

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(11)

OA No.2857 of 1991

New Delhi, this the 30th day of October, 1997.

Hon'ble Dr. Jose P. Verghese, Vice Chairman(J)
Hon'ble Mr. K. Muthukumar, Member(A)

Shri Yash Pal Singh Dosaj,
S/o Shri Dina Nath Dosaj
R/o 2-D, Madhur Apartment,
Inder Enclave,
Rohtak Road,
Delhi - 110 041

(By Applicant in-person)

...Applicant

Versus

1. Delhi Administration
5, Alipur Road, Delhi
(through its Chief Secretary)

2. The Secretary (Finance)
Accounts Department
Delhi Administration
5, Alipur Road, Delhi

...Respondents

(By Advocate : None)

ORDER

By Dr. Jose P. Verghese, VC(J) -

The admitted fact in this case is that the respondent, Delhi Administration, was facing acute shortage of qualified Junior Accounts Officers and so with the prior approval of the Government of India, it was decided that the officials of Grade II of Delhi Administration Subordinate Services having five years experience in Accounts and five year service in the grade may be appointed as Junior Accounts Officer on an ad hoc basis. Accordingly a Selection Board was constituted and a panel of 84 officials was drawn-up on the recommendations of the Selection Board. Accordingly, the petitioner who was one of those who were selected, was appointed as Junior Accounts Officer w.e.f. 13.11.1981 on ad-hoc basis and he

continued to hold the post till his regular appointment to the post of Junior Accounts Officer w.e.f. 22.04.1988 in accordance with the rules.

2. The Delhi Administration Accounts Service (Grade II) Rules, for regular appointment to the post of Junior Accounts Officers, were framed on 15.02.1982. As per the said rules, only those who qualify both parts of the Junior Accounts Officer examination become eligible for regular appointment. The case of the respondents is that since the petitioner was not eligible in accordance with the rules of 1982 for regular appointment, he was appointed in 1988 as soon as he became eligible in accordance with the rules of 1982.

3. On the other hand the case of the petitioner is that the appointment of the petitioner as Junior Accounts Officer, even though it was on ad-hoc basis, was at the instance of a duly selected Selection Board constituted for the purpose by the respondents and his name was cleared out of a panel of 84 officials, drawn on the basis of the recommendations of the Selection Board. It was contended that his entry into service was by no means a backdoor entry. Even though it was stated on the appointment order that his appointment was on ad-hoc basis, it was stated that he could not have been regularly appointed at the given time only because the Delhi Administration Accounts Service Grade II Rules came to be operative only w.e.f. 15.02.1982. And according to the principles laid down

in a number of decisions by the Hon'ble Supreme Court, his ad-hoc appointment w.e.f. 13.11.1981 has been subsequently regularised in 1988 on the basis of a rule notified subsequently in the year 1982, the benefit of continuous officiation which in the case of the petitioner was without break, is to be granted to the petitioner.

4. Therefore, the short question involved in this case is whether in accordance with the principles laid down by the Hon'ble Supreme Court in the case of Direct Recruit Class II Engg. Officer's Association Vs. State of Maharashtra, reported in (1990) 2 SCC 715 petitioner is entitled to treat his regular appointment w.e.f. 22.04.1988 as the one w.e.f. 13.11.1981, counting his ad-hoc service held without break and continued by regularisation, for the purpose of further service benefits. It was also stated that for the purpose of promotion to the post of Assistant Accounts Officer for which the recruitment rules have been finalised on 13.01.1982, three years regular service as Junior Accounts Officer was necessary. This requirement was found in the OM of the Administration dated 25.04.1990 and since the petitioner did not have three years of regular service as his regular appointment was only in April 1988, he could not be promoted to the post of Assistant Accounts Officer at that time. And it was stated that subsequently, as and when the petitioner completed the three years of regular service as Junior Accounts Officer, he has been promoted to the post of Assistant Accounts Officer subsequently.

5. We have heard the counsel on both sides, perused the records and we find that the petitioner is entitled to count his ad-hoc service from 13.11.1981 to 22.04.1988.

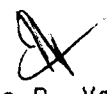
6. The contention of the petitioner that he happened to hold the post of Junior Accounts Officer on an ad-hoc basis, as the respondents themselves under compelling reason had recruited him, in accordance with a proper selection procedure, at the instance of a Selection Board. It was also stated that at the time when he was selected and appointed on an ad-hoc basis, the recruitment rule was still not formulated; thus his ad-hoc service remained ad-hoc for want of appropriate recruitment rule. The contention of the learned counsel for the respondents was that under recruitment rule, even though subsequently issued, require that the appointment to the post of Junior Accounts Officer could be made only if the incumbent passes the qualifying examination. We are afraid that the rule came into operation subsequent to the appointment and selection shall not be made a condition to reject the claim of the petitioner who happened to be appointed against an available vacancy in the year 1981 itself. The vacancies were available. The petitioner was qualified to be appointed and the appointment remained ad-hoc only for want of a recruitment rule for the purpose and regular selection could not be held for that reason. We are of the firm opinion that in accordance with the law as laid down by the Hon'ble

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Supreme Court as on today, the petitioner is entitled to count his ad-hoc service w.e.f. 13.11.1981 to 22.04.1988 for all purposes including seniority, promotion etc.

7. The respondents shall treat the period of ad-hoc appointment followed by regular appointment in 1988 as regular for all purposes, in accordance with the ratio of the decision of the Hon'ble Supreme Court in Direct Recruits case and pass an appropriate order giving all consequential benefits including the promotion to the grade of Assistant Accounts Officer as and when the petitioner became eligible. The respondents shall pass appropriate orders as directed above within four weeks from the date of receipt of the copy of this order. The petitioner shall be entitled to payment of arrears only to the extent of 50% in the circumstances of the case and we consider 50% in this case would meet the ends of justice. As such this OA is allowed to the extent mentioned above and no order as to costs.


(K. Muthukumar)
Member(A)


(Dr. Jose P. Verghese)
Vice Chairman(J)

/Kant/