

⑦

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 829/87 (OA 872/87) DATE OF DECISION: 22-1-1992

S. S. DUTTA

... APPLICANT

-Versus-

UNION OF INDIA & ORS.

... RESPONDENTS

CORAM

HON'BLE MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN
HON'BLE MR. P. C. JAIN, MEMBER (A)

APPLICANT THROUGH SHRI S. S. RANA, ADVOCATE

SHRI M. L. VERMA, COUNSEL FOR RESPONDENTS

J U D G M E N T

(Hon'ble Mr. P. C. Jain, Member (A)) :

The applicant first joined as Planning Assistant in the office of the respondent No.2, viz., the Chairman, Town & Country Planning Organisation, New Delhi. Later on he applied for and was selected and appointed as Assistant Economist in the same Organisation in January, 1985. He was promoted as Research Officer on 22.4.1968. Vide order dated 9.3.1977 (Annexure A-1) he was promoted to officiate on ad-hoc basis as Senior Research Officer for a period of six months or till the regular appointment is made, whichever is earlier. The post of Senior Research Officer was in the grade of Rs.1100-1600 and his pay was fixed in that grade on his ad-hoc promotion as above. He continued to work on the above post on ad-hoc basis until 16.1.1981, when he was selected and appointed on a regular basis to the post of Associate Industrial Economist in the scale of Rs.1100-1600.

Cu.

2. A post of Associate Industrial Economist in the grade of Rs.1100-1600 fell vacant on account of Shri M. B. Bhatia, incumbent of the said post, taking voluntary retirement on 5.6.1979. For considering the selection and appointment to the above vacant post, the DPC met in December, 1979 and the names of S/Shri K. V. Sundaram and Satish Chandra were included in the panel. Since both declined the offer, another meeting of the DPC was held some time in 1980 and the DPC recommended three candidates, i.e., S/Shri K. V. Sundaram, Satish Chandra and applicant before us. Since the first two officers again declined the offer, the applicant was ~~xxxxxxxx~~ appointed to the post of Associate Industrial Economist.w.e.f. 16.1.1981.

3. The first grievance of the applicant is that if the DPC had been held in 1979 itself after the post had fallen vacant in June, 1979 and if the names of S/Shri K. V. Sundaram and Satish Chandra who were already working on posts in the higher scale, had not been included in the panel prepared by the DPC first in December, 1979 and again in 1980, the applicant could have been regularly appointed to this post much earlier than in January, 1981. The plea of the respondents is that as both Shri K. V. Sundaram and Shri Satish Chandra were senior to the applicant in the feeder cadre and they were eligible for consideration for promotion to the post of Associate Industrial Economist, they could not be ignored. It is further stated in the counter affidavit filed by the U.P.S.C., i.e., the fourth respondent, that against one vacancy the DPC recommended two names in their first

meeting and in the second meeting, they recommended three names so that if both the officers again decline, the post could be filled in by appointing the third selected person, viz., the applicant without having to hold another meeting of the DPC. This contention of the respondents appears to have considerable force. As per the recruitment rules for the post of Associate Industrial Economist, Research Officers inter alia having five years' regular service in the grade were eligible for consideration. The post was to be filled by promotion as a selection post and both the officers recommended above the applicant were senior to the applicant in the feeder cadre. Moreover, there is not enough material on record to show that the lien of S/Shri K. V. Sundaram and Satish Chandra on the post of Research Officer had been abolished in view of their having gone on work on higher posts. In view of this, the prayer of the applicant that he may be deemed to have been promoted as Senior Research Officer from the date the vacancy occurred on 5.6.1979 cannot be allowed.

4. Another grievance of the applicant is that his officiating period of ad-hoc service in the post of Senior Research Officer w.e.f. 9.3.1977 till 16.1.1981 be treated as regular and the applicant should be given the benefit of seniority in the said post from the date of his appointment thereto vis-a-vis respondent No.3. In this context, it is also prayed that the inter se seniority list dated 10.12.1986 (Annexure A-8) be quashed and a revised list be ordered to be prepared showing the applicant as senior to respondent No.3 and the applicant

Qes

be given the consequential benefits of arrears of pay, allowances and other benefits and promotion from the revised seniority. The applicant has stated that he continued to officiate in the higher post of Senior Research Officer uninterruptedly until he was appointed w.e.f. 16.1.1981 on the post of Associate Industrial Economist, and as both the posts of Senior Research Officer and Associate Industrial Economist carried the same scale of pay, he is entitled to count the service for purposes of seniority in the cadre of Senior Research Officer. The contention of the respondents is that respondent No.3 was appointed as Senior Research Officer on a regular basis w.e.f. 22.12.1980 while the applicant was so appointed w.e.f. 16.1.1981, and, therefore, respondent No.3 has rightly been shown senior to the applicant in the seniority list. A copy of the recruitment rules by the name of "Town and Country Planning Organisation (Class I and II Posts) Recruitment Rules, 1964" (hereinafter referred to as 'the recruitment rules') as said to have been amended upto 1975, was made available by the learned counsel for the applicant. These rules clearly show that there are separate provisions for recruitment to the post of Associate Industrial Economist on the one hand and the post of Senior Research Officer on the other even though both the posts carry an identical scale of pay. The qualifications prescribed for the two posts are also different. As a matter of fact, even the various posts of Senior Research Officers, which also go by different designations, have different qualifications. The applicant having officiated on an ad-hoc basis in the post of Senior Research Officer cannot, therefore, get the benefit of continuous ad-hoc officiation in the post of Associate Industrial

Economist, the two posts having different requirements in the recruitment rules. However, as regards his claim for giving to him the benefit of continuous ad-hoc officiation ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ in the post of Senior Research Officer, it may be stated that it is well settled that in the absence of a specific rule in the relevant recruitment rules or elsewhere in regard to inter se seniority, seniority has to be calculated on the basis of length of service. In the recruitment rules made available to us, we do not find any provision for determining inter se seniority. The respondents have also not referred to or shown to us any provision elsewhere having the force of law in this regard. In the case of the Direct Recruit Class II Engineering Officers' Association & Ors. vs. State of Maharashtra & Ors. : Judgment Today 1990 (2) SC 264, it was held by a Constitution Bench of the Supreme Court that even if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with rules, the period of officiating service will be counted. This itself does not help the applicant inasmuch as his ad-hoc appointment in 1977 was to the post of Senior Research Officer while his appointment is on regular basis to the post of Associate Industrial Economist. It has already been stated by us above that the two posts are different and there are different requirements for selection and appointment to the two posts even though they both happen to be in identical scale of pay. The benefit of ad-hoc officiation followed

C.

by regularisation could be allowed to the applicant only if his was a case of ad-hoc officiation in the post of Associate Industrial Economist followed by his regular selection to the post, but it is not so. He was promoted to officiate on an ad-hoc basis on the post of Senior Research Officer while his regular appointment on 16.1.1981 is on the post of Associate Industrial Economist.

5. Fundamental Rule 9 (4) defines 'cadre' as meaning "the strength of a service or a part of a service sanctioned as a separate unit". Rule 2 of the recruitment rules makes it clear that they are neither meant for any organised service as such or to a unit of such a service. These rules apply to the posts specified in column 1 of the schedule annexed to these rules. Though the posts are classified as belonging to General Central Service Group 'A' or Group 'B', the posts included under these rules cannot be said to be sanctioned as forming part of one cadre or a part of any service sanctioned as a separate unit. The post of Senior Research Officer and the post of Associate Industrial Economist also cannot be said to be on the same time scale.

Under FR 9(31) (c) "a post is said to be on the same time scale as another post on a time scale if the two time scales are identical and the posts fall within a cadre, or a class in a cadre, such cadre or class having been created in order to fill all posts involving duties of approximately the same character or degree of responsibility, in a service or establishment or group of establishments, so that the pay of the holder of any particular post is determined by his position in the cadre

Q.

or class and not by the fact that he holds that post." In the light of this definition also it cannot be said that even though the scale of the post of Associate Industrial Economist and that of Senior Research Officer was Rs.1100-1600, the two posts carried the "same time scale". In view of this also the applicant cannot be deemed to have officiated on ad-hoc basis against the post of Associate Industrial Economist with a view to entitle him ^{to} the benefit of continuous ad-hoc officiation for purposes of seniority in the post of Associate Industrial Economist. However, he shall be entitled in the light of the decision of the Supreme Court in the case of the Direct Recruit Class II Engineering Officers' Association & Ors. (supra) to count the continuous officiating service from 9.3.1977 to 16.1.1981 for purposes of seniority in the post of Senior Research Officer.

6. Another grievance of the applicant is in regard to the ad-hoc appointment to the post of Senior Social Scientist to which respondent No.3 was promoted in August, 1986 on ad-hoc basis and for which the applicant states that inspite of his request he was not considered. The contention of the respondents is that the appointment was on ad-hoc basis and, therefore, the seniormost person, viz., respondent No.3, was promoted on ad-hoc basis to the post of Senior Social Scientist. The applicant had prayed that respondents 1, 2 and 4 be restrained from appointing respondent No.3 as Senior Social Scientist on regular basis till the disposal of the O.A. and that a direction be given to the respondents to consider to promote the applicant to the post of Senior Social

Cm

Chen.

7. From the above, it is clear that the prayer for a direction to respondents 1, 2 and 4 not to fill up the post of Senior Social Scientist (the post appears to be that of Senior Sociologist) till the disposal of the OA cannot be granted, as it has already become infructuous. We do not find any prayer in the proceedings before us for quashing the regular appointment of respondent No.3 which is said to have been made in 1987. Moreover, in the absence of the recruitment rules for the post of Senior Sociologist, we are unable to state whether the post was a selection post or a non-selection post. The reply of the respondents shows that the applicant was also considered for regular selection to this post. A government servant has a right to be considered for appointment/promotion to a post if he is otherwise eligible but not to appointment/selection as such. He having been considered, as already stated above, and respondent No.3 having been already appointed to the said post on a regular basis through selection and which appointment has not been challenged in these proceedings, it is not possible to grant any relief to the applicant in regard to reconsideration or his appointment to that post.

8. In the light of the foregoing discussion, the OA is partly allowed in terms of the direction that the continuous ad-hoc officiating service of the applicant on the post of Senior Research Officer from 9.3.1977 till his regular appointment to the post of Associate Industrial Economist will be counted for purposes of fixing his seniority on the post of Senior Research Officer and the revised seniority

seniority so fixed shall be taken into consideration for his eligibility and promotion to higher post in future. The question of arrears of pay pursuant to revision of his seniority on the post of Senior Research Officer does not arise as he drew the pay in the grade of Rs.1100-1600 from the date he was promoted to officiate on ad-hoc basis on that post in March, 1977. His claim for arrears of pay on account of his possible appointment to the post of Senior Sociologist also does not arise in view of our findings in the preceding para^g. The seniority list for the post of Senior Research Officer may accordingly be revised within three months from the date of receipt of a copy of this order.

On the facts and in the circumstances of the case, we leave the parties to bear their own costs.

(Signature) 22/11/1991
(P. C. JAIN)
MEMBER (A)

as

(Signature) 22.11.92
(RAM PAL SINGH)
VICE CHAIRMAN (J)