

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-952/87

Date of decision: 09.08.1989.

Shri Chaman Singh

.....Applicant

Vs.

Union of India & Others

.....Respondents

For the Applicant

.....Shri K.L. Bhatia,
Counsel

For the Respondents

.....Shri P.H. Ramchandani,
Sr. Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. M.M. MATHUR, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *yes*

(The judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who is an Assistant Communication Officer in the office of Director General of Civil Aviation filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (i) that he be deemed to have been appointed on regular basis with effect from 20th March, 1983 when he completed 5 years service as Communication Assistant;

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- (ii) that the Director of Communication Memo dated 1/4-10-1985 may be quashed so far it relates to him;
 - (iii) that the letter dated 27.5.87 issued by the National Airport Authority (hereinafter referred to as the Authority) may be declared null and void, so far as it relates to him; and
 - (iv) that he be given consequential benefits of seniority and promotion to the higher post of Communication Officer from 17.1.1986 when his juniors were promoted to this post.

2. At the outset, we may consider the question as to the maintainability of this application raised by the respondents. According to them, the application is not maintainable so far as ^{the Authority} Authority is concerned. The application has been filed against the Union of India through the Secretary, Ministry of Civil Aviation (Respondent No.1), Director General of Civil Aviation (Respondent No.2) and Chairman, National Airport Authority (Respondent No.3). The applicant is presently working in the office of the Authority which is an autonomous body. No notification has been issued by the Government under Section 14(2) of the Administrative Tribunal's Act, 1985. Therefore, the said Authority does not come under the jurisdiction of this Tribunal.

3. The Central Government constituted the Authority as an autonomous body under the National Airports Authority Act, 1985 which was brought into force on 1.6.1986.

Section 13(3) of the said Act reads as follows:-

"(3) Every employee holding any office under the Director-General of Civil Aviation immediately before the commencement of this Act solely or mainly for or in connection with such affairs of the Directorate-General of Civil Aviation as are relevant to the functions of the Authority under this Act as may be determined by the Central Government shall be treated as on deputation with the Authority but shall hold his office in the Authority by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement or other terminal benefits as he would have held such office, if the Authority had not been constituted and shall continue to do so until the Authority duly absorbs such employee in its regular service:

Provided that during the period of deputation of any such employee with the Authority, the Authority shall pay the Central Government in respect of every such employee, such contribution towards his leave, salary, pension and gratuity as the Central Government may, by order, determine:

Provided further that any such employee, who has, in respect of the proposal of the Authority to absorb him in his regular service, intimated within such time as may be specified in this behalf by the Authority his intention of not becoming a regular employee of the Authority, shall not be absorbed by the Authority".

4. It is clear from the aforesaid provision that an employee holding any office under the Director-General of Civil Aviation immediately before the commencement of the said Act for or in connection with such affairs of the Director-General of Civil Aviation as are relevant to the functions of the Authority under the said Act as may be determined by the Central Government shall be treated as on deputation with the Authority. He shall hold his office in the said Authority by the same tenure and upon the same terms and conditions of service as ^{regards} remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office, if the Authority had not been constituted and shall continue to do so until the

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Authority duly absorbs such employee in its regular service.

5. It is not the case of either side that the applicant has been absorbed as an employee of the Authority. He still continues to enjoy the status of a Central Government servant who is on deputation with the Authority and, therefore, we are of the opinion that the Tribunal is competent to entertain the present application in so far the reliefs claimed by the applicant relate to the period prior to the date of his deemed deputation with the Authority from 1.6.1986.

6. The case of the applicant is that he is entitled to be appointed as Assistant Communication Officer on regular basis with effect from 20.3.1983 when he completed 5 years' service as Communication Assistant as he has already passed the departmental qualifying examination and he fulfils all the essential qualifications as per the Recruitment Rules of 1977. The case of the respondents is, that he will become eligible for such appointment only after he passes the qualifying examination held by the Director General of Civil Aviation, in accordance with the said Recruitment Rules.

7. We have carefully considered the records of the case and have heard the learned counsel of both parties. The applicant who was initially appointed as Radio Operator in 1962 was promoted as Communication Assistant on regular basis with effect from 20.3.1978. He was appointed as Assistant Communication Officer on ad hoc basis with effect

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from ^{an} 30.4.1982. He has continued in that post by virtue of the interim order passed by this Tribunal on 23.7.1987. In this context, the respondents have stated in para 6.8 of their counter affidavit as follows:-

" The applicant was promoted to the post of Assistant Communication Officer on ad hoc basis with effect from 30.4.82 and his ad hoc appointment in the grade of Assistant Communication Officer was extended after every six months, due to a large number of regular Assistant Communication Officers holding the next higher post of Communication Officer on ad hoc basis. These appointments were continued on ad hoc basis in view of the operational requirements of the Airports, until regular appointment could be made in accordance with rules and eligible candidates become available".

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8. According to the Recruitment Rules of 1977,

Communication Assistant is eligible for appointment as

Assistant Communication Officer if he fulfils the followings:-

- "(iii) with 5 years service in the grades in the case of those who do not possess either a degree or a diploma in Electrical Engineering or Radio Engineering or Telecommunication Engineering but have passed the qualifying examination held by the Director General of Civil Aviation.
- (iv) Persons holding the post of Technical Assistant or Communication Assistant on the date of promulgation of these rules and fulfilling the following conditions shall be eligible for consideration for promotion, without having to pass any qualifying examination.
 - (a) Should be either permanent or quasi-permanent in the grade.
 - (b) Should be at least Matriculate or should possess equivalent qualifications.
 - (c) Should have at least 5 years service as Technical Assistant or Communication Assistant.

Note:- In case Technical Assistants or Communication Assistants with the requisite length of service as indicated at (i), (ii) and (iii) equal to the number of posts above, are not available for consideration for promotion, Technical Assistants or Communication Assistants with a combined service of 10 years in the grades of Technical Assistants or Communication Asstts. and Radio Technicians or Radio Operators respectively would be considered for promotion".

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9. We are not impressed by the contention of the applicant that he has passed the qualifying examination held by the Director-General of Civil Aviation, as contemplated in (iii) above of the Recruitment Rules. There is ^{no} force in the contention of the respondents that the passing of qualifying examination prescribed in the Recruitment Rules for the post of Communication Assistant does not entitle the applicant to be exempted from passing the departmental qualifying examination prescribed in the Recruitment Rules for the post of Assistant Communication Officer. There is material difference between the content of the two examinations. The applicant's claim for regular promotion to the post of Assistant Communication Officer on the basis that he has passed the prescribed qualifying examination for the purpose is devoid of any substance.

10. The question, however, arises whether the applicant fulfils the qualifications mentioned in (iv) above of the Recruitment Rules. There is no dispute that he fulfils the qualifications mentioned in (iv) above. In terms of the Note accompanying the Recruitment Rules, mentioned above, in case Communication Assistants with the requisite length of service as indicated at (i), (ii) and (iii) equal to the number of posts of Assistant Communication Officer are not available for consideration, for promotion, Communication Assistants with a combined service of ten years in the grade of Communication Assistants and Radio Operators would be

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considered for promotion. This condition was also fulfilled in the case of the applicant at relevant time. The learned counsel of the respondents, however, contended that the Recruitment Rules were promulgated on 30.5.77 and the applicant was promoted as Communication Assistant only thereafter on 20.3.78. Therefore, according to him, the aforesaid provisions would not be applicable to the case of the applicant.

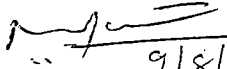
11. We have already referred to ^{the} ~~the~~ above statement in the counter affidavit that Communication Assistants including the applicant, were promoted on ad hoc basis and their appointments were extended from time to time. There is nothing on record to indicate that at the relevant time, Communication Assistants with the requisite length of service were available for regular promotion. Having regard to the fact that the applicant has officiated in the post of Assistant Communication Officer on ad hoc basis for over seven years, we are of the opinion that this is a fit case in which the respondents must be deemed to have treated the applicant as having ^{been} duly appointed ~~as~~ ^{as} Communication Assistant on the date of promulgation of the rules, by relaxing the rules. The applicant has stated in Para 9.7 of the application that Shri M.C. Antani, Communication Assistant was promoted to the post of Assistant Communication Officer and then Communication Officer without passing any qualifying examination. The respondents have admitted this in their counter affidavit, as having been done in accordance with the provisions of

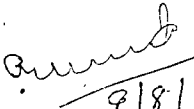
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sub-clause (iv) of the Recruitment Rules. We consider that in the interest of justice, the respondents should accord the same treatment to the applicant.

12. In the conspectus of the facts and circumstances of the case, we order and direct that the respondents Nos. 1 and 2 shall consider the case of the applicant for promotion on regular basis with effect from 20th March, 1983 when he completed 5 years ^{of a} service as Communication Assistant under the provisions of Column 11(iv) of the Recruitment Rules, treating as if he was holding the post of Communication Assistant on the date of promulgation of the Rules. In case he is found suitable for promotion, they shall promote him as Assistant Communication Officer on regular basis. He would also be entitled to all consequential benefits. Respondents Nos. 1 and 2 shall comply with the above directions within a period of three months from the date of communication of this order.

The parties will bear their own costs.


9/8/88
(M.M. MATHUR)
ADMINISTRATIVE MEMBER


9/8/88
(P.K. KARTHA)
VICE CHAIRMAN(J)