

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

(19)

O.A. No. 627/87
T.A. No.

199

DATE OF DECISION 28.11.1990

<u>Shri H.S. Dahiya</u>	Petitioner
<u>Shri R.L. Sethi</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri M.L. Verma,</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

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 ?

(Amitav Banerji)

Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 627/87

DATE OF DECISION: 28.11.1990.

SHRI H.S. DAHIYA

APPLICANT

VERSUS

UNION OF INDIA

RESPONDENT

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SH. R.L. SETHI, COUNSEL

FOR THE RESPONDENT

SH. M.L. VERMA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE MR. I.K. RASGOTRA, MEMBER(A))

Shri H.S. Dahiya, Assistant Director (Coop) has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order No. 12026/17/79-Estt. dated 7.12.1984, reverting him from the post of Deputy Director to that of Assistant Director.

The applicant, on promotion from the post of Senior Technical Assistant (Coop) was appointed on adhoc basis as Assistant Director (Coop) w.e.f. 30.11.1973. He was promoted regularly w.e.f. 1.12.1976. He was later promoted as Deputy Director (Coop) in the Department of Agriculture and Cooperation on adhoc and temporary basis w.e.f. 11.1.1980 "for a period not exceeding six months or till regular incumbent returns or till further orders whichever is earlier." The duration of the adhoc appointment was extended from time to time upto 7.12.1984 when he was reverted to the post of Assistant Director vide impugned order dated 7.12.1984. Thus the total period for which the applicant officiated continuously amounts to 11.1.1980 to 7.12.1984. The applicant has

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contended that his reversion is tantamount to a major penalty listed in Rule 11 (vi) of the CCS (CCA) Rules, 1965 which can be imposed only for good and sufficient reasons as provided in the Rules. He has further pointed out that the Recruitment Rules for the post of Deputy Director (Cooperation) notified in the Official Gazette of 5.7.1973 have been amended and notified on 11.4.1985 making substantive alterations therein to the detriment of the interest of the applicant. For instance, the number of posts of Deputy Director (Cooperation) has been reduced from 7 to 5. While the probation period for promotees has been retained for two years (it was two years for direct recruits also) for direct recruits it has been reduced to one year in the 1985 Rules. According to the 1973 Rules $33\frac{1}{3}\%$ of the posts were to be filled by promotion failing which by transfer on deputation and failing both by direct recruitment. The remaining $66\frac{2}{3}\%$ are to be filled by direct recruitment failing which by transfer on deputation basis. In the 1985 Recruitment Rules only 20% of the vacancies are to be filled by promotion failing which by transfer on deputation and failing both by direct recruitment. The remaining 80% are to be filled by transfer on deputation failing which by direct recruitment. Thus the departmental officers of the feeder category have been made ineligible for consideration for appointment to the higher grade post in the deputation quota posts. The applicant has urged that the changes brought out above in the Recruitment Rules have substantially reduced the prospects of career progression of the applicant, first by reduction of the number of posts of Deputy Director from 7 to 5, secondly by reducing the quota from $33\frac{1}{3}\%$ to 20%, and thirdly for /being considered against the deputa-

tion quota by as the feeder category was debarred of or consideration against the deputation quota. His case is that he was promoted against a regular vacancy falling in the promotion quota on adhoc basis whereas he should have been appointed on temporary basis rather than adhoc basis. Further, he was promoted in accordance with the statutory Recruitment Rules then prevalent by following the prescribed procedure viz. on the recommendation of the Departmental Promotion Committee (DPC). This assumption is based on the fact as his appointment order reads "the President is pleased to appoint....." Besides the above, he claims the benefit of regularisation as Deputy Director on the basis of uninterrupted continuous officiation as Deputy Director for a period of five years.

By way of relief he has prayed that the impugned order of reversion dated 7.12.1984 be quashed and that the petitioner should be deemed to be promoted as Deputy Director w.e.f. 11.1.1980. He has further claimed arrears of pay and allowances with interest @ 18% per annum as well as the benefit of seniority and confirmation.

3. The respondents have clarified that reversion of an employee promoted on adhoc and temporary basis does not amount to a penalty in accordance with ~~Explan~~ation (iv) given below, second proviso to Rule 11 (v) of CCS (CCA) Rules, 1965. Regarding the reduction in number of posts of Deputy Director the respondents have submitted that the Cooperation Division was reorganised in 1979 and some of the items relating to Cooperative Division were transferred from Department of Civil Supplies to the Department of Agriculture and Cooperation. This resulted in transfer of four posts of Deputy Director (Cooperation) with the incumbents thereof in

August, September, 1979 to Department of Agriculture. The name of the applicant was not in the seniority list issued by the then Department of Civil Supplies and Cooperation in January, 1976 as the list included two officers holding the post on deputation basis whereas the name of these officers were not required to be indicated in the seniority list as they were not holding the post on regular basis in a substantive or temporary capacity. The respondents have further averred that the Recruitment Rules of 1973 were revised in accordance with the general guidelines issued by the Department of Personnel & Training and notified on 11.4.1985 and have underscored the fact that the applicant on his own reckoning was appointed Assistant Director (Cooperative) on regular basis w.e.f. 1.12.1976, when he had not completed five years regular service in the grade on 30.11.1981 which is the minimum service required for promotion to the grade of Deputy Director.

4. Shri M.L. Verma, the learned counsel for the respondents raised the preliminary objection that the application was time barred and that the applicant has not impleaded the parties which might be effected if his application was allowed. On merit, the learned counsel submitted that it is an admitted fact that the applicant was promoted on adhoc basis and temporary basis w.e.f. 11.1.1980 for a period not exceeding six months or till the regular incumbent returns or till further orders whichever is earlier. Such an order even if it is extended from time to time for a period of less than five years cannot be construed by any stretch of imagination as regular promotion nor does it confer any legal right on him to lay a claim to the post for regular promotion.-

5. Shri R.L. Sethi, the learned counsel for the applicant generally reiterated the pleadings in the application and submitted that even when the applicant became eligible on completion of five years regular

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service in the grade for promotion on regular basis the DPC was not convened in accordance with the 1973 Recruitment Rules. In fact his representation dated 10.4.1984 was rejected by the Department of Agriculture and Cooperation on 16th June, 1984.

6. The learned counsel for the respondents submitted that the real cause of action for the applicant to pursue this matter arose on 16th June, 1984 when his representation was rejected by the respondents, the application deserves to be dismissed on this very account straight away as earlier submitted him.

7. Continuing Shri R.L. Sethi, the learned counsel for the applicant averred that there is no provision for adhoc appointment in the Recruitment Rules. Since the appointment of the applicant as Deputy Director on adhoc basis was made by the President it follows that the statutory procedure had been followed and that the applicant was promoted based on the recommendations of the DPC; the termination of the adhoc appointment of the applicant without sanction of the President is illegal, malafide and with the intent to denying the regular appointment to him.

7. We have heard the learned counsel of both the parties. It is not disputed that the applicant was appointed on purely adhoc and temporary basis as Deputy Director (Cooperation) even when he fell short of five years' regular service in the grade of Assistant Director, a prerequisite for consideration for promotion in regular basis. We are also not persuaded to accept the plea that since the appointment of the applicant was made by the President, the same was a regular appointment

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after following the prescribed procedure. There is no basis for drawing such an inference. His promotion was not based on the recommendation of a Departmental Promotion Committee as on the date he was appointed under the Presidential order as Deputy Director, he was not even eligible for promotion to the higher grade post. The principles of counting period of continuous officiation for seniority etc. has now been elaborately set out by the Hon'ble Supreme Court in the judgement dated 2.5.1990 delivered in the case of Direct Recruits Class-II Engineers Officers Association & Ors. Vs. State of Maharashtra and Ors. JT-1990 (2) SC-264. In summing up the judgement their Lordships have held:

"(A). Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

The case of the applicant is covered by the above corollary as the initial appointment was only adhoc and not according to the rules. The post of Deputy Director is a selection post and the applicant was not appointed after completing the due process of selection based on the recommendation of the DPC. He, therefore, has no legal right to continue and claim the post on regular basis. There have been changes in the Recruitment Rules 1973 which were relevant at the time of adhoc promotion

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of the applicant and which are no longer in force from 1985. These changes have been necessitated by the reorganisation of the departments but in such reorganisation of the Departments the distribution of posts is made in accordance with the well established norms and yard sticks. The revised recruitment rules 1985 have also been made in accordance with the guidelines issued by the Department of Personnel & Training for Group 'A' services. We are not therefore able to find any illegality in the action of the respondents in this regard meriting interference by us.

In the facts and circumstances of the case, we, therefore, do not see any merit in the application which is dismissed.

There will be no order as to costs.

Subir
(I.K. RASGOTRA)
28/11/1990

Member(A)

AB/AB/AB
(AMITAV BANERJI)
Chairman

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