

In the Central Administrative Tribunal

Principal Bench: New Delhi

OA No. 471/87

Date of decision: 08.09.1992.

Shri Baljit Singh Chellar

...Petitioner

Versus

Union of India through the ...Respondents
Secretary, Ministry of Home Affairs & Others.

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Administrative Member

For the petitioner Shri B.S. Gupta with Shri S.K.
Gupta, Counsel.

For the respondents Shri P.P. Khurana, Counsel.

Judgement (Oral)
(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner started his career as Statistical Assistant from 7.11.1972. By order dated 30.9.1978 (Annexure-A) he was appointed as Statistical Investigator on ad hoc basis. It was made specifically clear in the order of appointment that it is purely on an ad hoc basis and is liable to be terminated without notice and does not confer any right with regard to pay, seniority or regular appointment. The petitioner accepted the said appointment without any demur. It is obvious that this appointment came to be made because one Shri Randhir Singh who was Statistical Assistant was appointed as Statistical Officer on ad hoc basis w.e.f. 14.8.1978 (Annexure-B). Later on the services of the petitioner

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were regularised with immediate effect by order dated 30.03.1985. Thereafter the petitioner made a representation on 27.11.1986 as per Annexure-E, praying that his services should be regularised with effect from the date of his ad hoc appointment w.e.f. 30.09.1978. He submitted in support of his representation that Shri Randhir Singh having been regularised in the post of Statistical Officer from 14.08.1978, i.e., the date from which he was appointed on ad hoc basis, same treatment should be accorded to the petitioner as well. This representation of the petitioner was turned down by order at Annexure-F dated 12.12.1986, pointing out that the provision for promotion was incorporated for the first time by amending the rules in January, 1985 and that the petitioner's case was considered by the Departmental Promotion Committee held in March 1985. It is in this background that the petitioner has approached this Court for appropriate relief.

2. The principal contention of the learned counsel for the petitioner is that he being the seniormost person in the department and having possessed all the qualifications for regular appointment and appointed on ad hoc basis w.e.f. 30.09.78, consequent upon a decision to regularise his services, the decision should have been given effect from the date of his ad hoc appointment itself. It is not possible to accede to this contention firstly for the reason that the petitioner accepted the appointment offer clearly saying *✓* that it does not confer any right in regard to regular

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appointment or in regard to seniority etc. Be that as it may, in accordance with the statutory rules the petitioner cannot claim his right for regularisation with effect from the date of his ad hoc appointment to the post of Statistical Investigator. Learned counsel for the petitioner submitted that there were no rules governing the subject on that date for giving promotion and, therefore, the petitioner having been promoted on ad hoc basis and having continued in service for more than 6 years thereafter, there is no justification for denying him the benefit of long service which he had rendered to the department. The assumption made that the appointment of the petitioner in 1978 was not opposed to the rules is not correct. The respondents have pleaded in their reply that the statutory rules framed under proviso to Article 309 of the Constitution of India governed the appointment of the post of Statistical Investigator as on 30.09.1978 when the petitioner came to be appointed on ad hoc basis. The statutory rules then in force did not provide for filling up the post of Statistical Investigator on promotion basis. The provision at that point of time was only for direct recruitment. It is not the case of the petitioner that he was selected by direct recruitment and appointed on ad hoc basis from 30.09.1978. The petitioner's claim is that he was Statistical Assistant from the year 1972 and, therefore, he came to be promoted on ad hoc basis as Statistical Investigator on 30.09.78. As the post

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under the statutory rules was required to be filled up by direct recruitment, filling up the post by any other process such as promotion would be clearly contrary to the statutory rules. This is not a case of filling up the post of Statistical Investigator not being occupied by the statutory rules in which event an executive order could hold the field. This is a case in which the field of recruitment to the post of Statistical Investigator was occupied by the statutory rules framed by the President under proviso to Article 309 of the Constitution. Hence it is clear that the appointment of the petitioner on 30.09.1978 on ad hoc basis was not in accordance with the statutory rules. That is the reason why only ad hoc appointment was made as regular appointment was not permissible and it would have been opposed to the statutory mandate. It is only in the year 1985 for the first time that the statutory rules were amended, making provision for filling up the post by the process of promotion. Immediately thereafter a DPC was convened and the petitioner's case was considered and he was duly promoted on regular basis. It is, therefore, clear that the petitioner could claim regular promotion to the post of Statistical Investigator only when it became possible to fill up the post by promotion in the year 1985. Any order which the petitioner seeks for giving effect for his regularisation w.e.f. 30.09.1978 would be clearly opposed to the statutory provisions. The function

of the Tribunal is to keep the authorities within the bounds of law and not to command them to act in a manner in violation of the rules. We, therefore, have no hesitation in holding that the petitioner has no case. Hence this petition fails and is accordingly dismissed.

No costs.


(I.K. Rasgotra)
Member(A)


(V.S. Malimath)
Chairman

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