

CAT/7/12
(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 782 of 1986.
Appeal No.

199

DATE OF DECISION 20.7.90.

G.P.Kukreti

Petitioner

Shri R.C.Sethi

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent(s)

Shri M.L.Verma

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B.C.Mathur, Vice Chairman(A)

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman(J).

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

G.S.
(G.Sreedharan Nair)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH
NEW DELHI.

O.A.782 of 1986.

G.P.Kukreti ... Applicant.
versus
Union of India and others ... Respondents.

P R E S E N T :

The Hon'ble Shri B.C.Mathur, Vice Chairman(A)

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman(J).

For the applicant - Shri R.C.Sethi, Advocate

For the respondents- Shri M.L.Verma, Advocate

Date of hearing - 16.7.90

Date of Judgment and Order - 20.7.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman (J) :

The applicant was appointed as Technical Assistant (Fisheries) under the respondents with effect from 7.10.1960 on the scale of pay of Rs. 425-700/- p.m. On 23.7.1973, he was appointed as Fisheries Research Investigator (Selection Grade) on a purely temporary and adhoc basis, initially for a period of six months. The case of the applicant is that he was continuing to hold the post, and on 12.5.1983 his appointment to the post was regularised on the recommendation of the Union Public Service Commission (UPSC) and he was placed on probation for a period of six months, and he was confirmed in the post of Fisheries Research Investigator (Selection Grade), for short, 'FRI(SG)', on 12.11.1983.

2. The post of Fisheries Research and Investigation Officer, for short, 'F.R.I.O.', is the next higher post, and according to the Recruitment Rules, 75% of the posts of FRI.O is to be filled up by promotion of Senior Technical Assistant (Fisheries) and FRI(SG) with 5 years regular service in the grade.

3. The grievance of the applicant is that having worked in the post of FRI(SG) for a period of five years, he became

eligible for promotion to the post of FRIQ on 23.7.1978, but the promotion was denied to him unjustifiably.

4. It is also alleged that in the final seniority list of Senior Technical Assistant(Fisheries) and F.R.I.(S.G.) as on 28.7.1986, the applicant has not been included at the appropriate place, but his name has been shown separately.

5. The applicant prays that he be assigned seniority in the post of FRI(SG) from the date of his adhoc appointment with effect from 23.7.1973 and his name be interpolated in the seniority list accordingly. It is urged that continuous and uninterrupted officiation in the post of FRI(SG) has conferred on him a claim for seniority and confirmation though the initial promotion was on adhoc basis.

6. In the reply filed on behalf of the respondents, it is stated that in May, 1970, the post of Technical Assistant(Fisheries) which was held by the applicant was declared surplus by the Staff Inspection Unit of the Ministry of Finance and, at that time, instead of surrendering the applicant to the Central (Surplus Staff)Cell, he was appointed on a purely temporary and adhoc basis to the newly created higher post of Senior Technical Assistant (Fisheries) with effect from 10.2.1971. It is contended that the said adhoc appointment was a stop-gap arrangement pending regular appointment to the post by direct recruitment which was the only method prescribed in the Recruitment Rules for appointment to the post. It is further stated that the post of Senior Technical Assistant (Fisheries) was filled up on a regular basis in May, 1973 and, as such, the applicant was adjusted on a ^{Temporary} _L purely and adhoc basis against the post of FRI(SG) with effect from 23.3.1973. According to the respondents, every attempt was made to regularise the services of the applicant in the said post, but it could not be done since the UPSC did not agree.

3.

It is stated that to protect the interest of the applicant, the Recruitment Rules for the post of FRI(SG) was amended so as to include promotion also as a method of recruitment and on the basis of the revised Recruitment Rules issued on 15.9.1982, a selection was conducted by constituting a Departmental Selection Committee and on the recommendations of the Committee, the applicant was appointed to the post on a regular basis with effect from 12.5.1983. It is further stated that the request of the respondents to the UPSC for regularisation of the appointment of the applicant with effect from 1973 was not agreed to by the UPSC. It is contended that as the applicant has been appointed to the post of FRI(SG) on regular basis only with effect from 12.5.1983, his inter se seniority has been determined accordingly.

7. The short question that arises for determination is whether the services of the applicant rendered in the post of FRI(SG) from 23.7.1973 can be reckoned for the purpose of seniority. After hearing counsel on either side and on a perusal of the record, we are of the view that the answer has to be in the affirmative.

8. No doubt, the initial appointment of the applicant to the post of FRI(SG) by the order dated 4.8.1973 was on a purely temporary and on adhoc basis for a period of six months, or till the regular incumbent to the post reverts, whichever is earlier. It appears that with effect from 15.2.1974, the regular incumbent of the post Dr Mathur was promoted to the next higher grade of FRI0 and that the applicant was allowed to continue in the post of FRI(SG). This arrangement is seen to have been continued uninterruptedly and it was followed by the regular promotion of the applicant to the post in accordance with the Recruitment Rules with effect from 12.5.1983, by the order dated 1.7.1983. ~~This~~

The respondents have clearly admitted that all along they were of the view that the service of the applicant in the post has to be regularised with effect from the date of his appointment on 23.7.1973, but they were not in a position to do so in view of the technical objection raised by the UPSC. It may be noticed in this context that the post of Technical Assistant(Fisheries) against which the applicant was working was declared surplus, but instead of surrendering the applicant to the Central (Surplus Staff)Cell, the respondents first appointed the applicant to the higher post of Senior Technical Assistant(Fisheries) with effect from 10.2.1971, and when that post was filled up on a regular basis, the applicant was appointed against the post of FRI(SG) with effect from 23.3.1973. The non-recognition of the continuous and uninterrupted service rendered by the applicant in the post of FRI(SG) for a period of 10 years in the matter of reckoning of his seniority in the cadre of FRI(SG) is totally unfair and violative of Articles 14 and 16 of the Constitution of India. In the decision of the Constitution Bench of the Supreme Court in The Direct Recruit Class II Engg. Officers' Association v. State of Maharashtra, (JT 1990(2) SC 264 /, the principle laid down by the Supreme Court earlier in Narendar Chadha and others vs. Union of India and others / 1986(1) SCR 211 /, that when certain officers were promoted, although without following the procedure prescribed under the Rules, but they continuously worked for a long period of nearly 15-20 years on the post without being reverted, the period of their continuous officiation has to be counted for seniority and that any other view would be arbitrary and violative of Articles 14 and 16 of the Constitution of India, has been held to be of considerable force. The Supreme Court, in the aforesaid decision, has confirmed the principle of counting towards seniority the period of continuous officiation, following appointment made in accordance with the Rules prescribed for regular substantive appointment in the service.

5.

9. In view of the position of law enunciated above, the service rendered by the applicant in the post of FRI(SG) with effect from 23.7.1973 has to be reckoned for the purpose of determining his seniority in that cadre. Accordingly, we direct the respondents to do so and to interpolate the name of the applicant in the seniority list of FRI(SG). This shall be done within a period of three months from the date of receipt of copy of this order.

10. The application is disposed of as above.

Mr. Sreedharan Nair
20.7.90
(G. Sreedharan Nair)
Vice Chairman(A)

B. C. Mathur
20.2.90
(B. C. Mathur)
Vice Chairman(A).

SP Singh/
17.7.90.

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