

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

R.A. No.265 of 1993 in

O.A. No.,2068 of 1990.

New Delhi this the 5th day of January, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member(A)

Union of India & Another

...Petitioner in the RA/
Respondent In the O.A.

By Advocate Shri H.K. Gangwani

Versus

Shri Ashwani Kumar

...Respondent in the RA/original
applicant in the OA

By Advocate Shri B.S. Mainee

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

This Review Application has been filed on the basis of an order passed by the Supreme Court in S.I.P. No.20997 of 1993 decided on 05.07.1993.

2. The aforesaid S.I.P. was filed by the Union of India & Another against the judgment given by the Principal Bench of this Tribunal consisting of one of us (Hon'ble Shri B.N. Dhoundiyal, Member) in O.A. 2068 of 1990 preferred by Shri Ashwani Kumar, the respondent in this Review Application.

3. The Tribunal in its judgment dated 20.08.92 observed:-

"...It is admitted that the applicant was the seniormost person in the lower grade when he was given ad hoc promotion and that ^{this} promotion was against a permanent vacancy and that his continuous officiation was followed by regularisation..... In our opinion, ad hoc officiation of the applicant in the instant case, was not fortituous in terms of Railway Board's letter dated 18.03.1954....".

In paragraph 8 of the judgment the Tribunal issued some

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directions. Direction No.2 has relevance and is, therefore, extracted:

"The applicant shall be deemed to have put in the prescribed length of service as Personnel Inspector and to have rightly been allowed to appear for selection for the next higher post of Group 'B' Assistant Personnel Officer".

4. We may now read the order of the Supreme Court. It appears to us that the only submission made on behalf of the Union of India & Others by the learned Additional Solicitor General was that the Tribunal committed an error when it said in its judgment that the ad hoc promotion to the post of Personnel Inspector on ad hoc was given to respondent on the basis of seniority-cum-suitability. The argument was that promotion was given to the respondent (respondent means before the Supreme Court) was just ad hoc and without consideration of seniority-cum-suitability. His Lordship after taking note of the arguments advanced on behalf of either side observed:-

"It will be open to the petitioners to file a fresh application before the Tribunal within a period of two weeks from 05.07.93(the date of the judgment of the Supreme Court) and to bring to the notice of the Tribunal all relevant material for consideration as to whether on 22nd August, 1985, the ad hoc promotion given to the respondents, was after consideration of seniority-cum-suitability.....".

5. Having read and reread the order of the Supreme Court we have come to the conclusion that the limited enquiry set for us in the Review Application is as to whether the ad hoc promotion given on 22.08.85 to the respondent was on the consideration of seniority-cum-suitability.

6. The matter came up before us on 03.01.94. During the course of the arguments, Shri Gangwani, the

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learned counsel for the respondents made an offer that he will produce the relevant records pertaining to the ad hoc appointment of respondent (Shri Ashwani Kumar). The relevant record has been produced before us today.

7. On a perusal of the record, we find a note dated 4.05.1985 of some responsible officer. The note is: "the post of Personnel Inspector Grade Rs.425-640(AS) is a selection post. As such, the applications from the eligible senior clerks Grade Rs.330-560 may be called for. Out of those eligible candidates, the three seniormost employees may be promoted purely on ad hoc basis as Personnel Inspector, pending selection."

A proper selection for the post of P.I. may be processed".

This note was agreed to by the officer higher in rank (DPO). We then find another note at the foot of the note that the DPO's orders may be perused expeditiously. Shri Gangwani, the learned counsel for the petitioners in the R.A. has contended that the respondent was given the appointment as he was considered to be the seniormost amongst those who had applied in terms of the applications called for. Therefore, there can be no getting away from the fact that the respondent was given an ad hoc appointment because he was considered seniormost amongst the optees for the appointment. It is obvious that the respondent was selected for the ad hoc appointment because he was not considered unsuitable. It follows that the ad hoc appointment was given to the respondent on the basis of seniority-cum-suitability.

8. Shri Gangwani has pointed out that this Tribunal committed an error while giving the benefit of continuous officiation to the respondent. We have already pointed out that the scope of the enquiry in this R.A. is ^alimited one, as directed by the Supreme Court. We are, therefore, not called upon to examine this contention. Even if the contention is to be examined on merits, we may indicate

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at once that this Tribunal took the view that under the circumstances of the case, the respondent should be given the benefit of continuous officiation on the basis of the judgment given by the Supreme Court in the case of Direct Recruits Engineering Association Vs. State of Maharashtra, JT 190 Volume 2 SC page 264. We have already emphasised that the Tribunal has taken pains to point out that the ad hoc appointment of the respondent was a non fortituous one. The petitioners have not been able to place before us any material to indicate that such an ad hoc appointment was de hors the rules. We have, therefore, come to the conclusion that while giving the benefit of continuous officiation to the respondent, the Tribunal has not committed an error much less an error apparent on the face of the record.

9. This R.A. has no merit and it is rejected. There shall be no order as to costs.

B.N. Dhondiyal
(B.N. DHOUNDIYAL)
MEMBER (A)
05.01.1994

S.K. Dhaon
(S.K. DHAON)
VICE CHAIRMAN
05.01.1994

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