

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.685/1991

New Delhi, this 8th day of February, 1996.

Hon'ble Justice Shri B.C. Saxena, Vice-Chairman
Hon'ble Shri R.K. Ahooja, Member(A)

S/ Shri
1. J.M.Malhotra
2. Dharam Pal
3. Vinod Kumar Khanna
4. J.P. Handa
5. S.P. Sood
6. U.S. Virmani
7. K.B. Lal
8. Y.R. Kathuria
9. N.K. Jain
10. M.K. Ohri
11. S.B. Bhatnagar
12. D.S. Arora
all working as Investigators(Statistics)
in the Min. of Health & Family Welfare
Nirman Bhavan, New Delhi .. Applicants

By Shri S.K. Bisaria, Advocate

versus

Union of India, through

1. Secretary
Min. of Health & Family Welfare
Nirman Bhavan, New Delhi
2. Director General of Health Services
Nirman Bhavan, New Delhi .. Respondents

By Shri M.K. Gupta, Advocate

ORDER

Hon'ble Justice Shri B.C. Saxena

The applicants, who are working as Investigators(Statistics) in the Ministry of Health & Family Welfare have filed this OA seeking quashing of orders at Annexures A and A-1, by which their demand to treat them as regular appointees in the said grade from the date of their ~~ad hoc~~ appointment/promotion as Investigators(Stat) had been rejected. They further seek a direction ^{be issued} to the respondents to assign them seniority in the said grade from the date of their ~~ad hoc~~ promotion and other consequential benefits.

1
Bd

2. We have heard Shri S.K. Bisaria, learned counsel for the applicants and Shri M.K. Gupta, learned counsel for the respondents.

3. The brief facts in the present OA are that the applicants were promoted as Invesgitators (Stat) on ad hoc basis in the scale of Rs.1640-2900. Copies of orders of their ad hoc promotion are placed at Annexure D(colly) The applicant allege that after rendering several years of ad hoc service in the said post they were regularised from different dates as shown in Col.6 of Annexure B. Their ad hoc service ranges between 3 ^{to} ~~and~~ eight and half years and they were regularised by Annexure E (colly) orders. The applicants' case is that they belong to feeder cadre of Indian Statistical Service Grade IV in the pre-revised scale of Rs.700-1300. Under Rule 8 of the Indian Statistical Service Rules, 1961, 40% of the vacancies were to be filled by selection from amongst officers serving in offices under the Government statistics posts recognised for this purpose by the controlling authority. The learned counsel for the applicants invited our attention to the decision of the Principal Bench in OA 984/86 Dinanath & OIrs. Vs. UOI & Ors. decided on 10.8.88 (copy at Annexure F). We shall advert to this decision later. The applicants claim parity as that of the applicants in that OA.

4. In the counter affidavit, the respondents have indicated that the applicants have been promoted in the vacancies available under promotion quota and have no claim for appointment against direct recruitment, that they were appointed on ad hoc basis temporarily till direct recruits are available and that the applicants were granted ad hoc

1
Bd

promotion against short term vacancies consequent to ad hoc promotion of the regular appointees. Preliminary objections have also been taken that the application as filed is bad in law as it suffers from laches and delay. It has been pointed out that in case of 3 applicants, they have filed after 9 years of their regular promotion and in one case after 5 years of such regular appointment and in case of remaining 8 applicants, after 2 years of regular appointment. It has been further stated that in the intervening period many other persons have been appointed against the vacancies under direct recruitment and their interest with regard to their seniority and service conditions are vitally affected. Their plea is that the OA deserves to be dismissed on the ground of nonjoinder of necessary parties.

5. The respondents in their counter have further taken the plea that after their ad hoc promotion either against the posts falling within the direct recruitment quota or against short term vacancies, the applicants in their due turn have been appointed on regular basis against the vacancies in promotion quota from the date of DPC for such regular appointment.

6. The respondents have also taken the plea that the judgement of the Tribunal rendered in OA 984/86 relates to the department of statistics and was based on the facts of that particular case and is not applicable here.

7. The applicants have filed rejoinder in which the averments and the plea taken in the OA have been reiterated.

1
Bcs

15

8. The learned counsel for the applicant invited our attention to the order passed on 7.3.95, wherein it was pointed out that the respondents in their counter affidavit had taken the plea that at the time the applicants were appointed on ad hoc basis, regular vacancies were not available in the promotee quota. It was further noticed ^{that} in the rejoinder affidavit the applicants have pointed out that in the counter affidavit details of the vacancies occurring in various years in both the streams have not been given and therefore the plea taken by the respondents is not tenable. In the circumstances, the respondents were granted one month time to ascertain the position right from the year 1976 about the vacancies.

9. The learned counsel for the applicant urged that though an additional counter affidavit has been filed, but break ^{up} of vacancies have not been indicated. The learned counsel for the respondents on the other hand submitted that as per the additional affidavit records from 1982 were not available and therefore complete details could not be furnished. In the additional affidavit, however, a plea has been taken that minutes of the DPC meetings held during 1976 to 1989 ^{will be placed for perusal} ~~are~~ _{Bo2} ^{Bo2} ~~Since these were available~~ available with him and he has filed photostat copies of the same for our consideration.

10. It needs to be noted that preliminary objection has been taken by the respondents to the effect that the seniority list of Investigators (Stat) in the combined cadre of Ministry of Health & Family Welfare and the Directorate General of Health Services was circulated on 11.1.91 and representations were called for. A copy of the seniority list is at annexure I to the counter reply. The submission

Bo2

of the learned counsel for the respondents was that the applicants though aware of the said seniority list have not challenged the same and neither the persons assigned seniority above them in the list have been impleaded as respondents. He therefore submitted that the relief claimed should be refused as the grant of the same is likely to affect the persons who have not been impleaded as respondents.

11. The learned counsel for the applicant however submitted that since the applicants are claiming parity to be extended to them of the decision rendered in OA 984/86, it is not necessary for them to challenge the seniority list dated 11.1.91. We have given our ^{careful} ~~conscious~~ thought to the point raised but we are unable to agree with the learned counsel of the applicant. Seniority list having been issued, rights have ~~been~~ accrued to the persons who have been assigned higher seniority position than the applicants. In the absence of the said persons having been impleaded in this OA, the relief claimed for can not be granted.

12. Even on merits, we find that the decision in OA 984/86 proceeds on the basis of its own facts. In the present case, the dispute with regard to the question of ad hoc promotion of the applicants have been made against the vacancies for direct recruitment quota or against short term vacancies is involved. From the minutes of the DPC and the order of ad hoc promotion, we find that the DPC has ^{taken note,} ~~decided~~ before the ad hoc promotion was granted to them, ^{that there existed only} ~~against~~ short term vacancies, ^{or sometimes in} ~~and also against~~ direct recruitment quota pending joining of direct recruits.

1
Roe

13. The first meeting of the DPC was held on 16.1.76. These minutes clearly show that one vacancy had arisen consequent to the deputation of one Shri K.K. Aggarwal for a period of 11 weeks and another was anticipated on leave vacancy for a period of 60 days. After going through the confidential reports, Shri J.P. Handa, applicant No.4 was promoted against one of the two vacancies mentioned above on ad hoc basis. Accordingly, the said applicant was promoted on ad hoc basis against a short term vacancy.

14. Subsequent minutes of the DPC meetings also go to show that the ad hoc promotion was either to fill up short term vacancies or against direct recruitment quota and that there was no regular vacancy in the promotion quota to be filled up. The order of ad hoc promotion also clearly stipulates that the applicants were being promoted on ad hoc basis and the ad hoc promotion will not confer on them any right to regular promotion to the grade and for eligibility for promotion confirmation. Thus, from the material placed on record, we are satisfied that the stand taken by the respondents is correct. The ad hoc promotion of the applicants was either against short term vacancy or against direct recruitment quota. It was not contemplated to be regular appointment.

15. ^{Also} ~~Although~~ on record are the orders of regular promotion, they have been made on the basis of the recommendations of the DPC when regular vacancies in the promotion quota came to be available.

/ *Boi*

17. In these circumstances, the question that falls for our consideration is whether the applicants are entitled to seniority from the date of their initial ad hoc promotion followed by regular promotion. On this aspect of the matter, the learned counsel for the applicants invited our attention to the various decisions which are as follows.

- 1) Bhagwan Singh Vs. UOI & Ors. SLR 1994 Vol-6-586
- 2) Direct Recruit Class II Engineering Officers Assn. Vs. State of Maharashtra and others 1990(2) SLR page 769.

18. Reliance was placed on proposition A given in para 47, which reads 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 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 can not be taken into account for considering the seniority."

19. The applicants' case is that their initial ad hoc promotion were made through DPC and thus it was in accordance with the rules. We have already held in a number of cases that the initial ad hoc promotion of the applicants have been proved to be either to fill up short terms vacancies or vacancies available in the direct recruitment quota for want of direct recruits. Their promotions were made as and when regular vacancies in the promotion quota became available. In this view of the matter, even when we apply the proposition A cited above, the applicants can not claim counting seniority from the date of their initial ad hoc promotion.

1
Bcl

- 3) 1993(3) SCC 371 - State of West Bengal & Anr. Vs. Aghore Nath Dey & Ors.
 4) AIR 1991 SC 285 K.C. Joshi Vs. UOI

20. In both these cases, proposition 'A' ^{was held to be} ~~above~~ ^{applied} but in view of the facts of the present case; even if the above said ^{proposition is} ~~provisions~~ are applied, we are not satisfied that the applicants have made out a case for counting their service on ad hoc basis for purpose of seniority.

21. The learned counsel for the respondents on the other hand referred to 1994(26)ATC 779 I.K.Sukhija & Ors. Vs. UOI & Ors. In this decision ~~it has been laid down~~ that ad hoc promotion made to meet immediate requirement though continued for a period ranging between 1 and 8 years before the petitioners were promoted on regular basis on the facts of the said case was held to be promoted as a stop gap arrangement. Applying corollary of Principle 'A' and 'B' as laid down by the Hon'ble Supreme Court in Direct Recruit Class II Engineering Officers Asn. Vs. State of Maharashtra, it was held that ^{if} ~~the~~ the case is governed by principle 'A' or its corollary, principle 'B' is excluded.

22. The next decision cited by the learned counsel for the respondents is reported in 1988(Supple.)SCC 225 K.Siva Reddy & Ors. Vs. State of Andhra Pradesh & Ors. wherein it has been held that the applicants who were promoted on ad hoc basis against direct recruitment ^{quota} ~~quota~~ in excess of the promotee quota, were not ~~eligible~~ ^{eligible} to seniority over direct recruits appointed within quota fixed by recruitment rules. The other decision referred to the learned counsel is A.P.Singh & Ors. Vs. State of Bihar & Ors. 1993(3)SCC-294 which also lays down the same proposition cited above.

1
 Bch

23. On the conspectus of the discussions made herein above, our conclusions are as follows:

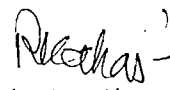
(1) The present OA is bad for nonjoinder of ^{necessary} parties. The seniority list which has been issued has not been challenged. In the absence of the necessary parties, we do not consider it proper to grant the relief prayed for.

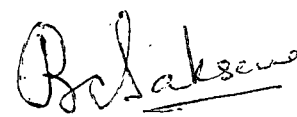
(2) The OA is also barred by limitation. The applicants have approached the Tribunal after a considerable delay from the date of their regular promotion.

(3) The decision in OA 984/86 proceeds on its own facts and the applicants can not derive any parity from it.

(4) Since the ad hoc promotions of the applicants had been made either against short ^{term} vacancies or against vacancies of the direct recruitment quota, the period of ad hoc promotion will not count towards seniority. The applicants have rightly been assigned seniority from the date of their regular promotion against regular vacancies on promotion quota basis.

The OA is therefore dismissed leaving the parties to bear their own costs.


(R.K. Ahooja)
Member (A)


(B.C. Saxena)
Vice-Chairman