

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(29)

O.A. No. 961/1986

New Delhi, dated the 7th Jan., 1994

Hon'ble Mr. N.V.Krishnan, Vice Chairman(A)

Hon'ble Mr. B.S. Hegde, Member(Judicial)

Shri Asi Mohammad,
R/o 10/43, Schedule 'B'
President Estate, Rastapati Bhawan,
New Delhi-110004

... Applicant

(By Advocate Shri R.Venkataramani with
Sh.K.B.S.Rajan, counsel for the
applicant)

Versus

1. Secretary to the President of India
President's Secretariat,
Rastapati Bhawan, New Delhi

... Respondent

(Sh.K.C. Mittal - by
MS Pratima Mittal) Not present

ORDER(ORAL)

(Hon'ble Mr. N.V.Krishnan, Vice Chairman(A))

The applicant was appointed to the post of Mali in the Garden Establishment of the President's Sectt. in the pay scale of Rs 196-232 in pursuance of the offer of appointment contained in the memorandum dated 10.9.74 (Ann.A-11) indicating that he will be on probation for a period of one year. While so appointed, he was compulsorily retired by way of penalty. Therefore, he ceased to be in service. Against this order of penalty he filed O.A. No. 2705/92 which was dismissed

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by order dated 30.8.1993 produced as Ann.Z-III by the applicant alongwith MA No.3411/93. Against that order of the Tribunal the applicant has filed S.L.P. No.15538/93, in the Supreme Court which is still pending.

2. Before he was compulsorily retired, the applicant filed this O.A. on 27.10.1986 for a direction to the respondents to quash the letter dated 14.10.1982(Ann.A.8) of the President's Sectt. by which he was informed that his request for being treated as departmental candidate for appointment as LDC has been rejected, as it is not covered under the President's Secretariat (Recruitment and Conditions of Services) Rules, 1976 Rules for short.

3. When this case came for admission on 10.11.1986 it was noted that the relief sought by the applicant was barred by limitation and hence this O.A. was dismissed. Later, at the instance of the applicant, the aforesaid order was reviewed on 19.12.1986 when it was submitted that the applicant was not considered on subsequent dates also and, the application was admitted only to the limited extent of questioning appointment if any made, in 1986 and subsequent thereto, without considering the claim of the applicant. In the circumstances, this application

is being considered to this limited extent only.

4. The applicant states that he has been employed in the Garden establishment of the President's Secretariat and not on the Workcharged establishment. The initial offer of appointment (Ann.A-II) offers appointment as Mali in the Garden Establishment of the President's Secretariat and not on the workcharged establishment.

5. Respondents, however have filed a reply opposing this application taking the plea that, in accordance with the provision of the Rules, the applicant is not entitled to be considered. The expression "secretariat" is defined to exclude the workcharged establishment of the Garden attached to the President's Sectt. It is also pointed out that for appointment to the post of LDC, the promotion is limited to Group 'D' staff and house hold staff of the President's Sectt. Read with the aforesaid definition excluding workcharged establishment, President's garden, the applicant is not eligible. The respondents have also produced Ann.A-V order dated 25.11.1984 by which 10 persons have been appointed in a temporary capacity on the work charged establishment in the President's Garden, New Delhi with effect from 13.9.1974, which includes the name of the applicant.

6. Respondents, therefore, state that it is established beyond doubt that the applicant belongs to the workcharged establishment of the household staff of the President's Secretariat in the scale of Rs 196-232 and hence, can not be treated to be a part of Sectt. of the President, as defined, so as to entitle him to be considered for recruitment as L.D.C.

7. The applicant then filed MP 3411/93 for placing some material/documents on record, serving a copy of the same on the respondents also. One document is Ann.Z-IV. This is a copy of the reply filed by the same respondents in another O.A. No. 285/93 (Sh.Chanee V/s Union of India. & others) wherein, inter alia, the respondents have stated as under:-

" Though the Garden Establishment of the President's Sectt. is having the nomenclature "workcharged", in practical this is "Regular" establishment having all facilities as for a regular establishment and treated as such "

This admission has been noted and acted upon in the judgement delivered in that case on 29.10.1993. A copy of that judgement has been produced for our perusal by the learned counsel for the applicant.

No one was present for the respondents.

8. This matter came up today for final hearing. Learned counsel for the applicant submitted that there is no mention whatsoever in the offer of appointment Ann.A.II that the applicant was being considered for appointment to the workcharged (W.C) establishment. In answer to our question, whether the applicant was ever confirmed, in view of the fact that he was appointed on probation

for one year, the learned counsel for the applicant produced before us a copy of the office order No. 24/Estd/295 dated 6.7.77 by which the probation of temporary employees borne on the W.C. establishment on the President's Garden New Delhi were confirmed w.e.f. 1.7.1977. That order is kept on record. The applicant's name is at serial No. 14 under the heading, Mali. We put to the counsel for the applicant whether this order does not lend support to the contention of the respondents that the applicant was really borne on the W.C. establishment of the President's Sectt. The learned counsel for the applicant submitted that once an employee is confirmed he should be treated as part of the regular establishment, confirmation being an act of regularisation. Hence, after such confirmation the applicant ceases to be W.C. employee, even if it is considered for arguments' sake, that he was a W.C. employee prior to this date.

9. The learned counsel for the respondents who appeared on 17.4.93

lays stress on the appointment letter (Ann. A-5) dated 25.11.74, showing that the applicant was appointed to the W.C. establishment. She also argued that in terms of the Rules, persons on the W.C. establishment

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were not eligible for appointment as an L.D.C.

10. We have carefully heard the rival contentions.

The first question is whether the applicant belonged to W.C. establishment or regular establishment at the time of appointment. If ^{he} was appointed to the work charged establishment, did he continue to be so at the relevant period i.e. in 1986 in respect of which period alone, this application is admitted.

11. In our view, the offer of appointment Ann. XI is an important document, which should disclose all relevant aspects of the appointment. There is no mention here that the appointment was to the work charged establishment. This is a strong point in favour of the contention that the applicant was appointed to the post of mali in the regular establishment.

12. No doubt, the respondents have produced the appointment order itself dated 25.11.74 (Ann. A.4) which appoints the applicant and others on the ^{work} charged establishment of the President's gardens. In the normal course, this should have decided the issue but for certain other circumstances.

13. The applicant has produced a copy of the reply filed by the respondents in another similar case i.e. OA No. 285/93 an extract of which is reproduced in para 7 above. This shows that the respondents have,

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perhaps, been using the expression 'workcharged' rather loosely and that, in fact, such employees are treated as regular employees. Otherwise, there is no need to stipulate that the appointment will be on probation. This contemplates that there will be a confirmation. Such a confirmation will be only on a regular post. In fact, the work charged employees are purely temporary employees whose pay and allowance are not shown in the regular establishment pay bill. Instead, such expenditure is charged to the work itself.

14. Admittedly, there is a regular garden establishment. It is also stated that there is a workcharged garden establishment. Obviously, there is a need for a certain strength to work regularly and hence a regular establishment exists. For the rest of the sporadic work which arises, the workcharged establishment exists. Conceptually, the employees on this establishment are temporary and short term employees, whose employment can be dispensed with when the additional work is over. Therefore, there is no occasion to stipulate that the employee will be on probation.

15. Lastly, the applicant has established that he has been confirmed by the order dated 6.7.1977 (para-8) No doubt, he is shown as confirmed in the work charged establishment. We are of the view that this is conceptually a contradiction in terms. A workcharged establishment is necessarily temporary in nature. If there is a confirmation of a work charged employee, he ceases to belong to workcharged establishment and becomes a member of the regular establishment. For, the moment a person is confirmed he gets the status of a regular employee.

16. We derive support for this conclusion from the Rules also. In regard to Sl. No. 46 'Choudhary' which is admitted to mean Mali, it is provided that it will be by promotion of skilled Malis on the basis of test" We have, no doubt, that when a person is confirmed as a Mali his skill should be deemed to have been tested. Therefore, a confirmed workcharged mali had not to undergo such a test. If so, there should have been a provision to absorb such a confirmed workcharged Mali in the schedule. This does not exist. The reason is that once confirmation is given, the employee already becomes a regular employee and does not have to be considered under the provision of this Schedule.

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17. We, therefore, hold and declare that, on confirmation as Mali, the applicant became a Mali in the Regular garden establishment and therefore, he was entitled to be considered for promotion as LDC. We further direct the respondents to consider the case of the applicant for appointment as LDC against the vacancy/vacancies which arose in 1986 or thereafter on the date(s) when his juniors were considered for appointment. In case, the applicant is found fit for appointment he should be appointed in preference to his junior and he should be given the benefit of pay fixation with effect from the date of appointment, including arrears of pay. We however, make it clear that this order will become operative only if the appeal filed by the applicant in the Supreme Court against the Tribunal order confirming the penalty of compulsory retirement imposed on him is allowed and the applicant is directed to be reinstated.

18. The O.A. is disposed of as above.

B.S. Hegde
(B.S. Hegde) 7/1/94

Member(J)

N.V.Krishnan
7.1.94
(N.V.Krishnan)

Vice Chairman(A)

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