion to the post of Director (Technical) from the lower post of Deputy Educational Adviser (Technical). The applicant argued that the post of Director (Technical) is non-functional and the incumbent of the said post performs the same functions as one who is holding the post of Deputy Educational Adviser (Technical). Without going into the merits of this contention, there can be no doubt that the prescribed requirement for a person to hold the post of Director (Technical) or Additional Apprenticeship Adviser (Technical) before he can be considered for the post of Joint Educational Adviser (Technical) cannot be brushed aside in the face of the post of Director (Technical) being a higher post in the hierarchy of the Department's

functioning and appointment to the said post being governed by rules providing for promotion from the lower post of Deputy Educational Adviser (Technical).

9. The applicant, during the course of his arguments, contended that if his ad-hoc service as Deputy Edu. Adviser (Technical) had been taken into account, he would have been eligible for promotion to the post of Director (Technical) in 1982 and, therefore, he could be deemed to be holding the post of Director (Technical) at the time when the vacancy of Joint Educational Adviser (Technical) arose in January, 1987. Although this is not one of the reliefs prayed for in the application, we have to consider this question in the context of the Recruitment Rules. The Recruitment Rules, both for the purposes of promotion to the post of Director (Technical) and Joint Educational Adviser (Technical) prescribe a certain length of "regular service" in the lower grade before a person is eligible for consideration for promotion in the higher grade. The applicant contended that continuous officiating or ad-hoc service should be treated as "regular service" and that since it is an accepted principle of law that ad-hoc service followed by regularisation counts for purposes of seniority, there is no reason why ad-hoc service should also not be treated as regular service for purposes of promotion where such regular service is prescribed in the Recruitment Rules. In this connection, the applicant relied on certain rulings which are cited below: -

(i) In C.M. HENRY Vs. UNION OF INDIA AND OTHERS (ATR 1987 (1) C.A.T. 107), the Jodhpur Bench of this Tribunal held that the "basic principle being that it is the experience in a particular post which really matters. The experience whether rendered by an ad hoc appointee or by a regular appointee would not change in character".

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In the said case, the eligibility qualification

for the candidates for the departmental examination for promotion to the post of Assistant Stores Officer in the restructured Directorate of Purchase & Stores in the Rajasthan Power Project, Department of Atomic Energy, was examined with reference to a circular dated August 14, 1981 and the prescribed eligibility qualification was "five years continuous service in the grade of Store Keeper". The circular did not envisage experience based on regular service.

(ii) In S.C. KUCKIWANA & OTHERS Vs. UNION OF INDIA AND OTHERS (ATR 1987 (2) C.A.T. 22), a Bench of this Tribunal held as follows: -

"In the facts and circumstances given above, we have no doubt in our mind that ad-hoc officiation of the petitioners in the various grades followed by regular appointment to that grade cannot be taken to be either irregular or fortuitous since there was no reversion, and it was followed by regular appointment to that grade. In view of the rulings of the Supreme Court and of the Principal Bench of the Tribunal, the petition has to be allowed with this direction that the seniority of the petitioners should be revised within a period of next four months by taking into account their entire period of continuous ad hoc officiation preceding their regular appointment to that grade for the purpose of seniority."

(iii) In SHRI IKRAM Vs. UNION OF INDIA & OTHERS (ATR 1986 (2) C.A.T. 112), the Jodhpur Bench of this Tribunal observed as follows: -

"Reliance was placed on the dictum of the Supreme Court in Narinder Chadha and others v. Union of India and others, A.T.R. 1986 S.C. 49. The facts of the case decided by their Lordships are far dissimilar to those of the

instant T.A. In Chadha's case there was not only dispute about the seniority and promotion of direct recruits on the one hand and promotees on the other, but the promotees had also been continued in ad hoc basis for unreasonable long period of 15 to 20 years without being reverted to their original post and without their right to hold the promotion post being questioned.

The Court also took notice of the failure of the Departmental Promotion Committee meeting only as prescribed by rules and instructions and their meeting only thrice in 19 years and selecting for regular promotion only those promotees who had four years of regular service in the feeder post as on a specified date of several years back. In the peculiar facts and circumstances as of that case, it was held that if ad-hoc promotees or appointees are allowed to continue as such for long years without being reverted or challenged, they would be deemed to have been regularised.¹⁰

(iv) In NARENDER CHADHA AND OTHERS Vs. UNION OF INDIA AND OTHERS (A.T.R. 1986 (1) S.C. 49), the Supreme Court held as under: -

¹⁰It is unfortunate that even though the promotees have been discharging their duties to the best of their ability and receiving salary and allowances from the Government for the services rendered by them, it is alleged in the course of the said counter-affidavit that what was being paid to them was by way of grace. This statement adds insult to injury. If the Government felt that they were not competent to discharge their duties and they had not been appointed permanently to the posts held by them, it was open to it to revert them to their posts from which they had been promoted leaving it

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open to them to question the orders of reversion in Court. The Government was in need of their services and the petitioners have been holding these posts for nearly 15 to 20 years. It is not fair to say at this distance of time that the Government was only keeping them in their posts as a matter of grace."

10. The above rulings referred to and relied upon by the applicant do not advance his case since ad-hoc service being counted for purposes of seniority or confirmation is one thing and the same service qualifying for promotion in the context of the eligibility criteria prescribed under the Rules is a different thing. Merely because ad-hoc service followed by regularisation or confirmation can count towards seniority or because in certain cases a circular or departmental instruction or a rule does not envisage rendering of regular service in a certain post as a condition precedent for eligibility for promotion to a higher post cannot lead to the conclusion ~~that~~ that ad-hoc service should be treated as regular service for purposes of eligibility where such regular service is prescribed under the Recruitment Rules framed under the proviso to Article 309 of the Constitution.

11. In RAVISH GUPTA AND OTHERS Vs. SECRETARY, MINISTRY OF PERSONNEL AND TRAINING, NEW DELHI & OTHERS (A.T.R. 1986(I) C.A.T. 22), a Bench of this Tribunal held as follows: -

"7. When qualifications for appointment to a post in a particular cadre are prescribed, they must be satisfied before a person can be considered for appointment. Only when one is eligible as per the qualifications prescribed and is appointed, he enters that cadre and then his seniority in that cadre is fixed. The post in the next higher cadre may be a promotion post or a selection post. In either case one must first be eligible for appointment to the next higher post before he can come up for consideration for appointment. For any appointment, eligibility comes first and is a must. Seniority comes only next if it is a promotion post and merit if it is a selection

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post. Even the seniormost must possess the prescribed qualifications before he can be considered eligible for appointment failing which he must give way to his juniors who are eligible. Seniority would be relevant only among persons eligible; it cannot be a substitute for eligibility much less can it over ride it in the matter of appointment to the next higher cadre."

12. In R. Prabha Devi and Others Vs. Government of India (1988) 7 Administrative Tribunals Cases 63), the Supreme Court held as follows: -

"15.When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post."

13. In S. Ramaswamy Vs. Union of India and others (AIR 1976 S.C. 2394), an identical question arose whether ad-hoc service could count towards regular service when the Recruitment Rules for a certain post prescribed a certain length of regular service as a necessary eligibility criterion for promotion. The following observations made by the Supreme Court in the said case are relevant: -

"5. Recruitment to the post of Industrial Adviser (Chemicals) was governed originally by the Directorate General of Technical Development (Class I Posts) Recruitment Rules, 1963. Item 6 of the Schedule annexed to those Rules related to

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appointment to the post of Industrial Adviser (Chemicals), a Class I selection post, then generally in the scale of Rs.1300-100-2000. One of the methods of recruitment to the post, as specified in column 9 of the Schedule, was by promotion. Column 10 which regulated appointments by promotion read thus:

"Promotion: - Development Officer having a minimum experience of 10 years in the grade provided however, that in the scale of Rs.1300-60-1600-100-1800, the minimum experience shall be five years in that grade."

"6. In exercise of the powers conferred by Article 309 of the Constitution, the President on January 30, 1974 made the Directorate General of Technical Development (Class I Posts) Recruitment (Amendment) Rules, 1974. Rule 2 of these Rules amended column 10 of the Schedule to the Rules of 1963 by substituting the following entry for the one extracted above: -

"Promotion:

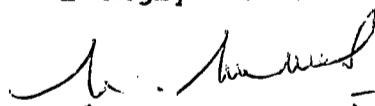
(i) Officer on Special Duty (Food Processing Industries) with 5 years' regular service in the grade; failing which with 10 years' regular service in the grade of Development Officer and Officer on Special Duty (Food Processing Industries) combined together of which 4 years should be as Officer on Special Duty (Food Processing Industries).

(ii) Development Officers having at least 10 years' regular service in the grade, provided that in respect of Development Officers, who are in the grade of Rs.1300-1800 not less than five years' regular service shall be required."

Mr. N. N. Nair
"6. That the appellant is qualified and eligible for appointment as an Industrial Adviser is beyond

dispute and has at no stage been questioned. But
it has to be stated that for the purpose of
computing the completion of 5 years' service as
an Officer on Special Duty, the period during
which the appellant was working in that post on an
ad hoc basis has to be excluded from consideration.
(emphasis supplied)
The appellant was appointed as an Officer on
Special Duty on an ad hoc basis in 1966 but the
appointment was regularised on January 23, 1970
after the President made the Recruitment Rules
dated January 14, 1970 regulating the method of
recruitment to that post. The appellant, therefore,
must be taken to have completed 5 years' service
in the post of Officer on Special Duty on January
23, 1975."

14. The above decision of the Supreme Court clinches
the point at issue in this case beyond any doubt that
ad-hoc service rendered by the applicant could not be
taken into account for the purpose of computing regular
service as prescribed under the statutory rules framed
under the proviso to Article 309 of the Constitution for the
purpose of his promotion to the post of Joint Educational
Adviser (Technical). The application thus fails and is
accordingly dismissed with no order as to costs.


(KAUSHAL KUMAR)
MEMBER (A)


(P.K. KARTHA)
VICE-CHAIRMAN.