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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

D.A.No.110/1990

New Delhi, This the 3rd June 1994

Hon'ble Shri J P Sharma, Member(J)

Hon'ble Shri P.T. Thiruvengadam, Member(A)

Shri Bihari Lal Sah
Son of Late Shri D.L. Sah
Supdt. B/R Grade-I
Officer of Garrison Engineer(East), Lucknow
Military Engineer's Service(MES)
Resident of 141/1, Outram Lines, Lucknow.

.Applicant

Shri M C Juneja, Advocate

Versus

Union of India Through
The Secretary
Ministry of Defence
South Block,
New Delhi -110011

The Engineer-in-Chief
Army Headquarters
Kashmir House
Rajaji Marg,
New Delhi 110011.

..Respondents

By None.

O R D E R(Oral)

Hon'ble Shri J P Sharma, Member(J)

1. The applicant joined as Supdt B/R Grade II in July 1963. He was promoted the post of Supdt B/R Grade I on 24-8-79. Subsequently he was regularised in his promotion with effect from 22-4-85 and was assigned seniority in that grade from that date. The grievance of the applicant is that the adhoc service in Grade I from 24-8-79 be also counted for seniority in Grade I. He made a representation which was rejected by the impugned order dated 3.2.89 informing him that as per DP & AR OM dated 30 Dec 76 the service rendered on adhoc basis is not the counted towards fixing up seniority in the Grade.

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2. In this application the applicant has prayed for the grant of relief for quashing the order dated 3.2.89 and ^{for a} direction to the respondents fixing the seniority of the applicant in Grade I from the date of his continuous and un-interrupted officiation with effect from 24-8-79.

3. The respondents contested the application ^{given} on the ground that the applicant was ^{only} adhoc promotion in view of the fact the vacancies were to be filled for the first time centrally in E-in-C's Branch on All ^{India} basis. Prior to this the vacancies were filled at the Command level according to Command seniority. Since seniority roster was to be prepared on All India basis sufficient time therefore is elapsed in calling for the DPC and when finally a seniority list has been drawn the DPC met and the applicant was given regularisation from April 1985. The applicant has not given any names of the juniors who has taken march over him.

4. We have heard the learned counsel for the applicant. None is present on behalf of the respondents. Normally seniority is fixed according the length of the service in that grade. The applicant therefore wants to count ^{rendered} his service/on adhoc basis in grade I and also that the seniority be reckoned in that Grade from that date. In fact it is only on substantiating appointment to a post that a person earns a lien on the post and not otherwise. In exigences of service and in order to avoid vacancies at higher level if adhoc promotions are made for specific period that will not give

any right for a claim of counting seniority for that period when promotion was purely a stop gap arrangement. In such a case the applicant is benefitted by pay and emoluments of the post on which he has been temporarily promoted till the regular appointments are made.

5. In the case of Direct Recruit Class II Engineering Association Vs State of Maharashtra reported in JT 1990(2) SC 264 the Hon'ble Supreme Court considered all the judgements on the point of seniority and clearly held that if the initial appointment is not according to Rules the adhoc officiating service in the grade will not count for seniority. The respondents therefore in their reply have clearly stated that posts are to be filled as per administrative instructions of the Recruitment Rules centrally and at E-in-C's Branch regular appointment would not be made because of non-availability of All India seniority lists. The applicant of course continued uninterrupted firstly against the vacancies in 1979 and later against the vacancies occurred in 1981 and therefore fresh panel for regular promotion had to be made which could only be made available in the year 1985. Since there was vacancies the ~~app~~ applicant continued for a specific period and therefore his continuance is not for want of vacancies but because there was none available ^{at the time} on All India seniority basis. 4

6. The learned counsel for the applicant however rightly pointed out ~~to~~ the order of fixation of pay which speaks about the lifting of probation and also the next date of increment. In fact

in all adhoc promotions the emoluments are increased as per the tenure or period of service in adhoc appointment. That will not confer any right on seniority. Regarding the mention of probation period that was totally uncalled for in an order of fixation of pay and the respondents rightly in their reply admitted their fault that because of ignorance of the lower level staff the word probation has been mentioned and subsequently that particular order has been recalled. Neither the applicant nor the respondents have placed on record the order of promotion of the applicant dated 24.8-79. The applicant has also not prayed for examining the records from the respondents. Respondents are not present nor they are represented through any lawyer to-day. We cannot adjourn the proceedings in an old case of this nature. It is because of the fact that since 1979 almost 15 years have elapsed and the matters which are now settled should not be unsettled at this point point of time.

7. The learned counsel for the applicant referred to the representation made by the applicant. The respondents have considered the representation and on the basis of the O M of 1986 of DP&AR rejected the same.

8. The applicant neither assailed the order of regularisation dated 22-4-85 nor he has brought on record the date of initial promotion dated 24-8-79. For this the applicant has to suffer himself. In view of above circumstances, the application is dismissed as devoid of merit. No costs.

P. T. Thiruvengadam
(P.T. THIRUVENGADAM)
Member (A)

J. P. Sharma
(J P SHARMA)
Member (J)

LCP