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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.40/90

New Delhi this the 22nd Day of September, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Smt. Lakshmi Swaminathan, Member (J)

M.S. Bisht,
S/o Late Sh. D.S. Bisht,
R/o 8, Laxman Bhawan, Purana Kila,
Lucknow-226 001.

...Applicant

(By Advocate Sh. M.C. Juneja, though none appeared)

Versus

1. Union of India through
the Secretary,
Ministry of Defence,
South Block,
New Delhi-110011.

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

...Respondents

(By Additional Standing Counsel Sh. M.K. Gupta)

ORDER(ORAL)

Hon'ble Mr. N.V. Krishnan:-

On an earlier occasion, we had passed an oral order on 17.5.94. That order had to be recalled because it came to our notice before that order was signed, that the applicant has filed a rejoinder in which he has stated that the enclosures to the reply of the respondents were not served on him. In the interest of justice we directed that these be served on the applicant's counsel. These enclosures have now been served on the applicant's counsel on 26.5.94. Since then, neither the applicant nor his counsel is present. The applicant did not appear on 5.9.94 and is not present today also. Hence, we proceed to pass the orders, after hearing the learned counsel for the respondents.

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2. The grievance of the applicant is that he has been regular rise as Superintendent B/P Grade-I w.e.f 3.1.83 only, whereas the applicant rendered service from 10.5.81 to 1.1.85 in the same grade. The service has been created as ad hoc whereas it was on probation when from the Annexures A-1 to A-5. He was given regular increments. Hence it was a regular appointment. He made a representation for counting this service for the purpose of seniority. This was rejected by the Annexure A-1 order of the respondents dated 11.1.83. Hence, this application has been filed for a direction to the respondents to reckon the applicant's seniority as Superintendent B/P Grade-I from the date of his continuous and uninterrupted officiation in that post from 10.5.81. The applicant refers to the Tribunal's judgment in S.S. Kumar and Another vs. Union of India & Others - AIR 1983 (3) SC 665.

The respondents have filed a reply, in which it is stated that the applicant was appointed purely on an ad hoc basis by the Annexure A-1 order dated 3.1.83. A panel for ad hoc promotion was prepared. The applicant was also included. Ranks 4 and 5 of the order dated 1.1.83.

The above promotions (ad hoc) are for a period of one year or till further order, whichever is earlier. These ad hoc promotions will be effective from the date of attaining the higher appointment which will be intimated to the Hq/1st C Branch, Army HQ in due course.

45. The attention of the above individuals promoted on ad hoc basis is drawn to the Department of Personnel and Administration No 2004/1, Memo(D) dated 10.11.82, which is circulated under 1-100/12 Branch letter

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No. A-2000007 INHOP/HIC dated 23 Jul 77 regarding
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7. We have considered the matter. We are of the view that granting benefit of such ad hoc service for seniority purpose would be detrimental to the interests of others whose cases have not been considered for ad hoc appointment. That would be violative of the provisions of Article 14 of the Constitution of India amounting to injustice to the others. Further, the issue is squarely decided by the decision of the Supreme Court in the Direct Recruit's case (AIR 1990 SC 1607). The Court said as under:

"Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Seniority can not be determined on the sole test of confirmation, for, confirmation is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Arts. 14 and 16. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering seniority." (emphasis given).

8. That settles the issue. In view of the averments made by the respondents which have not been denied and the contents of Annexure R-III order dated 30.3.83, this CA has no merit. It is dismissed.


Lakshmi Swaminathan
Member (J)

'Sar'


27/9/94
(N.V. Krishnan)
Vice-Chairman (A)