

13

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A.No.1728 of.1987

Date of Decision: 8-9-93

S.K.Arora .....Applicant.

Versus

Union of India & others .....Respondents.

CORAM:

Hon'ble Mr.C.J.Roy,Member(J)

Hon'ble Mr.S.R.Adige,Member(A)

For the applicant: Shri Rattan Pal,counsel.

For the respondents: Shri M.L.Verma,counsel.

JUDGMENT

(By Hon'ble Mr. S.R.Adige,Member(A).)

In this application,Shri S.K.Arora has prayed for quashing of the order dated 27.11.87(Annexure-A12) reverting him to the post of Planning Draftsman w.e.f. 17.11.87 and for regularising him as Planning Assistant from 17.6.76 itself with all consequential benefits including seniority and promotion.

2. The applicant was first appointed as a Tracer in Town and Country Planning Organization (TCPO) in 1967, and was promoted to the post of Planning Draftsman on regular basis in 1970. The next higher post was that of Planning Assistant. According to the applicant, under the rules as they originally stood, the post of Planning Assistant was to be filled 50% by promotion and 50% by direct recruitment. In 1971-72, these rules were amended. By these amendments, the mode of recruitment was changed to 50% by promotion failing which by direct recruitment and 50% by direct recruitment! The educational qualification was spelt out as an Intermediate in Architecture from a recognized University and two years experience was also made a requirement.

In 1973, according to the applicant, he completed his Intermediate in the Diploma Course for Architecture and became eligible to be considered for the post of Planning Assistant as he already possessed the required two years experience as Draftsman. In 1975, the DPC considered several names in respect of 50% promotion quota for the post of Planning Assistant and empanelled nine names but the applicant was not empanelled. On 17.6.76, the applicant was promoted on adhoc basis as Planning Assistant, in a leave vacancy(Annexure-A3). According to the applicant, this vacancy fell in the quota of direct recruitment. He was at S1.No.9 of the panel and according to him, he was the only eligible candidate to be promoted as Planning Assistant because the remaining eight candidates had already been promoted. This officiating promotion was thereafter extended from time to time vide orders dated 26.10.76(Annexure-A4), 19.10.78 (Annexure-A5) and 18.9.82(Annexure-A6). Thereafter, the applicant proceeded on long leave and on his return he was posted in the Urban Regional Division under Town and Country Planner vide order dated 17.3.86(Annexure-A7). Subsequently, upon the appointment of Shri A. Jag Mohana Rao as Planning Assistant w.e.f. 10.9.87, the applicant who was said to be working as Planning Assistant on adhoc basis, was again adjusted against the leave vacancy of Planning Assistant w.e.f. 10.9.87 to 30.10.87 vide order dated 22.9.87 which was further extended upto 21.11.87 vide order dated 28.10.87(Annexure-A10). However, he was reverted by the impugned order dated 27.11.87(Annexure-A12).

3. It is his case that he continued to hold the post of Planning Assistant right upto

November, 1987 and in the mean time the vacancy had become a regular one. Since the direct recruitment quota was not filled up on regular basis either because the post falling within it was not advertised or if advertised, the qualified candidates were not available, the applicant avers that the quota had ~~to~~ collapsed and, therefore, the vacancies falling in the direct recruitment quota were filled up by promotion. There were four vacancies falling in the promotion quota and there were nine persons whose names were in 1975 panel. Four were regularly appointed in the promotion quota and the remaining five, including the applicant, who were at Sl.No. 5 to 9 of the panel were appointed in the vacancies falling in the direct recruitment quota. It is the applicant's contention that the vacancy in which the applicant was appointed was a leave vacancy in the beginning but later it became a regular vacancy in the direct recruitment quota because the regular appointees had already left the Organization. It is the applicant's case that since the quota collapsed and since there had been a power of relaxation in the recruitment rules, the recruitment rules to the extent of appointment of the applicant in 1976 and/or thereafter stood relaxed and, therefore, the applicant is entitled to regularisation from the date of his appointment/promotion in 1976.

4. The respondents have contested the application in their counter-affidavit, and have pointed out that no regular vacancies became available after 22.9.75 which could be filled by promotion in terms of the recruitment rules. Hence, the applicant's contention that the

vacancy had become regular, and did not remain a leave vacancy, is untenable. The vacancies falling in the direct recruitment quota were filled up through direct recruitment during 1975, 1977 and 1978. Thereafter, the Organisation was restructured during 1979-81 and no direct recruitment took place. In 1984-85 regular vacancies were notified to UPSC falling within the direct recruitment quota. The applicant was eligible for the direct recruitment vacancy right upto 1981, but he did not avail this facility when the direct recruitment was resorted to in 1975, 1977 and 1978. Since the departmental candidates did not have any claim or right for the direct recruitment vacancies, the applicant's contention that as qualified candidates were not available for the appointment through direct recruitment, the quota had collapsed, is wholly untenable. The respondents have, therefore, stated that the application has no merit and is fit to be dismissed.

5. We have heard Shri G.D.Gupta, learned counsel for the applicant and Shri M.L.Verma, learned counsel for the respondents.

6. Shri G.D.Gupta has highlighted the main averments made in the application. In so far as the direct recruitment made in the years 1975, 1977 and 1978 is concerned, he has stated that the applicant was not eligible in 1975; he was not informed of the direct recruitment which was held in 1977, and could not succeed in the direct recruitment which was held in 1978. However, as the applicant was promoted on adhoc basis as Planning Assistant from 17.6.76 itself and continued on that post without break, and as in the mean time the direct recruitment quota

must be deemed to have collapsed because no direct recruitment was made upto 1984-85, and furthermore as the power of relaxation of the quota rule was provided in the recruitment rules itself, the applicant must be deemed to have been regularised from the date of his continuous officiation i.e. 17.6.76 itself in accordance with the Hon'ble Supreme Court's judgment in 'A.Janardhan Vs. Union of India (AIR 1983 SC 769). Furthermore, he has argued that even if there was no specific order relaxing the rule, the continuous officiation by the applicant would deem the recruitment rules to have relaxed in accordance with the Hon'ble Supreme Court's judgment in 'G.S.Lamba Vs. Union of India' (AIR 1985 SC 1019). Shri Gupta has also sought support from judgment dated 22.8.86 in the case 'K.N.Mishra & others Vs. Union of India' decided by the Principal Bench of this Tribunal and reported in ATR 1986(2)CAT 270, wherein it has been held that where the quota rule of recruitment breaks down or is not observed over a long period, and the rota rule of seniority was interlinked with quota rule, in the absence of any other valid rule of seniority, the seniority would have to be determined on the basis of continuous officiation. Furthermore, it has been stated therein that in cases of promotion, irrespective of whether the posts are temporary or permanent, so long as the promotions are made against long term or substantive vacancies and not against short term or fortuitous vacancies, the period of continuous officiation would have to be reckoned for determining seniority.

7. We find it difficult to agree with

these submissions made by Shri Gupta. Firstly, even if as claimed by the applicant he was not eligible to appear in the direct recruitment held in 1975 (incidentally the O.A. itself is silent on this point), there is nothing to indicate what steps the applicant took to get included at the time the direct recruitment was held in 1977. Moreover, Shri Gupta himself has admitted that the applicant could not succeed in direct recruitment which was held in 1978. Thus, it is clear that right upto 1978, steps were being taken to recruit the candidates directly as Planning Assistant. Thereafter, admittedly there was a break in the direct recruitment process because of Organization/ <sup>al</sup> restructuring. The process resumed in 1984-85 by which time the applicant had crossed the age limit for being considered for direct recruitment. Thus, merely because for a period of six years or so, there was no direct recruitment, cannot under any circumstance lead to the conclusion that the entire system itself had collapsed.

8. Furthermore, it is clear that the applicant was appointed to officiate as a Planning Assistant on adhoc basis on 17.6.76 in place of another Planning Assistant who proceeded on earned leave and the order dated 19.6.76 (Annexure-A3) specifically stated that the appointment would not confer any right upon him to his continuance in the post. That arrangement was extended upto 4.10.76 (Annexure-A4) in another leave vacancy. The order dated 19.10.78 (Annexure-A5) stated that the applicant would be adjusted against one of the plan posts of Planning Assistant created for work relating to the preparation of regional plans for Western Ghats Area which indicates that the work was not of regular nature because by the subsequent order dated 18.9.82 (Annexure-A6), the applicant was transferred to

a vacancy of planning Assistant on the regular side w.e.f. 19.8.82. Thereafter, the applicant appears to have proceeded on long leave and on his return, was posted in the Urban Regional Division. Subsequently, vide order dated 22.9.87(Annexure-8), it was specified that the applicant, who was working as Planning Assistant on adhoc basis, is adjusted against another leave vacancy from 10.9.87 to 30.10.87 which was again extended upto 21.11.87, but meanwhile the applicant was reverted vide order dated 27.11.87. Thus, it is clear that the applicant was appointed to officiate as Planning Assistant for numerous segments of time out of this entire period purely on a dhoc basis in leave vacancy, which were essentially short term and fortuitous. Moreover, for a considerable stretch of time out of this entire period, the applicant remained on long leave, and even on his return his officiation as Planning Assistant was declared to be on adhoc basis in a leave vacancy.

9. Lastly, the applicant's contention that as he and Shri V.K.Behal were the only two persons left in the panel, they became entitled to regularisation right from 1976 itself, is negated by the fact that Shri Behal was also reverted in December, 1987 because <sup>two</sup> he had to make way for direct recruits who became available in that year.

10. Under the circumstances, the applicant's prayer for regularisation with effect from the date of his officiation as Planning Assistant from 1976, or even from 1978, has no merit and this application is accordingly dismissed. No costs.

*Arif Ali*  
(S.R.ADIGE)  
MEMBER(A)

*Ch. Roy*  
(C.J.ROY)  
MEMBER(J)

11

(ug)

8/9/83