

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

D.A. No. 664/87

DATE OF DECISION 7.7.92

Sh. A. K. Jain

Applicant

Versus

UNION OF INDIA & OTHERS

Respondents

CORAM

Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman (J)

Hon'ble Shri I.P. Gupta, Member (A)

For the applicant

Sh. S. S. Tiwari, counsel

For the Respondents

Sh. M. M. Sudan, counsel

1. Whether reporters of local papers may be allowed
2. To be referred to the Reporter or not?

JUDGEMENT

(Delivered by Sh. I.P. Gupta, Member (A))

In this application filed u/s 19 of the Administrative Tribunal Act, 1985, the applicant was appointed as Physiotherapist on the recommendation of the Staff Selection Board. The memo. of appointment dated 17.2.85 is at Annexure-A. The appointment was on adhoc basis against the vacancy reserved for Scheduled Caste and was for a period of six months or till such time a suitable Scheduled caste candidate became available, which ever was earlier. The learned counsel for the applicant argued that this appointment having been made on the recommendation of the Staff Selection Board i.e. by adoption of due procedure for selection should have been regular, but, it was termed as adhoc

because the post at that point of time was reserved for scheduled caste. The applicant's tenure in the post was extended from time to time by small periods. At one point of time, the applicant was disallowed to work without issue of any formal termination order. Later on, however, he was allowed to resume duty with effect from 14-3-85.

2. The applicant's services were terminated by order dated 12-6-86(Annexure-H). It was said that in pursuance of recommendation of Staff Selection Board his services were terminated. Though the applicant had come through the Staff Selection Board in his initial appointment dated 17-2-1983, he had to appear at the Staff Selection Board once-again and he was not recommended for selection on this second occasion.

3. The learned counsel for the applicant cited the observations of the Hon'ble Supreme Court in Civil Appeal No.3819 of 1989(Sri Krishna Singh and Others V/s Union of India) where it was held that " when a person is promoted to a post on a regular basis, may be temporarily, his promotion cannot again be subjected to scrutiny by another Departmental Promotion Committee". Though the applicant in this particular case was not promoted on a regular basis, but, only on adhoc basis, the fact remains that his appointment was on the recommendations of Staff Selection Board by following the usual procedure and the applicant possessed requisite qualification for the post. The respondents would have been within their rights to terminate the services of the applicant by a regular incumbent selected by Staff Selection Board if he belonged to Scheduled Caste, but, it was not proper for the respondents to terminate his services just on the ground that he was not recommended in a subsequent selection of the Staff Selection Board, more so, when a regular scheduled caste was not to replace him

and subjecting the applicant to a second scrutiny by the same Staff Selection Board for the same post was not called for.

4. In the facts and circumstances of the case, we set-aside the termination order dated 12-6-1966. The applicant should be deemed to have continued in service as Physiotherapist and should be allowed to count this period as duty for all purposes. However, we are not inclined to allow any back wages for the period the applicant has not actually worked against the post on the principle of no-work-no-pay, more so when his initial appointment was only on adhoc basis for a specified period pending selection of a regular scheduled caste candidate, as the post was said to be reserved one, as pointed out in the counter.

5. The counsel for the respondent did not appear on several occasions and therefore a notice was directed to be issued to the respondents which was served upon them. In spite of that, they did not choose to avail this opportunity, also. Hence we have considered only their counter on record.

6. With the direction and order given above, the case is disposed of with no order as to costs.

I.P. Gupta
(I.P. GUPTA)
MEMBER(A)

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN(J)