

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

O.A. No. 756/87
T.A. No.

199 4.7.1991

DATE OF DECISION

<u>Shri S.K. Arora & Ors.</u>	Petitioners
<u>Shri T.C. Aggarwal,</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Others</u>	Respondents
<u>Shri P.P. Khurana,</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.S. Oberoi, Member (J)

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

I.K. Rasgotra
 (I.K. Rasgotra)
 Member (A)

T.S. Oberoi
 (T.S. Oberoi)
 Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(13)

OA NO.756/87

DATE OF DECISION: 4.7.1991

SHRI S.K. ARORA & OTHERS

...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

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

FOR THE APPLICANTS SHRI T.C. AGGARWAL, COUNSEL

FOR THE RESPONDENTS SHRI P.P. KHURANA, COUNSEL

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

Shri S.K. Arora, who is working as Technical Assistant on adhoc basis in the Directorate of Publications Division (DPD for short), in the pay scale of Rs.550-900 (pre-revised) filed this application on 25.5.1987 under Section 19 of the Administrative Tribunals Act, 1985. Besides the applicant, S/Shri Sunil Kaura, H.K. Uppal and Anil Marcus, all Technical Assistants in DPD are listed as applicants. They are aggrieved by their nonregularisation in the posts held by them, by the respondents and have come to the Tribunal on the basis of the respondents' intimation dated 18.8.1986, informing that their case for regularisation "is still pending with the Ministry of Information and Broadcasting."

2. From the order-sheets we find that no application appears to have been moved and permission obtained for joining together more than one person for filing a single application in terms of Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987. The appli-

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cation was, however, admitted on 28.5.1987 and we are, therefore, not viewing this lapse on the part of the applicants seriously, in the interest of justice, at this stage.

3. The application was amended in accordance with the orders dated 15.9.1987 of the Tribunal, on MP No.1113/87, and the amended application was filed on 13.10.1987.

4. The case of the applicants is that they were selected as Technical Assistants by the DPD, out of about 60 candidates after they qualified in the written test followed by viva voce. They were, however, offered adhoc appointments as Technical Assistants w.e.f. the dates as shown in Annexure I-P and reproduced below:-

<u>Name of the applicant</u>	<u>Date of adhoc appointment</u>
Shri S.K. Arora	05.9.1980
Shri Sunil Kaura	20.12.1982
Shri M.K. Uppal	07.10.1980
Shri Sunil Marcus	24.06.1982

5. The posts of Technical Assistants which are placed in Group 'B' were subsequently advertised by the Union Public Service Commission (UPSC for short), Respondent No.2. The applicants applied in response to the advertisement but were not called for interview by the UPSC. They then filed a Civil Writ Petition No.2475/83 in the High Court of Delhi. Apparently, as a consequence thereof, the respondent No.2, UPSC issued interview letters dated 13th January, 1984, calling the applicants for interview on 3.2.1984. By this time the applicants had rendered 1 to 3 years' service on adhoc basis and they started representing for their early regularisation to the respondents. In response to one such representation, Shri S.K. Arora, applicant No.1 was advised by the UPSC, respondent No.2 vide letter dated 17.4.1984 that:-

"you have been recommended to the Director, Publication Division, Ministry of Information and Broadcasting, Patiala House, New Delhi, for appointment

to the aforesaid post. Further correspondence, if any, in this regard, may be addressed to the Ministry/Department concerned. I am, however, to make it clear that the offer of appointment will be made to you, only after the Government have satisfied themselves, after such inquiry as may be considered necessary that you are suitable in all respects for appointment to the service and that you are in good mental and bodily health and free from any physical defect likely to interfere with the discharge of your duties. The offer of appointment will also be subject to such other conditions, as are applicable to all such appointments, under the Central Government."

Apparently similar letters were issued to the other applicants. Inspite the UPSC's recommendation the applicants have not been given regular appointment letters. They, therefore, made a representation to the respondent No.3 on 4.8.1986 (Annexure P-IV) to get themselves regularised expeditiously. This representation was answered by the respondents vide their letter dated 18.8.1986 stating that "the case is still pending with the Ministry of Information and Broadcasting, although we reminded them."

6. The respondents in their counter affidavit have taken preliminary objection that the application is barred by limitation as the cause of action had accrued on 17.4.1984 when respondents No.2 had recommended the name of the applicants to Respondent No.3 for appointment. The applicants' contention however is that since the matter was said to be still under consideration on 18.8.86, their case is not time-barred.

On merits the respondents submit that the post of Technical Assistant in DPD is a Group 'B' post carrying a pre-revised pay scale of Rs. 550-900 and that these posts are required to be filled by direct recruitment through

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UPSC. However, for handling sudden heavy book production work and for publication of number of periodicals adhoc recruitment was resorted to by getting candidates sponsored by the Employment Exchange as well as from the open market till such time the vacancies are filled on regular basis. The four applicants (viz. S/Shri S.K. Arora, Sunil Kaura, H.K. Uppal and Anil Marcus) were accordingly selected through a test and interview conducted by the DPD for adhoc appointment only. The offer of appointment was "on adhoc basis" which clearly stated that the adhoc appointment "will not bestow upon them a right to regular appointment in the post." The respondents further submit that when the UPSC advertised the posts, they received 364 applications for filling up the six vacancies of Technical Assistants in DPD. The applications received were shortlisted by the UPSC by raising the limit of experience under essential qualification from three years to 10 years. As a result only 34 candidates were called for interview in November, 1983. As the four petitioners did not fulfil the criterion for shortlisting they were not called for interview. The respondents further submit that the UPSC does not offer regular appointments but merely recommends names of suitable candidates to the respondents for appointment, subject to other conditions. The UPSC, therefore, only informed the applicants vide letter dated 17.4.1984 that their names have been recommended for appointment to the aforesaid post. The offers of appointment are to be made by the Government, after satisfying themselves, after such enquiry, as may be considered necessary to determine the applicants' suitability in all respects for appointment to the service. The respondents affirm that the applicants are holding the posts of Technical Assistants only on adhoc basis and have not been appointed on regular basis.

7. The applicants have filed a rejoinder wherein they have stressed that the process of selection was complete when the UPSC recommended their names for appointment on

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17.4.1984 and that the applicants should have been given regular appointment accordingly. The applicants further claim that they should be given the benefit of counting their service w.e.f. the initial date of appointment as the adhoc service followed by regular service after completion of the process of selection in accordance with the recruitment rules counts for all purpose. In support of their contention they have cited the following judicial pronouncements:

- i) ATR 1987(1) CAT 164 (p.4) Siri Ram & Ors. v. Scientific Adviser to the Raksha Mantri & Anr.
- ii) 1978 (2) SLR 379 (P.3) Kuldip Chand Sharma and Ors. Vs. Delhi Admn. and another
- iii) 1970 SLR 483 (P.6) S.P. Sood v. State of Punjab & Ors. (P&H)
- iv) AIR 1984 SC 1527 (P.15) G.P. Doval v. Chief Secy. Govt. of U.P.
- v) ATR 1986(2) CAT 346 - Shri S.C. Jain Vs. UOI
- vi) ATR 1986(2) CAT 365 S.S. Grover Vs. UOI

Since the applicants have put in 2 years service prescribed as probation period they also seek confirmation on completion of 2 years service relying on Om Prakash Maura Vs. V.P. Cooperative ATR 1986(2) SC 309 and Har Bans Singh Vs. UOI & Ors. - ATR 1987 (2) CAT 8.

8. Vide MP No.576/89, the applicants submitted that the select panel of UPSC has been operated by the respondents and the candidates with lower rank have been appointed by the respondents on regular basis. They further wish/ place on record that in view of the illegal and arbitrary action of the respondents, the applicants Nos. 3 and 4 S/Shri H.K. Uppal and Anil Marcus appeared again in the UPSC test against subsequent vacancies and have since been

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regularised w.e.f. 5th January, 1990.

9. Shri T.C. Aggarwal, the learned counsel for the applicants submitted that some employees who are junior to the applicants in the select list have been regularly appointed by the respondents. This was disputed by Shri P.P. Khurana, learned counsel for the respondents, who stated that there was no averment in the OA that persons lower in merit have been appointed by the respondents. The learned counsel for the applicant cannot go outside the pleadings at this stage. The learned counsel further submitted that the applicants were interviewed in February, 1984 and not in November, 1983, in response to the advertisement dated 30.7.1983. He, however, affirmed that no candidate lower in merit to the applicants has been appointed by the respondents. The next submission of Shri T.C. Aggarwal, learned counsel for the applicants was that the case of the applicant is fully covered by the judgement in the case of **Suprabhat Biswas Vs. UOI & Ors. - 1988(3) SLR CAT 90.**

We find that the facts of **Suprabhat Biswas Vs. UOI (supra)** are not on all fours with the matter before us. In **Suprabhat Biswas (supra)**, the petitioner was a member of the Indian Civil Accounts Service and for certain reasons had been denied promotion in the Senior Administrative Grade Level-II, although recommended by the departmental promotion committee. The ratio emerging from the case of **Suprabhat Biswas Vs. UOI & Ors. (supra)** is not relevant to the facts and issues before us.

The learned counsel for the applicants then drew our attention to the Department of Personnel & Training OM No.39021/3/87-Estt-D dated 10th June, 1987 requesting all Ministries and Departments to ensure that "there is no undue delay in making offers of appointment to the selected

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candidates recommended by the Commission." They are also requested to ensure that the 'Commission is approached for recommending another candidate, in place of the recommended candidate or for advertising afresh only after the candidates already recommended by the Commission has been offered the appointment and he has declined to join the post or has not joined the post within the maximum period of 9 months stipulated in the OM dated 6.6.1978 referred to above, after which the offer of appointment shall lapse."

He also referred to the case of **S. Krishnan Vs. UOI and Another**

1991 (15) ATC 254 but we do not find the citation germane to the issues before us as the issues in the **S. Krishnan (supra)** relate to the regularisation of casual labours.

The next case cited by the learned counsel for the applicant is that of **Mahipal vs. State of Haryana - 1988**

(6) SLR 324. In this case the single judge bench of the High Court of Punjab and Haryana held that there was no legal justification whatsoever with the respondents for not giving appointment to the petitioner when he had been selected by the Haryana Public Service Commission in open recruitment and his name was in the merit list at No.3. The learned judge held that:

"When three post of Traffic Managers were advertised and eligible and suitable persons had been selected by Haryana Public Service Commission, whose names had been forwarded to the State Government for issuing appointment letters, it is no longer open to the State to withhold the appointment and to decide to have the post readvertised."

The High Court relied on the decision of the Hon'ble Supreme Court in **Miss Neelima Shangla Vs. State of Haryana and Others, A.I.R. 1987 Supreme Court 169** where their

Lordships had held that:

"once candidates have been selected by the Public Service Commission, the appointment cannot be denied to them arbitrarily nor can the number of persons to be appointed restricted without any conscious application of mind disclosing good and justifiable reasons."

We are of the view that the case of **Mahipal v. State of Haryana** (supra) is distinguishable.

10. We have heard the learned counsel for both the parties and perused the record carefully. The applicants were initially appointed on adhoc basis by conducting a selection through written test and interview by the department. According to the recruitment rules, the posts in Group 'B' are to be filled through the UPSC. The applicants were, therefore, appointed on adhoc basis, as they were selected in accordance with the provisions of the Statutory Rules. When the UPSC invited applications for filling up the posts of six Technical Assistants in DPD, they received 364 applications and therefore shortlisting of the candidates by raising the limit of experience under essential qualifications from 3 to 10 years was resorted to. Since the applicants did not have the requisite experience, they were not called for the selection by UPSC. They were later interviewed in February 3, 1984, apparently on the intervention of Delhi High Court in C.W. No.2475/83. This resulted in UPSC first preparing a select list of candidates who possessed ten years' experience and were interviewed in November, 1983 from among the shortlisted candidates according to the revised qualifications. In other words, candidates with less than 10 years experience were not considered at all by the UPSC. The second select list is confined to the applicants who had only 1-3 years

experience against 10 years prescribed by the UPSC and who were interviewed and recommended for appointment to the exclusion of other candidates who were similarly placed viz. had less than 10 years' experience.

It is, therefore, transparently clear that the applicants herein cannot be placed at par with those who were selected for appointment in November, 1983, as the applicants had experience only for 2 to 4 years while those who were interviewed and placed in the select list in November, 1983 had 10 years experience. Any consideration for regular appointment as Technical Assistants would erode the credibility of system of selection, as they were interviewed and recommended for appointment to the exclusion of other similarly situated candidates. The applicants can be considered for regular appointment only when all those who were similarly placed but had been excluded as they did not possess 10 years' experience are also interviewed and a fresh select list prepared. Any preference shown to the applicants merely because they are holding the posts on adhoc basis will be infraction of Articles 14 and 16 of the Constitution of India.

Accordingly the applicants have no claim for appointment on a regular basis. Their initial appointment was on adhoc basis and not in accordance with the Rules. Their continuation on adhoc basis for varying period does not bestow on them any legal right for continuing in those posts or for regularisation in those posts, when candidates duly selected by the UPSC in accordance with the recruitment rules become available.

Their Lordships in **The Direct Recruit Class II Engineering Officers' Association and others v. State of Maharashtra and others - JT 1990 (2) S.C. 264** have held:

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted

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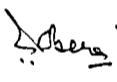
from the date of his appointment and not according to the date of his confirmation.

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

In accordance with the above corollary, the applicants are not entitled to count the adhoc service rendered by them on regularisation, whenever it takes place. We note that applicants Nos. 3 and 4 have been appointed on regular basis after they were selected by UPSC in a subsequent selection w.e.f. 5th January, 1990.

In the facts and circumstances of the case we do not see any merit in the application, which is, accordingly, dismissed with no order as to costs.


(I.K. Rasgotra)
Member(A)


(T.S. Oberoi)
Member(J)