

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No.1084/88

NEW DELHI THIS THE 23rd DAY OF NOVEMBER, 1993.

SHRI G.J. ROY, MEMBER(J)

SHRI B.K. SINGH, MEMBER(A)

Shri Yogendra Kumar Saksena,
Senior P.P.,
C/o Supdtt. of Police
CBI/SPE/SICI, C-1 Hutmants
Dalhousie Road,
New Delhi

...Applicant

Applicant in person.

vs.

(1) Union of India
through Secretary,
Ministry of Personnel &
Training Administrative Reforms &
Public Grievances & Pension
(Department of Personnel &
Training) Govt. of India
North Block, New Delhi.

(2) Director, Central Bureau of
Investigation,
Special Police Establishment,
C.G.O. Complex
Block-3, Lodhi Road,
New Delhi.

(3) Secretary, Union Public
Service Commission,
Dholpur House,
New Delhi

... Respondents

By Advocate Sh. George Paracken
proxy for Sh. P.P. Khurana, Advocate.

ORDER

Shri B.K. Singh

This OA has been filed by Shri Yogendra Kumar Saksena against Order No 14/5/85-Ad.V dated 12.12.1985 regarding appointment of Public Prosecutors as Senior Public Prosecutors (Group 'A' /Gazetted) on regular basis with effect from 16.10.1985. The order which has been assailed in this OA/Advertisement No.47 given by the UPSC in Employment News dated 21.11.1987 of which the applicant was informed only on 29.4.1988. He moved a representation against the advertisement. On 8.6.1988, the applicant moved for stay of interviews which were in the process of being held by the UPSC in connection with the filling up of the posts of Deputy Legal Adviser in the Central Bureau of Investigation. The interim

stay sought for was declined by the Tribunal but the appointments were made subject to the outcome of this OA.

2. The applicant has pleaded his case in person. We have heard Shri George Paracken, proxy counsel for Shri P.P. Khurana, counsel for the respondents.

3. The applicant is an MA LLB and was practising as an Advocate from December 1962 to May, 1970 at Kanpur. He was appointed as Public Prosecutor in the CBI vide letter No. Y-1/70 Ad-V dated 27.6.1970 in the scale of Rs.355-15-475 EB-20-575. This is Annexure-I of the paper-book. The promotional avenues from the post of Public Prosecutor are as Senior Public Prosecutor, Deputy Legal Adviser and Additional Legal Adviser. When he joined the CBI as Public Prosecutor, the rules framed for promotion were on the basis of seniority-cum-fitness. He was appointed as Senior Public Prosecutor with effect from 12.6.1980 in the pre-revised scale of Rs.700-40-900-EB-40-1200-50-1300 vide Notification No. Y-1/70-Ad.V dated 16.7.80. This is Annexure -II of the paper-book. He had put in 10 years of service as Public Prosecutor before his promotion as Senior Public Prosecutor. The word 'ad hoc' added to his promotion as Senior Public Prosecutor, according to the applicant, is misnomer because in the pre-amended rules no eligible criteria in terms of the number of years had been prescribed. There were a large number of vacancies in the regular cadre of Senior Public Prosecutor and if a DPC could be held in time, he could have been promoted on the basis of seniority-cum-fitness in a regular manner and the use of the word 'ad hoc' would not have been used. The word 'ad hoc' was used only because the cadre controlling authorities on the basis of the current rules did not hold a meeting of the DPC.

The vacancies were there and eligible candidates were also there and as such for want of a DPC, the authorities put the word 'ad hoc'. He was allowed to cross the Efficiency Bar and his pay was fixed with effect from 1.6.1984 vide order No.123/86 dated 31.1.1986. This is Annexure-III of the paper-book. It has been alleged that the applicant received a communication along with others similarly placed Senior Public Prosecutors that they had been regularised with effect from 16.10.1985. This is Annexure -IV of the paper-book. The applicant made a representation to the Secretary, Ministry of Personnel and Training Administrative Reforms & Public Grievances and Pensions through the CBI that he be treated as a regular promoted Senior Public Prosecutor with effect from 12.6.1980. This is Annexure-V of the paper-book. The said representation has been pending with the Ministry of Personnel since 7.12.1987. This representation is Annexure -VI of the paper-book.

4. On the 4th August, 1980, new recruitment rules called the Central Bureau of Investigation (Prosecution Staff) Recruitment Rules, 1980 were notified in the Gazette of India Part II, Section 3, Sub-section (3). In the revised recruitment rules, the posts of Senior Public Prosecutors were declared as Selection Posts for which maximum age limit fixed was 45 years (relaxable for Government servants) and a Law Degree of a recognised University with 8 years experience at the Bar in conducting criminal cases was stipulated. For direct recruitment, two years' practice as a criminal Lawyer was prescribed. The rules also envisaged that 50% of the posts in the cadre of Senior Public Prosecutor would be filled up by promotion, 25% by direct recruitment and 25% by transfer on deputation/ transfer. These were declared as Selection Posts.

(B)

(14)

a

The promotions were to be made through/ DPC on the basis of merit-cum-seniority, merit taking precedence over seniority. The criterion of seniority-cum-fitness was replaced by this new method of promotion.

5. The applicant has sought the following reliefs:

- (1) the impugned order dated 12.12.85 (Annexure-IV) may be quashed and set aside and the applicant be regularised as Senior Public Prosecutor with effect from 12.6.1980.
- (2) he may be allowed all consequential benefits as a result of his regularisation with effect from 12.6.1980.
- (3) he may be promoted as Deputy Legal Adviser in terms of the pre revised recruitment rules which were in vogue prior to 4.8.80 when the new recruitment rules were notified.
- (4) interviews by the UPSC for direct recruitment be stayed.
- (5) Costs be awarded.

6. Relief No.(4) i.e. stay of the interviews for recruitment to the post of Senior Public Prosecutor was declined and as such this relief cannot be allowed and has become infructuous.

7. The applicant argued his case at a great length. On the basis of the pre revised recruitment rules, he has claimed promotion with effect from 12.6.1980 instead of 12.12.1985 as Senior Public Prosecutor. He has not challenged the recruitment rules of 1975. He has claimed that he will be governed by these rules and not by the revised recruitment rules issued on 4.8.1980. There is no question of new recruitment rules being applied retrospectively in the case of the applicant and similarly placed

persons. The rules by and large have a prospective effect unless otherwise specifically stipulated in the rules. He further argued that his case is fully covered by the judgement of the Central Administrative Tribunal Patna Bench in OA No.304/1987(Tarkeshwar ^{Prasad} Parkash Sinha Vs.U.O.I & ors.). It was contended that he has worked as Senior Public Prosecutor from 12.6.1980 without any break in service and without any reversion and as such his regularisation with effect from 16.10.1985 treating a part of service as regular and other part as ad hoc is totally unwarranted and uncalled for since there were regular vacancies and his promotion was not a stop-gap arrangement to meet the functional requirement, but was a regular promotion wrongly described as 'ad hoc'. This is just to cover up the lapse on the part of the controlling authorities in not organising a DPC to promote him and other similarly situated persons on a regular basis. The ~~very~~ fact/ that he was allowed to cross EB on time and regular increments were admissible to him. Rejection of his representation dated 3.9.1986 seeking his regularisation as Senior Public Prosecutor from the date he was promoted in 1980 and not from 1985 is wrong and shows lack of application of mind on the part of the respondents. He relied upon the ratio established in Narender Chadha & ors. Vs. U.O.I & Ors.(AIR 1986 SC 638); P.S.Mahal & ors Vs. U.O.I & ors.(AIR 1984 SC 1291) and A. Janaradhan Vs. U.O.I & ors.(AIR 1983 SC 769).

8. The learned proxy counsel for Shri P.P.Khuran, counsel for the respondents stated that the period of ad hoc service rendered by the applicant as Public Prosecutor from 12.6.80 to 15.10.85 is still under consideration of the Government and no decision has been taken.

B

not

9. It is / denied by the respondents that he was promoted as Senior Public Prosecutor with effect from 12.6.1980, on ad hoc basis in the absence of a regular DPC panel. The interpretation given is that the word 'ad hoc' was used because the applicant was not promoted through a DPC. It was contended that even according to the 1975 rules, the meeting of the DPC had to be organised to determine the seniority-cum-fitness. It could not be done in spite of the best intentions of the controlling authorities. It has been further admitted that after promotion of the applicant on ad hoc basis on 12.6.1980, recruitment rules were revised and notified vide Notification No.213/1/79-AVD.II dated 4.8.1980. As a result of the revised recruitment rules, the posts of Public Prosecutor/ Senior Public Prosecutor were upgraded to Group 'B' Gazetted (in the case of Public Prosecutor (previously it was a non-Gazetted post). In case of Senior Public Prosecutors, the post was previously Gazetted post, Group 'B' which was upgraded to Group 'A'. This upgradation, according to the respondents made it obligatory to consult the UPSC after holding a regular DPC meeting. They have admitted that there was a delay in the regularisation of the promotion because the DPC could not meet and certain regularisations had to be resorted to after consulting the Ministry of Personnel and UPSC. The first DPC according to the respondents could meet only in 1985 when the case of the applicant was considered and he was regularised. They have also admitted that after May, 1977, there was no meeting of the DPC and the DPC met only in 1985 for the first time in 1985 when the case of the applicant along with others could be considered for regularisation. The method of recruitment prescribed for the post of Deputy Legal Adviser, according to the respondents

recruitment. The revised rules prescribed that Senior Public Prosecutor with at least 7 years' service in the grade rendered after appointment thereto could be entitled them to promotion as Deputy Legal Adviser. According to the respondents, since the recruitment rules specifically provided that only that service has to be taken into consideration which had been rendered after appointment on regular basis, the applicant has no case for counting of his ad hoc service for the purposes of making him eligible for promotion as Deputy Legal Adviser. It was further stated that the proposal for direct recruitment ^{for} ~~in~~ B the three posts in the rank of Deputy Legal Adviser through the UPSC was processed in the normal course without any discrimination/disfavour to the applicant. According to them, there are still 4 vacancies of Deputy Legal Advisers and the matter regarding counting the service of the applicant with effect from 12.6.80 is pending consideration of the Ministry of Personnel and once that decision is received, the case of the applicant will be considered. Learned counsel further stated that there is no force in the contention of the applicant that his ad hoc promotion on 12.6.1980 should be counted for purposes of seniority automatically. He also stated that the rulings cited by the applicant cannot be applied to the case of the applicant. It is however, clear that the respondents admitted that a part of the ad hoc service has been taken into consideration ~~for~~ purposes of seniority whereas the other part from 12.6.80 to 15.10.85 has not been taken into consideration for which the applicant has filed a representation. Therefore, the order dated 12.12.85 appointing the applicant as Senior Public Prosecutor on regular basis with effect from 16.10.85 (Annexure -IV of the OA) is in order and is in accordance with the

(B)

recruitment rules and the procedure laid down for promotion.

10. We have heard the applicant in person and the learned proxy counsel for the respondents. We are of the view that the plea of the respondents that the service of the applicant as Senior Public Prosecutor cannot be regularised before 16.10.85 as no DPC could be held earlier prior to 1985 cannot be accepted because it involves an element of hardship and injustice. There is lot of truth in the contention of the applicant that the counting of service from 16.10.85 and not counting it from 12.6.80 when there was no break and the applicant earned regular increments in that grade and was also allowed to cross the EB ^{unofficially}. The judgements cited by the applicant which were also the foundation for the judgement and order of the Central Administrative Tribunal Patna Bench have to be taken into consideration in deciding this issue. The ratio established in those judgements is that when the period of ad hoc service is continuous and there is no reversion or break and the incumbent had been treated as a regular holder of the post for all practical purposes as in this case since crossing of the EB and grant of regular increments prove this that the word 'ad hoc' used in 1980 for no fault of the applicant has to be treated as regular service. The posts were vacant and if a DPC was held, S/Sh.T.P.Sinha and Y.K.Sinha would have been considered for promotion on the basis of their seniority-cum-fitness which were the criteria stipulated in the recruitment rules of 1975. Thus, the applicant cannot be denied the benefit of continuous officiation in the post of Senior Public Prosecutor with effect from 12.6.80.



11. As we have already stated that there is no question of staying the interviews which have already been held by the UPSC in pursuance of their advertisement dated 27.11.87 and the prayer for stay was declined by the then Hon'ble Chairman, Mr. Justice K. Madhava Reddy this prayer has become totally infructuous since two persons have already ^{been} recruited and have joined as Deputy Legal Advisers. It is also clear that the pre-revised rules of 1975 clearly stipulate that the method of recruitment will be by promotion failing which by direct recruitment and that the promotion from amongst the Senior Public Prosecutor in the CBI with at least 7 years of service in the grade rendered after appointment thereto on a regular basis. Since the method of recruitment envisaged direct recruitment, we do not feel that there is any irregularity in resorting to the direct recruitment since it was not possible to have a DPC in regard to promotion of the applicant. It is a fact that the applicant and Shri T.P. Sinha had completed more than 7 years service as Senior Public Prosecutor and were fully entitled to be promoted. They were denied the benefit of promotion only because Ministry of Personnel and UPSC could not constitute a DPC and held a meeting and in the meanwhile, resorted to direct recruitment in the exigencies of public service. This has resulted in discrimination to the applicant. We also feel that this case is fully covered by the judgement and order given by the Patna Bench of this Tribunal in OA No.304/87. The judgement was delivered by the Patna Bench on 24.1.1989. We find that there is considerable merit in the argument of the applicant that he should have been considered for the post of Deputy Legal Adviser in November, 1987 when two posts of Deputy Legal Advisers were advertised

by the UPSC for direct recruitment. The service of the applicant will have to be regularised with effect from 12.6.80 when he was promoted to the rank of Senior Public Prosecutor. Thus, the promotion of the applicant as Deputy Legal Adviser will have to be considered by the respondents by holding a review DPC from the date he had become eligible for such promotion. It is clear that 4 posts of Deputy Legal Adviser are still lying vacant.

12. Thus, the applicant has already been promoted as Deputy Legal Adviser on 28.2.1991 vide Order No.278/91 in the CBI and he has been allowed the regular pay scale with effect from 5.3.1991. Thus the order dated 12.12.85 promoting the applicant with effect from that date as Senior Public Prosecutor is quashed and set aside. He will be eligible for promotion as Deputy Legal Adviser after he becomes due for it on the basis of his ad hoc promotion from 12.6.80. The review DPC has to be called to decide the question of his selection on merit as Deputy Legal Adviser prior to 1991 when he had been regularly promoted to that grade. We order accordingly. There

will no order as to costs. These directions may be complied with within a period of three months from the date of issue of these orders.

B
(B.K.SINGH)
MEMBER(A)

B
(C.J.ROY)
MEMBER(J)

23/11/93

SNS