

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
XXXXXX XXXX XXXX
NEW DELHI BENCH

O.A. No. 1921 OF 1990. ~~xxx~~
Text Box

DATE OF DECISION 26.4.1991

P.V. Subba Rao,

Petitioner

Shri K.N.R. Pillai,

Advocate for the Petitioner(s)

Versus

Union of India,

Respondent

Shri P.P. Khurana,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman,

The Hon'ble Mr. M.M. Singh, Administrative Member.

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?
4. Whether it needs to be circulated to other Benches of the Tribunal? No

P.V. Subba Rao,
S/o Shri P.Satyanarayana
Age 34 years
Research Assistant
Department of Environment,
Forests & Wildlife
Ministry of Environment & Forests
Parivarayan Bhawan,
New Delhi. Applicant.

(Advocate: Shri K.N.R. Pillai)

Versus.

Union of India
through the Secretary,
Ministry of Environment & Forests
(Department of Environment,
Forests & Wildlife)
Parivarayan Bhawan,
Lodhi Road, New Delhi.

(Advocate: Shri P.P. Khurana)

J U D G M E N T

O.A.No. 1921 OF 1990

Date: 26-4-1991

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The relevant undisputed facts in the above application filed under section 19 of the Administrative Tribunals Act, 1985 and the reply to it of the respondent Union of India are as below. Along with these facts we have given our own observations also for juxtaposition which helps comprehension.

2. The Department of Environment of the Union of India maintained a Roster of Scientific Personnel for their "suitable appointment", to quote from the respondent's reply. In this roster appeared names of those who applied pursuant to a circular issued. Even before the promulgation of new recruitment rules of 1987 for the post of Research Assistants in the M. B. Sr.

Department of Environment, the latter started filling up the vacant posts of Research Assistants. Three persons were appointed in June and July 1983. The process of selection and appointment in their case consisted of circulating, on 19.1.83, the information about eight vacancies among all departments of the Government of India and research institutions etc. and inviting volunteers. Later, on different dates in 1984, nine persons including the applicant were appointed from those figuring in the above Roster. The applicant was so appointed on 11.9.84. Six persons were so appointed before him and two after him on different dates. The applicant was, by chronology of appointments, the seventh. The appointment of the applicant was preceded by an offer dated 10.5.84 to him made by the respondent. The offer, "based on the Roster of Scientific Personnel for a suitable position being maintained in the Department of Environment", was "for a temporary appointment" and "on ad hoc basis for a period of one year or till the post is filled on regular basis whichever is earlier", to quote from the offer (Annex. A-1). With the applicant having accepted the offer, appointment letter to him followed. On his joining duty on 11.9.1984, an establishment order was issued which contained, besides the above terms of the offer, a notice that the appointment "will not confer on him any right for regular appointment to or seniority in the grade".

3. Thus appointed, the applicant was continued in the post undisturbed even after one year, the maximum duration mentioned in the letter of offer and in the establishment order, as the posts were not filled up on a regular basis. By publication dated 14.11.87, the UPSC advertised for ten posts, of which

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three were exclusively reserved for Scheduled Caste candidates and for Scheduled Tribes. The advertisement informed that the posts were temporary but likely to be continued indefinitely. Qualification of age not exceeding thirty years on 14.12.87 was relaxable for Government servants upto five years. The advertisement was issued after the issue on 22.9.1987 of new recruitment rules for the post. The preamble to the notification of these rules shows that they were product of the exercise of powers conferred by the proviso to Article 309 of the Constitution and in supersession of the Department of Environment (Research Assistant) Recruitment Rules, 1983 "except as respect things done or omitted to be done before such supersession". The applicant was appointed on 11.9.1984 when, as seen from the preamble, the Rules of 1983 were applicable. These rules of 1983 have not been shown to us by both parties. Apparently, the applicant was ignorant of the 1983 Rules for he has averred in his application: "In 1984, when I was appointed, recruitment rules had not been framed for these posts". The respondent has relied on the 1987 rules for defence though they came into force on the date of their publication, namely, 22.9.1987 and the applicant was appointed on 11.9.84 when the 1983 rules were applicable. In the respondent's reply, crediting the applicant with knowledge of the 1987 Rules, it has been averred that "it is, however, denied that the applicant was not aware of provisions of Recruitment Rules and the nature and tenure of his appointment". With the applicant appointed in 1984, the applicant's awareness of "nature and tenure of his appointment" should, in our view, also relate to the 1983 rules. True, the preamble above excepts things "omitted to be done" pursuant to 1983 rules before their supersession by 1987 rules. But the fact that the respondents continued the applicant in ad hoc

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service all these years also cannot be ignored. That prolonged the precious period of early life (the applicant) devoted in the service of the establishment wholly wasted" (^{see} in Jacob's case infra.)

4. However, we glanced at 1987 Rules the respondent relies for defence. Rules 1, 10, 11 and 13 in these rules appear significant. They are reproduced below:

"1. Short title and commencement: (1) These rules may be called the Department of Environment, Forests and Wildlife (Research Assistant) Recruitment Rules, 1987.

(2) They shall come into force on the date of their publication in the Official Gazette.

10. Method of Recruitment i) 10% by promotion whether by direct recruitment or by promotion or by deputation/transfer & percentage of the vacancies to be filled by various methods. failing which by transfer on deputation (including short-term contract). ii) 50% by direct recruitment failing which by transfer on deputation (including short-term contract). iii) 40% by transfer on deputation (including short-term contract)/ transfer.

11. In case of recruitment by promotion/deputation/ transfer, grades from which promotion/deputation/transfer to be made. PROMOTION Junior Technical Asstt. with 5 years' regular service in the grade. Transfer on deputation (including short-term contract)/transfer Officers under the Central Government/ State Government Universities/Recognised Research Institutions/ Public Undertakings/

State or Autonomous Organisation.

- a) i) holding analogous posts regular basis; or
- ii) with 5 years' regular in posts in the scale of Rs.1400-2300 or equivalent and
- b) possessing the educational qualifications & experience prescribed for direct recruit under Col.7.

(The departmental officers in the feeder category who are in direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly deputationists shall be eligible for consideration for appointment by promotion of deputation/contract including period of deputation in an ex-cadre post held immediately preceding this appointment in same or some other organisation/department of the Central Government shall ordinarily not exceed 3 years).

13. Circumstances in which : Consultation with Union Public Service Commission is to be consulted in making recruitment. the commission necessary while making direct recruitment and selecting an officer for appointment on deputation/contract and transfer. "

5. Two posts were filled up on regular basis as per UPSC recommendations from the nine Research Assistants who were appointed with the applicant in 1984. These two, S.N. Satpathy and Manoranjan Hota, were, seen from the date of their ~~respective~~ appointment appointed on 14.12.1984 whereas the applicant was appointed before them on 11.9.1984, of course all on ad hoc basis. Two posts were filled up on regular basis. M. H. Suv.

not even apply for such selection when such posts were advertised.

6. With regard to the outcome of the applicant's trying for direct recruitment pursuant to above referred UPSC advertisement, he did not even figure in the short list prepared by the UPSC. For this outcome, he believes that the UPSC gave weightage to length of experience of candidates over their academic qualifications for inclusion in the short list. His this belief ^{the result of the M} is based on informal inquiries he made when his high qualifications consisting of M.Sc. in Biosciences, post M.Sc Diploma in Environmental Sciences and M Phil in Environmental Science, all in the first class, turned out to be as pedestrian as perhaps the paper on which his these qualifications were printed to certify.

7. The applicant's ^{case} sly is that the UPSC had advertised for ten posts and recruited only seven candidates, leaving three posts unfilled even as seen from the advertisement. He further avers that three vacancies in direct recruitment quota still continue. These averments in para 4(iii) of the application have not been covered by the respondent's reply which is stated to cover paras 4(i) and 4(ii) of the application only. The reply thus does not deny or dispute these contentions of the applicant. We also notice that para 5A of the application which, relying on Roshan Lal Tandon V/s. Union of India, (AIR 1967 SC 1989), Union of India V/s. Arun Kumar Ray (1986, 1 SCC, 675) and Dr. Sangeeta Narang V/s. Delhi Administration (ATR 1988(1) CAT 556) pleads that an ad hoc employee is entitled to continue in service as long as a vacancy exists, that it is responsibility of the Government to refer ad hoc employees case to UPSC on completion of one year of
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service and soon as it was known to the respondent that the appointment would exceed one year, and that having been selected from the Roster on the basis of his high academic qualifications, the initial appointment had all the characteristics of a regular appointment, is also not covered by respondent's reply in specific terms.

8. In the above facts and rival pleadings, the applicant seeks relief of continuity in service in his present post so long as vacancies continue and reassessment of his suitability for regularisation and relaxation in age limit in case his present age comes in his way in this relief or any other relief considered just and proper. To the respondent, the application lacks substance and deserves to be rejected.

9. We heard the counsel for the parties.

10. The circular persuant to which the applicant applied for inclusion in the Roster of Scientific Personnel and what promises and prospects, if any, it contained to attract applicants have not been shown to us. But it is beyond doubt that the applicant figured in the Roster and his high academic and, may be, other qualifications also caught the attention of the respondent to make an offer to him of the post. This implies that at that juncture in 1984 when the 1987 recruitment rules for the post had not been framed and 1983 rules applied, the applicant along with some others similarly figuring in the Roster, was chosen as the most eligible for the post. It is also clear from the terms of the UPSC publication, supra, that the posts advertised were likely to be continued indefinitely and in fact have been so continuing from dates over three years

before the advertisement against which the applicant and some others came to be offered appointments and were appointed. This position was ^{was the M} ~~clear~~ even when, on 19.1.83, information about eight vacancies was circulated and only three were appointed. Thus there is no doubt that ad hoc appointment of the applicant was made in 1984 although the posts were virtually of permanent nature and existing even in 1983. However, when the 1987 recruitment ^{rules} were framed and UPSC started the process of direct recruitment according to these rules, the applicant, as stated earlier, suspects that he was not included in the short list of the UPSC as UPSC gave weightage to experience over academic qualifications. That, if true, could, by itself be a disputable approach of UPSC when direct recruitment was the aim and purpose of the exercise. It is to be noticed that the recruitment rules, supra, provide for induction of experienced hands by separate provisions by earmarking 10% posts to be filled by promotion and 40% by transfer on deputation. The UPSC's publication incorporated two years experience as it figured in the essential qualifications in the 1987 recruitment rules. The applicant's fear that though he answered the essential qualification of two years' experience also though as an ad hoc incumbent, he did not figure in the short list of the UPSC because the UPSC gave weightage to experience thus has substance. No light has been thrown by the respondent on why the applicant did not come to be included in the UPSC's short list.

11. The question now is whether it is fair, legal and in public interest to have rendered jobless on 30.9.90 a highly qualified person who was offered the post and appointed by the respondent department though on ad hoc basis in 1984 when clear and permanent
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vacancies existed, after about six years of his service especially when there is no averment or allegation that the applicant was not working satisfactorily or that there were any complaints about his conduct or that any other ground of employer dissatisfaction existed. On the contrary, the essence of the respondent's case is that he could not be continued in service as ad hoc as he was not regularised and could not even be appointed to the lower post of Junior Technical Assistant to which post Mrs. Budhiraja was appointed. All this on the basis of 1987 recruitment rules whereas the ^{h c} matter should have been examined by the respondent in the light of 1983 rules any time after 1985 when the applicant completed the initial one year of appointment on ad hoc basis. The applicant may be ignorant of the 1983 rules the respondents framed and may, therefore, not have pressed, at the relevant time, their provisions to support his case. But that does not absolve the respondents ^M of duty to be fair even to such an applicant who, all along, seems to have relied more on his outstanding qualifications in his subject than the knowledge of the changing recruitment rules for his livelihood and job performance.

12. The respondents ~~have~~ ^h themselves disclosed that ad hoc appointees S.N. Satpathy and Manoranjan Hota were appointed as Research Assistants on regular basis as per recommendations of the UPSC. These two were appointed on ad hoc basis from the Roster on 14.12.84 after the applicant who was appointed before them on 11.9.1984 as stated earlier. If the names of Satpathy and Hota came to be referred to the UPSC for appointment on regular basis, the respondent owes a clarification at least in the interests of demonstrative justice and fairness as to why the name of the applicant, senior in ad hoc service, was not referred to the UPSC for appointment on regular basis. The reply of the respondent is silent on this point though the same is vital for justice and fairness. In the absence of ^h M. R. S.

satisfactory explanation, impression that the applicant though senior in ad hoc service to Satpathy and Hota was discriminated against immediately arises, and sticks. It smacks of arbitrariness at the same time. Such discrimination and arbitrariness which is not even explained by the respondent has to be held as unconstitutional, illegal and unfair.

13. The above when, as seen from several precedents consisting of Supreme Court judgements, the judicial view is that ad hoc appointees with considerable service shall deserve sympathetic treatment from the administration and that ad hoc appointments against regular vacancies are taboo both under Government instructions and Court decisions. For an example, in Jacob M. Puthuparambil Vs. Kerala Water Authority (JT 1990 (4) SC 27), the Supreme Court had considered a similar issue relating to the regularisation of persons who had been appointed on ad hoc basis for several years. The Supreme Court had directed the respondents to regularise the services of such employees who had put in continuous service of not less than one year, as a separate block in consultation with the Kerala Public Service Commission. In doing so, the Kerala Public Service Commission had been directed to take the age factor as waived. In arriving at this conclusion, the Supreme Court relied upon its earlier decision in P.K. Narayani and Others Vs. State of Kerala and Others, 1984 Supp. S.C.C. 212 and in Dr. A.K. Jain and Others Vs. Union of India and Others, 1987 S.C.C.(L&S). In the case of Jacob M. Puthuparambil, the Supreme Court observed about the nature of ad hoc appointments and career rights imperative on such appointments as follows:-

"Such appointments were intended to be stop-gap temporary appointments to serve the stated purpose and not long term ones. The rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules. But since the appointment continued for long, the services had to be regularised if the incumbent

/_ sub-rule (e). possessed the requisite qualifications as was done by /

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Such an approach alone would be consistent with the constitutional philosophy adverted to earlier. Even otherwise, the rule must be so interpreted, if the language of the rule permits, as will advance this philosophy of the Constitution. If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the jobs as obtaining on the date of their employment, must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the breadwinner, will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered "age barred" for securing a job elsewhere. It is indeed unfair to use him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution."

14. The case of the applicant is on a stronger footing than the above case for, as stated earlier, he was chosen from a Roster for offer to him of post. This evidences that the applicant possessed due qualifications for the post. Again, while in the above precedent rules for recruitment existed, in the applicant's case the new 1987 rules for recruitment came to be applied three years after his appointment and the rules of 1983 which should have been applied ^{h c} ~~lincly~~ not applied and no explanation offered for not doing so. The respondent in the circumstances cannot be cleared of having resorted to unjust
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termination despite existence of a vacancy to continue the applicant in service not denied. Further, as stated above, there is evidence of unfairness, arbitrariness and discrimination on the part of the respondent authority in dealing with the applicant's case and undenied allegation of U.P.S.C. having given weightage to experience over academic qualifications in direct recruitment though the rules, supra, made separate provision for induction of such experience and the applicant possessed more than minimum experience laid down in rules of recruitment and in the U.P.S.C. advertisement.

15. In the result, we find that the application has merits and has to be and is allowed to the extent of the following directions:-

- (i) The termination notice-cum-order dated 8.5.1990 is quashed and set aside. The respondent is directed to take the applicant back in service as Research Assistant within a period of fifteen days from the date of receipt of a copy of this order on the basis as if his services were not terminated on 30.9.1990 and to pay him full back wages within a period of three months from the date of receipt of a copy of this order.
- (ii) The respondent is further directed to refer the case of the applicant to the U.P.S.C. for regularising his services in consultation with them. While doing so, they shall, if

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necessary, relax the upper age limit for appointment as Research Assistant.

His regularisation should be on the basis of the evaluation of his work and conduct based on his annual confidential reports, as was directed by the Supreme Court in Dr. A.K. Jain's case.

(iii) The applicant will be entitled to the protection of pay and allowances of the post of Research Assistant, including the increments drawn by him and other benefits admissible to a regular employee.

(iv) The respondents are directed to comply with the directions in (ii) above within a period of three months from the date of receipt of this order.

Parties to bear their own costs.

M. M. Singh
(M. M. Singh)
Administrative Member

24/4/81
(P. K. Kartha)
Vice-Chairman (Jud. I.)