

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA No. 3096/91

Date of decision: 27.11.92

Sh. O.P. Sharma

Applicant

Versus

Union of India

Respondents

For the applicant

Sh. A.K. Behra, Counsel.

For the respondents

Ms. Geeta Luthra, Counsel.

CORAM

Hon'ble Sh. P.K. Kartha, Vice Chairman (J)

Hon'ble Sh. B.N. Dhoundiyal, Member (A)

1. Whether Reporters of local papers may be allowed

to see the judgement? *Yes*

2. To be referred to the Reporters or not? *Yes*

J U D G E M E N T

(Of the Bench delivered by Hon'ble Sh. B.N.

Dhoundiyal, Member (A)

In this OA filed under Section 19 of Central Administrative Tribunals Act, 1985 by Sh. O.P. Sharma working at present as LDC in the Directorate of Health Services, Delhi has challenged the action of the respondents of not taking into account the period of service from 1.11.73 to 6.10.82 rendered by him in Grade IV of the Delhi Administration Subordinate Services as Telephone Operator on adhoc basis, for the purpose of fixation of seniority. *bv*

2. The applicant joined service under Delhi Administration as a Nursing Orderly in L.N.J.P.N.Hospital on 09.7.65. On the basis of his educational qualification, experience, service record and his performance in the interview before a duly constituted Departmental Promotion Committee, he was selected for appointment as Telephone Operator in Grade IV of Delhi Administration Subordinate Service. The appointment was initially for a period of 3 months with effect from 1.11.73 but was extended from time to time till 15.10.82. He was regularised as Grade IV of the DASS w.e.f. 7.10.82. Later, the seniority of Grade-IV of D.A.S.S. was circulated and the applicant was shown against Serial No. 8304 by taking his date of appointment in the Grade as 7.10.82. Thus, the adhoc service rendered by him for 9 years was ignored for the purposes of fixing of his seniority. He alleges that in case of one Sh. Birendra Kumar Gupta, who was similarly situated, the adhoc service was counted for fixing his seniority with effect from 5.4.73 i.e. the date of his initial promotion as Telephone Clerk on adhoc basis. A number of representations made by him did not elicit any response. The applicant has therefore, prayed that the seniority list (Annexure-V) published by the respondents be quashed to the extent it fixes his seniority without taking into account his adhoc service and that the respondents be directed to regularise him from the date of his initial appointment as Telephone Operator i.e. 1.11.73 with all consequential benefits. *SN*

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3. The respondents have contended that the seniority of the applicant has been fixed in accordance with the rules i.e. Delhi Administration Subordinate Services Rules, 1967. While working as a Ward Orderly, he was appointed as Telephone Operator with effect from 1.11.73 on a purely adhoc and emergent basis for a period of three months or till such time, a regular candidate was appointed. The post of Telephone Operator falls under Grade IV of the D.A.S.S. for which promotions are made on the basis of the recommendations of a duly constituted Departmental Promotion Committee and the common seniority list is approved by the Chief Secretary, Delhi. The said adhoc promotion was made by the Medical Superintendent, Irwin Hospital in violation of the rules and was, therefore, irregular. It was meant to be only adhoc and a stop gap arrangement. In accordance with the D.A.S.S. Rules, on the recommendations of the duly constituted Departmental Promotion Committee, the applicant was nominated for promotion to Grade IV(M) LDC with effect from 7.10.82 and this appointment was duly approved by the Chief Secretary.

4. We have gone through the records of the case and heard the 1d.counsel for the parties. The 1d.counsel for the applicant has cited a number of Judgements* to support his case *Sw*

- * 1. Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra (1990 (13) ATC 348)
- 2. Shanmugam and Another Vs. U.O.I.(II (1987) ATLT 331).
- 3. Kuldeep Chand Sharma & Another Vs. Delhi Administration (1978 (2) SLR 379)
- 4. S.C. Kacktwana & Ors. Vs. U.O.I. (II 1987) ATLT 50)
- 5. S.C. Jain Vs. U.O.I. & Ors. (1987) (2) SLR 416)

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that continuous adhoc services followed by regularisation should be counted for fixation of seniority. On the other hand, the ld.counsel for the respondents have cited cases in which it was held that if any statutory rules or executive orders provides to the contrary, the rule or order will have supremacy implying that in such cases, only services to the extent permissible to be counted under rules will be taken into account (AIR 1987 SC 424 - Ashok Gulati Vs. B.S.Jain) and (AIR 1989 SC 278 - Delhi Water Supply and Sewage Disposal Committee Vs. R.K. Kashyap). We have considered all these cases. In Narendra Chadha Vs. Union of India (1986 (2) SCC 157) it was held that where officers were promoted without following the procedure prescribed in the rules and worked continuously for long periods without being reverted, then the period of continuance officiation should be counted for seniority and that any other view would be arbitrary and violative of Articles 14 & 16. This view has been reiterated by the Supreme Court in a number of cases including Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra (1990 (13) ATC 348). The respondents have not denied that in a similar case of Sh.Birendra Kumar Gupta, his adhoc service from 5.4.73 was counted and he was assigned a higher seniority. The contention of the respondents that Sh. Birendra Kumar Gupta is working in an ex-cadre post does not amount to denial of the fact that while fixing his seniority as Telephone Clerk, the adhoc service rendered by him has been taken into account.

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5. In the facts and circumstances of the case, we hold that the applicant is entitled to succeed and the respondents are directed to revise the seniority list of the Telephone Operators after taking into account the continuous uninterrupted adhoc service rendered by the applicant and those similarly situated, till the time of regularisation and finalise the same after hearing all the representation. These orders shall be implemented expeditiously and preferably within a period of 3 months from the date of receipt of this order.

There will be no order as to costs.

B.N.Dhundiyal
(B.N.Dhundiyal) 27/11/92

Member (A)

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27/11/92
(P.K.Kartha)

Vice Chairman (J)