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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI  
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O.A.No. 1313/90.

Date of decision. 9.9.94.

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri V.P. Batra,  
S/o Shri Mulakh Raj,  
BA/238, Ashok Vihar,  
Delhi-21.

.. Applicant

(Advocate by Shri B.S. Charya)

versus:

1. The Directorate General of  
Employment & Training,  
Shram Shakti Bhavan,  
New Delhi, through its  
Director General.

2. Union of India,  
Ministry of Labour,  
Government of India,  
Shram Shakti Bhawan,  
New Delhi, through its  
Secretary.

.. Respondents

Shri J.C. Madan,  
(Advocate by Shri P.H. Ramchandani)  
Shri K.P. Doharre, counsel  
for Interveners.

O\_R\_D\_E\_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

The applicant has filed this O.A. under Section  
19 of the Administrative Tribunals Act, 1985 claiming  
that he has been wrongly denied proforma promotion as  
Assistant Director of Employment Exchanges with effect  
from 19.2.1986 to 28.4.1988, and promotion on regular  
basis to that post from 29.4.1988 onwards after his  
repatriation to that post and consequential benefits,  
including benefits of pay scale <sup>and</sup> seniority.

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2. The brief facts of the case are that the applicant was directly recruited as Research Officer in the Directorate General of Employment and Training (DGE&T) on 16.12.1977. On 2.5.1985, he was appointed to the post of Senior Research Officer (SRO) in the Central Institute for Research & Training in Employment Service, Pusa, New Delhi (CIRTES) as a direct recruit through Union Public Service Commission. The post of SRO is in the scale of Rs. 3000-4500 (revised) whereas the post of Assistant Director of Employment Exchanges in DGE&T is in the scale of Rs. 2200-4000 (revised). Since the applicant retained his lien in the post of Research Officer for a period of two years, his name had also been considered by the DPC which met on 21.10.1986 to select candidates for promotion to the post of Assistant Director of Employment Exchanges. A panel of 6 selected candidates was prepared and the applicant's name figured at S.No. 3. One Shri H.K. Kaushik was placed senior-most in the panel by a letter dated 6th March, 1986 (Annexure P-2 of the OA). The respondents informed him of his selection to the grade of Assistant Director of Employment Exchanges and asked his willingness to be appointed to the said post within a period of 10 days. The relevant portion of the applicant's reply dated 13.3.1993 reads

23

(17)

as follows :-

" I am willing to accept the offer with the request that I may kindly be given proforma promotion with back lien as I am already holding a temporary higher post of Senior Research Officer in CIRTES.

This request for proforma promotion in the grade of Assistant Director of Employment Exchanges was rejected by the respondents vide their letter dated 31st <sup>13 March</sup> August, 1986 (Annexure P-4). It appears that till ~~1986~~ 1988, the applicant did not take any initiative to join the post of Assistant Director of Employment Exchanges, when he made a request for his reversion from the post of SRO in CIRTES to the post of Research Officer, DGE&T. His request for repatriation to the post of Research Officer in DGE&T was allowed by the memorandum dated 25th April, 1988 (Annexure P-9) and <sup>he</sup> was asked to report for duty before 29.4.1988. <sup>13</sup>

3. Between the periods from 29.4.1988 to 5.7.1988 and 7.7.1988 to 31.10.1989, the applicant was appointed on ad hoc basis to the post of Assistant Director of Employment Exchanges and then reverted to the post of Research Officer with effect from 1.11.1989.

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18

4. The main ground taken by the learned counsel for the applicant is that while Shri H.K. Kaushik, who was also promoted along with the applicant by the DPC held in January, 1986 ~~and~~ was given proforma promotion to the post of Assistant Director in DGE&T, the applicant had been wrongly denied the proforma promotion. According to him, both Shri Kaushik and himself were on deputation posts outside the DGE&T and, therefore, having regard to the guiding principle for the working of the rule relating to proforma promotion reproduced on pages 13 and 14 of the O.A., he had been arbitrarily and illegally discriminated and denied benefit of the proforma promotion. The second ~~is~~ main ground that he should be considered to be regularly posted as Assistant Director of Employment Exchanges on regular basis from 29.4.1988 onwards after his repatriation to DGE&T and be included in the seniority list of Assistant Directors dated 22.4.1987.

5. The respondents have, in their reply, denied the claims preferred by the applicant. They have stated that after due consideration of the reply given by the applicant dated 13th March, 1986, they have already replied to him on 31.3.1986 itself that his request for proforma promotion cannot be acceded to as per the existing

13

instructions.

6. The Respondent's counsel, Dr. S.C. Madan had also taken the plea of limitation as the reliefs claimed relate to 1986 and the O.A. has been filed in 1990, and also the ground of non-joinder of necessary parties.

We are satisfied that apart from the merits discussed below this application is liable to be rejected as barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. On the other plea, however, since we have heard Shri Doharra, learned counsel for the intervenous, it has to be rejected.

7. The orders for proforma promotion of Shri H.K. Kaushik were issued subsequently on 15.4.1986. The respondents have stated that when the recommendation of promotion to the post of Assistant Director in DGE&T was received in January, 1986, Shri H.K. Kaushik was working on deputation in the Bureau of Public Enterprises. It will, therefore, be necessary to see whether as per the rule/Government of India's instructions on proforma promotion, the applicant is entitled to be treated at par with Shri H.K. Kaushik, who was admittedly given proforma promotion with effect from 19.2.1986.

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7. The next below rule on proforma promotion

(Swamy's Compilation on Establishment and Administration at p. 144) provides :-

" When an officer in a post (whether within the cadre of his service or not) is for any reason prevented from officiating in his turn in a post on higher scale or grade borne on the cadre of the service to which he belongs he may be authorised by special order of the appropriate authority proforma officiating promotion into such scale or grade and thereupon be granted the pay of that scale or grade if that be more advantageous to him, on each occasion on which the officer immediately junior to him in the cadre of his service (or if that officer has been passed over by reason of inefficiency or unsuitability or because he is on leave or serving outside the ordinary line or forgoes officiating promotion of his own volition to that scale or grade then the officer next junior to him not so passed over) draws officiating pay in that scale or grade .....".

On perusal of the rule and the guiding principle for working the rule relied upon by the applicant, it is seen that the proforma promotion is to be given to an officer where for any reason he is prevented from officiating in his turn in a post on a higher scale or grade.

8. In this case, the applicant was appointed to the post of SRO in CIRTES by direct recruitment through UPSC; and his claim that he was on deputation to that

(21)

post is, therefore, baseless. His claim that in his letter dated 13th March, 1986, he had given his willingness to accept the offer of appointment as Assistant Director of Employment Exchanges on regular basis is also without any force because his acceptance was conditional. He did not voluntarily join the post of Assistant Director in his earlier Department which was a post lower than the grade he was holding in 1986 as SRO in CIRTES. In the facts and circumstances of the case, we find that the applicant has no right to be given proforma promotion as he did not come within the rule referred to above.

9. Therefore, the position is that after the Respondent's rejection letter of 31.3.1986 it is evident that the applicant was neither given proforma promotion to the post of Assistant Director of Employment Exchanges or could be promoted on regular basis to that grade as he did not also join the post. He, in fact, continued as SRO in CIRTES till his repatriation to DGE&T in 1988<sup>12</sup>.

10. The next question to be considered is whether on his repatriation to his parent department after two years, he can claim inclusion in the seniority list of Assistant Directors of Employment Exchanges. Since the applicant was never appointed to the post of Assistant

15

(22)

Director of Employment Exchanges in 1986, he cannot have a claim to be included in the seniority list of Assistant Directors of Employment Exchanges in 1986, he cannot have a claim to be included in the seniority list of Assistant Directors of Employment Exchanges in his parent department from 1986.

11. From the Memo. dated 25.4.1988 (Annexure P-9) it is noted that the applicant had, in fact, requested his parent department for repatriation in the post of Research Officer i.e. the lower post to that of Assistant Director where he had a lien which was agreed to. However, he was subsequently promoted to the post of Assistant Director purely on ad hoc basis vide office order dated 11.7.1988 w.e.f. 29.4.1988 upto 8.7.1988 or till reversion of Shri H.K. Kaushik whichever is earlier. It was also stated that this will not confer on him any right for his appointment on regular basis or give him seniority in that grade. The applicant has not denied the fact that he was repatriated to DGE&T and joined as Research Officer. The order promoting the applicant to the post of Assistant Director of Employment Exchanges on ad hoc basis was extended from time to time upto 31st October, 1989.

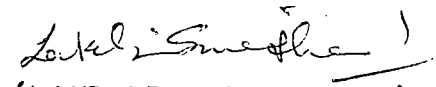
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23

This was a stop-gap arrangement. It is well settled law that <sup>much</sup> ~~this~~ ad hoc promotion as Assistant Director from 29.4.1988 cannot give him a right for regularisation from that date or seniority.

12. In the result, we find no merit in this O.A. and is, therefore, rejected. There will be no order as to costs.

  
(LAKSHMI SWAMINATHAN)  
MEMBER (J)

  
(S.R. ADIGE)  
MEMBER (A)