

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1495/91.

Date of decision 14/12/92

Shri Rahul Singh ... Applicant

v/s

Union of India & Ors. ... Respondents

CORAM:

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble Member Mr. I.P. Gupta, Member (A)

..

Applicant in person

For the respondents ... Shri A.K. Behra, counsel.

(1) Whether Reporters of local papers may be allowed to see the Judgement ?

(2) To be referred to the Reporter or not ?

JUDGEMENT

Delivered by Hon'ble Mr. I.P. Gupta, Member (A) 7

In this application filed under Section 19 of the Administrative Tribunal Act, 1985, the applicant has requested for quashing the order dated 12th October, 1990 of his reversion by a day and declaring the applicant

as regular with effect from 1st October, 1984.

2. The contention of the applicant is that he continued to officiate as Civilian Staff Officer (CSO) from 1st October, 1984 with technical breaks of one day or two days ~~periodically~~^{on}. Even such dates of technical breaks he did function as CSO.

3. By order dated 6th November, 1984 (Annexure 3) the applicant was appointed as CSO as a stop gap arrangement. The order said that pending availability of approved select list for promotion of Assistant Civilian Staff Officers to the grade of CSOs and the approval of all concerned authorities to the relaxation of eligibility conditions, the promotion was being made which was stop-gap in nature. At Annexure 4 is a certificate that the applicant officiated as CSO from 1.10.1984 to 29.4.1985 and actually performed duties of the higher post vice Shri P.N. Singh (retired). The officiating promotions were extended from time to time, on ad hoc basis. Annexure 7 et. seq. refer. Annexure 6, L These annexures said that he was appointed to the grade of CSO on ad hoc basis for a period of six

months or till the officers concerned retired from service or till regular incumbents became available which ever was earlier. The ad hoc appointments were approved by the competent authority. By order dated 7.4.1989 the applicant was appointed as CSO under Rule 10(2) of AFHQ Civil Service Rules, 1968 (p. 103). Such officiation under Rule 10 continued thereafter. Annexure 13 filed by the applicant shows various dates of appointment, type of appointment and the days of break. The total technical break from 1984 to 1990 was for about nine days. The applicant was reverted by order dated 12.10.1990 and again allowed to officiate under Rule 10(2) by order dated 15.10.1990.

4. The applicant's case is that he continued to work un-interruptedly against the post of CSO with technical breaks and in the case of Karnataka State Private College Stop-Gap Lecturers' Association versus State of Karnataka and others JT 1992 (1) SC 373 the practice of breaking service by a day or two has been deprecated by the Apex Court; the applicant therefore should be taken as having officiated continuously in the post of CSO from 1.10.1984. He cited the cases of

Narendra Chadha v/s UOI [1986(2)SSC 157] where it was held that promotees continuing in ad hoc position for 15 to 20 years without being reverted to their original posts and without right to ~~claim~~ hold the promotion post being questioned were entitled to regular promotion. DPC instead of meeting annually in accordance with the rules and instructions met only thrice in that case in 19 years and in selecting for regular promotions only those promotees who had four years of regular service in their feeder post as on a specified date of several years back was illegal. The applicant contended that it was after the decision in Narendra Chadha's case that the first break in his service was given. The applicant further cited the case of Direct Recruit Class II Engineering Officers' Association and Others v/s State of Maharashtra and Others (AIR 1990 SC 1807) where it was held that 'if the initial appointment is not made by following the procedure laid down by the rules but the appointee continued in the post uninterruptedly till the regularisation of his service in accordance with the rules the period of officiating service will be counted.'

5.4. The applicant further contended that the respondents

have admitted in their counter (p. 8 against para 1) that the applicant's appointment was always under Rule 10(2).

Rule 10(2) is reproduced below :-

" Notwithstanding anything contained in the Third Schedule, an officer employed in any office of Armed Forces Headquarters and under service organisations specified in the First Schedule, and eligible to be considered for promotion to the grade of Director or Selection Grade or Civilian Staff Officer or Assistant Civilian Staff Officer, as the case may be, under the provisions contained in the Third Schedule, may be appointed to officiate in a temporary vacancy of specified or unspecified duration in that office, for a period not exceeding three months, in the grade of Director or Selection Grade or Civilian Staff Officer or Assistant Civilian Staff Officer, as the case may be, if the Select List for the relevant Grade is not available or an officer included in the Select List for that Grade is not available or cannot, for any reason, be appointed to such vacancy :

Provided that the aforesaid period of three months

mentioned above, may, in exceptional cases and with the approval of the Ministry of Defence, be extended to six months in public interest."

'Approved Service' in the AFHQ Civil Service Rules, 1968 has been defined as follows :-

" approved service" in relation to any Grade means the period or periods of service in that Grade rendered after selection, according to prescribed procedure, for long-term appointment to the Grade, and includes any period or periods during which an officer would have held a duty post in that Grade but for his being on leave or otherwise not being available for holding such post."

5. The said rules also provide that for promotion to the post of CSO ' minimum 8 years continuous approved service as Staff Assistant Civilian/Officer would be needed.

6. In short, the applicant's case has been that he has been officiating under Rule 10(2) of the said rules right from 1.10.1984, the technical breaks were no breaks at all and having officiated continuously till 1.10.1984 with the approval of the competent authority the requirement of 8 years approved service

should be deemed to have been relaxed in his case and, therefore, he should be regularised as CSO from 1.10.1984, keeping in view the observations of the Apex Court in the case of Narender Chadha (Supra) and Direct Recruitment Class II Engineering Officers' Association and Others (Supra). The applicant also stressed that the respondents had in the last six years prior to 1984-85 promoted persons to the grade of CSO having only 4 to 5 years approved service in the grade of Assistant CSO. His initial appointment as CSO has to be taken as if it were under Rule 10(2) vide order dated 6.11.1984 which showed that the respondents had relaxed the eligibility condition of 8 years to 4 years approved service as on 1.10.1984 and promoted the applicant as officiating (not ad hoc) CSO. This was done as the DPC was to be held by UPSC to whom the ACRs of the eligible candidates had been sent and the applicant should be deemed to have been appointed regularly with effect from 1.10.1984. Even otherwise the applicant completed 8 years approved service in the grade of ACSO on 1.10.1988.

Q. It has been stated in the counter filed by the respondents that the regular appointments to the grade of CSO are made on the recommendation of the DPC held in UPSC in accordance with the statutory provisions of AFHQ Civil

Service Rules, 1968 and AFHQ Civil Service (Promotion to the Grade of CSO & ACSO) Regulations. The officiating appointments made from time to time were on the clear understanding that these were for specified periods and did not confer any rights on individual so appointed for regular appointment. The reference to the judgement of the Apex Court in Narender Chadha & Ors. (Supra) was not relevant as the applicant did not even fulfil the eligibility conditions for appointment to the grade of CSO, when he was appointed on ad hoc basis. The eligibility conditions for promotion to the grade of CSO is 8 years of approved service in the grade of ACSO. However, due to large scale retirement of the war time entrants, officers with 8 years of approved service were not available for promotion to the grade of CSO from 1978 onwards. Accordingly, the eligibility condition was relaxed to five years of approved service during the years 1978-79, 1979-80 and 1980-81. The eligibility condition was further relaxed to four years of approved service during the years 1981-82, 1982-83 and 1983-84. For the DPC year 1984-85, the UPSC did not agree to relaxation of the eligibility conditions. Since officers with 8 years

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of approved service were still not available and it was not possible to keep the appointments unfilled, it was decided, with the approval of the Appointing Authority, to make ad hoc appointments to the grade of CSO from amongst ACSO and Stenographer 'A' with four years approved service to manage the day-to-day functioning of the three services headquarters and ISOS.

Q. 9. Analysing the facts and arguments in this case, we find that the appointments of the applicant prior to 7.4.1989 were either stop-gap or ad hoc or until the availability of regular incumbents. The first time that he was appointed under Rule 10(2) was by order dated 7.4.1989. This is evident from a perusal of appointment letters and Annexure 13 filed by the applicant himself. The contention of the applicant that his initial appointment vide order dated 6.11.1984 should be treated as if it was under Rule 10(2) would not hold good. Annexure 3 is the appointment letter dated 6.11.1984. It said that pending availability of approved select list for promotion of ACSOs to the grade of CSOs and the approval of all concerned to the relaxation of eligibility conditions the interim arrangement was made

and it was stop-gap arrangement. Rule 10(2) was not taken recourse to for that officiating stop-gap arrangement.

9. The Recruitment Rules provide for eligibility for promotion to the post of CSO with minimum 8 years continuous approved service. Even ignoring the technical breaks, the applicant had not completed 8 years approved service on 1.10.1984 because according to the applicant's own admission he would complete 8 years service on 1.10.1980. Approved service means service rendered after selection, according to prescribed procedure. Though the recruitment rules provide for a relaxation clause and though such relaxations were given by the respondents for promotions upto 1983-84 but the eligibility condition for the DPC from 1984-85 onwards was decided not to be relaxed because of the recommendations of the UPSC. The applicant contended that the UPSC's recommendation was only recommendatory in nature and the respondents could have taken a decision to differ from the recommendation and relax the eligibility condition. It is true that the UPSC's recommendations are not mandatory but it is not left to the Bench to direct that the respondents should differ with the recommendation.



of the UPSC and relax the provision when we do not find any legal compulsion to do so. Just because relaxations were given in the past it would not follow automatically that relaxations should continue to be given in future also.

10. The case of Narendra Chadha quoted by the applicant is not on all fours with the facts of this case. In that case for no fault of the petitioners and the officers similarly situated their cases for promotion were not considered by DPG every year and even those who had been found fit by the DPC for promotion had to wait for nearly 15 years to get into the regular service through a select list prepared by the DPC.

11. It is legally settled that an employee has undoubtedly a right to be considered for promotion but only in accordance with the recruitment rules. Even in the

Narendra Chadha (Supra) case of 1 the following observation was made :-

" But we, however, make it clear that it is not our view that when ever a person is appointed in a post without following the rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post.

But in a case of the kind before us
where persons have been allowed to
function in higher post for 15 to
20 years with due deliberation it
would certainly be unjust to hold
that they have no sort of claim
to such posts and should be reverted
unceremoniously or treated as persons
not belonging to the service at all,
particularly where the Government is
endowed with the power to relax the
rules to avoid unjust results."

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12. The case of Direct Recruit Class II Engineer-
ing Officers' Association (Supra) will not also
entitle the applicant to regular appointment until
he had completed 8 years continuous approved service
as ACSO according to the provisions of the recruitment

rules. It is true that para 44(B) of the Judgement in the case of Direct Recruit Class II Engineering Officers' Association v/s State of Maharashtra reads as follows:-

" If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

The above has, however, to be read with para 44(A) which reads as follows :-

" 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. 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 the seniority."

Stop-gap officiating arrangement dehors the rules would not confer any right for regularisation. It is not a case where the procedure was not followed for regularisation though the applicant had fulfilled conditions of the recruitment rules. The applicant lacked in the eligibility condition itself.

13. The Learned Counsel for the respondents in their written statement stated that since the panel for the year

1988-89 was prepared for the first time in 1992 and it was not a case of Review DPC, the applicant would be treated as regular CSO from the date of issue of promotion orders namely 16.10.1992 or the date when he actually assumed the charge of the post of CSO, under the normal rules. The respondents have mentioned that notwithstanding the above and taking into consideration the peculiar circumstances of the case, the Government was trying to explore the feasibility of treating the applicant as regular CSO w.e.f. 1.10.1984.

15. 14. Since the applicant had completed 8 years service on 1.10.1988 as required under recruitment rules and since the panel for 1988-89 has already been prepared, if the applicant figures in that panel, we direct that he should be regularised from 1.10.1988, the date when he became eligible. Consistent with the observation of the Apex Court in the case of Direct Recruit Class II Engineering Officers' Association the applicant should not be made to suffer for any procedural delay.

16. In short, though we cannot direct that the applicant should be regularised from 1.10.1984 in view of the provisions of Rule regarding eligibility, we

of what has been said above, we do direct that he should be treated as regular CSO from 1.10.1988 if he figures on the panel approved by the authorised DPC for the year 1988-89 in the event of availability of vacancy, according to his seniority.

16. With the aforesaid direction, the case is disposed of with no order as to costs.

IP Gupta
IP Gupta 14/12/92
Member (A)

Ram Pal Singh
Ram Pal Singh 14/12/92
Vice-Chairman (J)