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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.1438/88

Date of decision: 8.10.1993.

Shri T.R. Sharma

...Applicant

Versus

Union of India & Another

...Respondents

Coram:- The Hon'ble Mr. J.P. Sharma, Member (J)
The Hon'ble Mr. B.K. Singh, Member (A)

For the applicant Shri K.L. Bhatia, Counsel.

For the respondents Shri P.H. Ramchandani, Senior
Counsel.

Judgement(Oral)
(Hon'ble Mr. J.P. Sharma)

The applicant is working in the Directorate of Field Publicity, Ministry of Information and Broadcasting, New Delhi. The grievance of the applicant is that inspite of having been duly selected by the DPC for the post of Superintendent on August 11, 1982, he has not yet been regularised on his appointment and continues to work on ad hoc basis without any break for want of regular vacancy. He apprehends that his further consideration for promotion to the post of Administrative Officer and Senior Superintendent shall be deprived if his appointment is not regularised. The applicant has prayed for the grant of relief that the respondents be directed to issue orders that the applicant had been appointed on regular basis on the post of Superintendent w.e.f. 11.8.1982 and he may be further considered for promotion to the post of Administrative Officer and Senior Superintendent on the basis of his service on ad hoc basis w.e.f. 11.8.1982.

2. A notice was issued to the respondents to file their reply and contest the application. By interim order dated 5.8.1988 it was ordered that a meeting of the Departmental Promotion Committee for the post of Administrative Officer/Senior Superintendent is held, the applicant and other similarly placed persons shall also be considered by the Departmental Promotion Committee but the recommendations of the Departmental Promotion Committee shall not be acted upon till further orders.

3. The case of the respondents is that the DPC had recommended ad hoc promotion of the applicant was not for regular selection for the post of Superintendent and in this connection referred to the proceedings of the DPC (Annexure-I). The respondents have also referred to the note circulated amongst the members of the DPC (Annexure-2) where it is mentioned that the posts of Superintendent are likely to be available. A panel, therefore, be prepared for filling up these future vacancies. List of 20 eligible candidates has been prepared giving their service particulars and the vigilance clearance of all the eligible candidates has been obtained. The main attack of the respondents is that at the time when the DPC was held there was ~~not~~ vacancy available for the post of Superintendent as on the two posts which were sanctioned were held by Shri N.K. Roy and Shri D.S. Sangamnerkar. They are holding these posts from August, 1980 and July, 1980 respectively. Since there was no vacant post available, the applicant could not be appointed on regular basis. This appointment was made without a post sanctioned under G.F.R. No.77 and the applicant has been drawing his pay against the post of Senior Superintendent which was created on 9.8.1982. In view of this fact the service of the applicant could not be regularised.

4. Though the respondents have made a number of averments in reply to the OA but in paragraph-9.1 of the grounds it is specifically stated that the applicant will continue as ad hoc appointee till the post becomes available for him.

5. We have heard the learned counsel for both the parties at length and perused the records. It is not the case of the respondents that the applicant is not eligible or that the applicant during all these years since when he is working on ad hoc basis as Superintendent was reverted. Though continuing on ad hoc basis does not by itself give a right for regularisation but at the same time when a person has entered into service either at the initial stage or by way of promotion in accordance with the extant rules then the ad hoc service cannot be washed off, depriving the benefit of officiation for a number of years. That is the spirit and ratio of the case of Narender Chadha reported in AIR 1986 SC 638.

6. Otherwise also the proceedings of the DPC filed by the respondents themselves (Annexure-I) does not make a mention at all that the selection for the posts of Superintendent was made as a stop gap arrangement only for monetary benefits. When a document is silent with respect to any particular fact, the benefit has to go to the person who wants to interpret the document according to the rules. The circulation of the note by the respondents themselves does not make out that the selection of the post of Superintendent is by way of stop gap arrangement. This note (Annexure-II) goes to show that the

posts are likely to fall vacant and are available and as such DPC was constituted and considered as many as 20 eligible candidates.

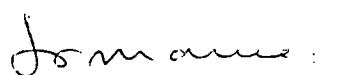
7. The contention of the learned counsel for the respondents that there appears to be some irregularities in the preparation of the eligibility list as, as many as 20 persons were considered. But, that issue cannot be raised at this stage after a person has been duly selected as a Superintendent on ad hoc basis and allowed to continue on the post for a number of years.

8. During the course of the arguments it has come out that one post of Superintendent is likely to fall vacant on regular basis on account of one of the Senior Superintendent being absorbed on that post on regular basis by virtue of certain departmental proceedings coming to an end, exonerating him fully from the allegations levelled against him. This fact is not substantiated by any document on record. However, taking that part of the argument ^{as} statement at the Bar the same is being referred to but is not being relied exclusively in arriving at a conclusion in the judgement we are delivering today.

8. In view of the above circumstances the application is partly allowed with the direction to the respondents to consider the case of the applicant for regularisation on the post of Superintendent in view of their averment in paragraph 9.1 of the reply in accordance with the extant rules when a

clear vacancy is available to him. As a result of this regularisation, if he is otherwise found fit, may also be considered for promotion in his own turn for the higher posts of Administrative Officer as well as Senior Superintendent. No costs.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)