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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.

(7)

2. The grievance of the applicant is that he has been regularised as a Sub-Inspector B/R Grade-I V.E.F. 3... only, whereas the applicant is in undivided service from 10.5.83 to 1.... 5 in the same grade. The service has been treated as ad hoc whereas it was on probation taken from the Annexures A-1 to A-5. He was given regular increments. Hence it was a regular appointment. He, therefore, made a representation for counting this service for the purpose of seniority. This was rejected by the Annexure A-1 order of the respondent dated 21.1.89. 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 utilisation in that post from 10.5.83. The applicant refers to the Tribunal's judgment in S.S. Varma and Another v. Union of India & Others - AIR 1987 (2) 843 - 65.

In the respondents name filed a reply. It is stated that the applicant was appointed purely on ad hoc basis by the Annexure B-1 order dated 3.1.83. A power for ad hoc promotion was prepared. The applicant was allowed to take bars 4 and 5 of the standard scale.

The above increments (ad hoc) are for a period of one year or till further order, which ever is earlier. These ad hoc promotions will be effective from the date of its taking the higher appointment which will be informed to the HQ, HQ, HQ, HQ in the course.

4. The intention of the above order is to be promoted on ad hoc basis on the Department of Personnel and Training No 20441, 1987(D) dated 10.1.87 and circulated among concerned concerned officer.

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No. A 100001 NHOP/HTC dated 23 Jul 77 regarding
the use of a vice ordered ad hoc. This
is the first confirmation/confirmation.

The 11th March went he was appointed on probation in the
A-2 and A-5 which was a mistake. In regard to
the 11th a qualification to a probation appointment. The
probation period is as follows:

4. The basis of the appointment, he was placed on ad hoc basis for a one stop-gap arrangement for a specific period which was later extended from time to time until he was selected on regular basis. Eventually upon his appointment to stop-gap arrangement he continued till he was regularly selected, the fact's remain at his initial appointment was through Departmental Promotion and he is not entitled that while he was placed on ad hoc basis he was considered as a possible candidate for the post and the initial offer of his services was accepted by his superiors for him to serve as a stop-gap + he was stopped from being promoted to the regular basis.

5. The appointment of Mr. D. R. Datta in the post of Director of Supply and Transport in the initial list of the "value" of the information requested it is to be noted that D. R. Datta is a regular employee.

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(9)

7. We have considered the matter. We are of the view that granting benefit of such ad hoc service for arbitrary purpose would be detrimental to the interests of ours those cases have not been considered for ad hoc appointment. That would be violative of the provisions of Article 14 of the Constitution of India and doing 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.

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