

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O. A. NO. 1009/1991

DATE OF DECISION 3.1.91

SHRI K.R. SUNDERAM AND ANOTHER
VS.

...APPLICANTS

UNION OF INDIA AND ANOTHER
...RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANTS

...SHRI ASHOK AGGARWAL

FOR THE RESPONDENTS

...SHRI P.H. RANCHANDANI

1. Whether Reporters of local papers may be allowed
to see the Judgement? *Y*

2. To be referred to the Reporter or not? *Y*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicants, Sr. Administrative Officers in
National Sample Survey Organisation jointly filed this
application aggrieved by notification issued by the
respondents dt. 13.3.1991 (Annexure A1) by which it is
proposed to fill up one post of Deputy Director (Admn.)
through the second method of transfer on deputation under
the Extant Recruitment Rules without favourably disposing

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the representation of the applicants. The applicants also assailed the memo dt. 21.9.1988 rejecting their representations for counting continuous adhoc service rendered followed by regularisation in the cadre/post of Administrative Officer for the purposes of seniority in promotion to the next higher post of Deputy Director (Admn.).

2. The applicants have claimed the following reliefs :-

- (a) A direction to the respondents to reckon their seniority from the date of their initial appointment as Administrative Officer instead of 19.12.1986.
- (b) A direction to the respondents to order correct placing in the seniority/eligibility list of Administrative Officers for the purpose of promotion to the higher post of Deputy Director (A).
- (c) As a consequence of the above (a) & (b) reliefs, the respondents be further directed to convene the DPC meeting and promote the applicant No.1 to the post of Deputy Director (A).
- (d) As a consequence of the above, the respondents be further directed to take action immediately to make good/seek relaxation of short fall, if any, of qualifying service in the feeder grade in the case of the applicant No.2 and he may also be promoted to the post of Deputy Director (A).
- (e) As a consequence of the above add in the changed circumstances/situation, the respondents be directed to repatriate the already inducted deputationist forthwith to his parent cadre and the two vacancies in the grade of Deputy Director(A) may be filled by the first method prescribed in the Recruitment Rules, i.e., by promotion from the cadre of Administrative Officer.

3. The facts of the case common to both the applicants are that both of them are substantive holder of the post of Administrative Officer in the Field Operations Division, National Sample Survey Organisation in the pay scale of Rs.2000-3500. The applicant No.1 w.e.f. 2.8.1982 and the applicant No.2 w.e.f. 22.12.1983 have rendered continuous

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service in the cadre of Administrative Officer on ad hoc basis by promotion from the prescribed feeder grade of Office Superintendent. They were regularised in their appointment w.e.f. 19.12.1986. The grievance of the applicants is that despite availability of long term vacancy in the cadre of Administrative Officer and despite the existence of validly made Recruitment Rules for this cadre, their appointment was made on ad hoc basis whereas it should have been on a regular basis right from the date of assumption of charge as said above. The DPC was not convened at all during the period from 1982 to November, 1986. The service of the applicant No.1 from 2.3.1982 till 18.12.1986 and that of applicant No.2 from 22.12.1983 to 18.12.1986 was treated as ad hoc service which resulted in illegal deduction in the length of qualifying service and postponed their entry into the zone of consideration for promotion to the post of Deputy Director (A). The respondents have issued a notification dt. 13.3.1991 inviting applications for filling up of another post of Deputy Director (A) by transfer on deputation, though they had already filled one of such posts on 31.1.1991.

4. The applicants jointly and severally made representations but to no avail. The extensible ground taken by the respondents for appointment on deputation basis on the post of Deputy Director (A) has been that none of the officers in the feeder grade had rendered 8 years' regular service, which is required under Rules. According to the applicants, the applicant No.1 had already completed 8 years' continuous/
service

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in the feeder grade as on 1.8.1980 and the applicant No.2 had completed more than 7 years' continuous service in the feeder grade on the date of this application and there is only a shortfall of few months. According to the applicants, inducting a deputationist prejudices the chances of promotion to cadre employees. The respondents, according to the applicants, have a duty to protect the legitimate interest of its cadre employees. The applicants have also averred in the application that the respondents failed to convene the DPC for promotion to the grade of Administrative Officer on a regular vacancy caused due to absence of Shri M.L. Sabrawal. It is also stated that the ad hoc appointment of the applicants were continued without intervention till 19.12.1986 from which the applicants were promoted on regular basis and since these promotions were made in long term vacancy, so the applicants should be deemed to be promoted regularly from the date of their initial assumption of charge of the Administrative Officer.

5. It is also stated that the applicants have been appointed as Senior Administrative Officer by the order dt. 25.10.1988. This is an ex-cadre post to be filled on transfer by deputation. However, this appointment has not secured to them any relief in as much as for the purpose of promotion to the post of Deputy Director (A), Service rendered as Administrative Officer has no relevance and it is not the feeder grade. A vacancy arose in the cadre of Deputy Director (A) on 1.9.1989 and another vacancy fell on 14.6.1990. The Recruitment Rules for the post of Deputy Director (A) provide the method of recruitment firstly by

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promotion failing which by transfer on deputation. In column 12 of the aforesaid Recruitment Rules, the eligibility for consideration of Administrative Officer to this promotional post is 8 years' regular service in the grade. However, the eligibility for appointment on transfer on deputation, in the case promotion could not be made from the cadre of Administrative Officer, is that the officers under the Central Government holding analogous posts or with 5 years' service in the scale of Rs.700-1300 or equivalent or with 8 years' service in the pay scale of Rs.650-1200 or equivalent and having experience in administration, establishment and accounts methods.

6. The respondents contested the application and stated in reply that there are two sanctioned posts of Deputy Director (A) in the Field Operations Division, National Sample Survey Organisation, which is a subordinate office of the Department of Statistics. The method of recruitment for the post is by promotion, failing which by transfer on deputation. Administrative Officers (Group-B) in the pay scale of Rs.2000-3500 in the F.O.D., N.S.S.O. with 8 years' regular services are eligible for consideration for promotion. The method of filling up the post on transfer on deputation is that from the officers under the Central Government holding analogous posts or (b) with 5 years' services in the scale of Rs.2200-4000 or equivalent or (c) with 8 years' services in the post in the pay scale of Rs.2000-3500 or equivalent and having an experience in administration, establishment and accounts methods. One post of Deputy Director (a) fell vacant on 31.8.1989 and applicant No.1 had put in a regular service of only about 2 years and 6 months and

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as such, he was not eligible for promotion to the post of Deputy Director (A). As the regular service of applicant No.2 was even less than that of applicant No.1, so he too was ineligible. As no Administrative Officer with 8 years' service was eligible in the F.O.D., N.S.S.O. to fill up the post by promotion, the post had to be filled up by second method, i.e., by transfer on deputation. Shri T.S. Krishnan, who was selected through U.P.S.C., joined the post on 31.1.1991. The second post of Deputy Director (A) also fell vacant on 14.6.1990 and the applicants No.1 and 2 have not yet rendered 8 years' regular service as Administrative Officer, so they are ineligible for promotion to the post of Deputy Director (A) which fell vacant on 14.6.1990.

7. The applicants had submitted representation dt. 30.4.1987 for counting their ad hoc services in the grade of Administrative Officer for seniority and confirmation. In accordance with the Department of Personnel & Training OM No.22011/3/75-Estt.(D) dt. 29.10.1975 (Annexure R1) appointment on ad hoc basis does not bestow any claim on the appointee for appointment on a regular basis. These orders further provide that the service rendered on ad hoc basis shall not count for purpose of seniority and eligibility for promotion to higher grade. In the orders appointing the applicants to the post of Administrative Officer on ad hoc basis, it was clearly stipulated that the ad hoc appointment will not bestow them any claim for regular appointment on seniority. The applicants were, therefore, informed accordingly on 7.2.1988. The applicants



also preferred revision petition and in that petition, the applicants raised a fresh point relating to appointment on ad hoc basis. However, it is stated in the reply that in the cases of these Superintendents, promotion had been made according to the Recruitment Rules and on the recommendation of a duly constituted DPC. However, they could not be appointed straightaway on regular basis due to pending court cases filed by some Assistant Superintendents regarding their seniority etc. In the case of the applicants, before giving them ad hoc appointment, the procedure for promotion actually stipulated in the rules, i.e., through a DPC has not been followed. The Revising Authority too rejected their representations and that was conveyed to the applicants in September, 1988.

8. The respondents also took the plea of limitation as the applicants have also challenged the memo dt. 21.9.1988. The applicants filed this application in 1991.

9. The respondents have filed a detailed reply also giving parawise comments, but the points taken in the earlier reply dt. 4.6.1991 have been reiterated. In the supplementary reply, it is stated that the vacancy which arose in the grade of Administrative Officer on the promotion of Shri M.L. Sabarwal was not a long term vacancy as the promotion of Shri M.L. Sabarwal was only on ad hoc basis. The vacancy caused by the retirement of Shri R.P. Ganga

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was, however, a clear vacancy which could not be filled on regular basis as the Recruitment Rules for the post of Administrative Officer were under consideration. In view of the above facts, the respondents have prayed that the application has no merit and deserves dismissal.

10. We have heard the learned counsel at length and have gone through the record of the case. Regarding the challenge of the applicants to the memo dt, 21.9.1988 (Annexure A2), there is a legal objection of limitation by the respondents. The applicants have been informed in September, 1988 by this impugned memo that the ad hoc service for seniority and confirmation in the post of Administrative Officer cannot be counted. It was further informed that the procedure for regular promotion was not followed in the case of the applicants and the promotion given was clearly ad hoc and cannot be treated as regular later. Under Section-21 of the Administrative Tribunals Act, 1985, the applicant has to make an application to the Tribunal within one year from the date on which any final order has been passed on any representation made under Section 20 of the Act and if no such final order has been made, then after the expiry of six months from the date of representation and within one year thereafter. The present application has been filed in the Registry in April, 1991. The memo dt. 21.9.1988 is the final order communicating the decision of the respondents to the applicants. The applicants, therefore, should have come by April, 1990, while they have come in April, 1991. The delay in filing the application has

not at all been explained with regard to relief No.2. The successive representations by the applicants on the same cause of action after the final order has been communicated will not add to the period of limitation provided under Section-21. The period of limitation is not revived by making repeated departmental representations as already held in a number of cases* by the Tribunal. The point has also been considered by the Hon'ble Supreme Court in the case of S.S.Rathore Vs. State of M.P., reported in AIR 1990 SC page-10. The Hon'ble Supreme Court clearly held that the repeated representations will not save to limitation. Thus the plea taken by the respondents regarding the bar to challenged the memo dt. 29.9.1988 has some force. The applicants, even in the rejoinder, could not show why they have not come within time for redressing of their grievance in time. What has been stated in the rejoinder to the earlier counter, is that since there is violation of fundamental right, the question of limitation does not arise and the cause of action of the applicants is a continuing one. This is not the position here. The applicants had a grievance that their ad hoc service was not being counted and the respondents had clearly informed them the reason for not doing so. If the applicants were not convinced with that reason, then the applicants should have come to the Tribunal at that time within the prescribed period of limitation. Thus the challenge to the memo dt. 21.9.1988 cannot be entertained as the same is barred by limitation.

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1. Dev Raj Vs. Union of India, 1987 (2) ATC 1989 CAT Jabalpur.
2. Ganpat Dashrath Sarate Vs. Union of India, 1986 (1) ATC 521 CAT Bombay.
3. Satyabir Singh Vs. Union of India, 1987(3) ATC 924 CAT New Delhi.

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11. The next challenge of the applicants is to a memo dt. 13.3.1991 wherein the post of Deputy Director (A) was directed to be filled up by the second method of transfer on deputation as the first method, according to the respondents, has failed. The applicants have filed the Recruitment Rules for the post of Deputy Director (A) in F.O.D., N.S.S.O. vide notification dt. 6.11.1984 (Annexure A9). In column 12 which relates to recruitment by promotion/deputation/transfer, the following eligibility conditions are laid down:-

"Promotion : Admn. Officer with 8 years regular service in the grade.

Transfer on deputation: Officers under the Central Govt.

(a) (i) holding analogous posts; or

(ii) with 5 years service in posts in the scale of Rs.700-1300 or equivalent; or

(iii) with 8 years service in posts in the scale of Rs.650-1200 or equivalent; and

(b) having experience in administration, establishment and accounts matters.

(Period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same organisation/department shall ordinarily not exceed 3 years)"

The above Recruitment Rules clearly provide that only those Administrative Officers, who have 8 years of regular service in the grade come within the eligibility zone of consideration

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for promotion. According to the applicants themselves, the post of Deputy Director (A) fell vacant on 1.9.1989 and has already been filled up in February, 1991. The applicant No.1 was promoted on ad hoc basis on 2.8.1982 and applicant No.2 was promoted on ad hoc basis on 22.12.1983. Thus even from these dates, none of these applicants has completed 8 years of ^{regular} service when the post fell vacant in September, 1989. Another post of Deputy Director (A) fell vacant on 14.6.1990 for which the respondents have issued an advertisement/circular vide memo dt. 13.3.1991. The Recruitment Rules provide regular service. While giving ad hoc promotion, one has not to go through the process of selection as envisaged under the Recruitment Rules, i.e., the matter is not considered by the DPC. Ad hoc promotee has no lien on the promoted post. His lien remains only on the post, which he had been holding before his ad hoc promotion. What the learned counsel for the applicant stressed is that for all purposes, ad hoc promotion should be deemed to be regular promotion for the purpose of seniority. Ad hoc service is also to be counted if subsequently the person, who was promoted on ad hoc basis is regularised in his appointment. The argument by the learned counsel that applicant No.1 w.e.f. 2.8.1982 and the applicant No.2 w.e.f. 22.12.1983 should be taken to be regularised w.e.f. that date, cannot be accepted in view of the clear statutory provision that a person to be eligible for promotion should have worked at least for 8 years as Administrative Officer on regular basis. It, therefore, envisages that the person must have got his lien on the post of Administrative

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Officer and that can only be when he is appointed on regular basis in a clear vacancy. The contention of the learned counsel for the applicant that not holding of DPC for years together should not come in the way of further promotion of the applicants. The respondents have clearly stated that certain Superintendents have gone to the Court of law and the Superintendent's grade is the feeder grade for the post of Administrative Officer. So the ~~non~~ holding of DPC was not deliberate. It was due to ~~pending~~ case. The applicants have not at all been discriminated and in the exigency of the services, some departmental delays are likely to happen in the matter of selection and promotion. The Recruitment Rules (Annexure A9), filed by the applicants themselves for the post of Administrative Officer have been notified on 6.11.1984 when in 1984 two posts of Deputy Director (A) were created. The respondents, to their main counter, have also annexed the notification regarding the method of recruitment to the post of Senior Administrative Officer in the Field Operations Division, N.S.S.O. where the posts are filled up by transfer on deputation. The applicants have been working as Senior Administrative Officer since 1988, though it is an ex-cadre post. The counting of service in the cadre of Administrative Officer on regular basis is provided under Statutory Rules. The OM No. 22011/3/75-Estt.(D) dt. 29.10.1975 (Annexure R1) clearly lays down, "It has, therefore, been decided that whenever an appointment is made on ad hoc basis, the fact that the appointment made on ad hoc basis, and that such an appointment

will not bestow on the person a claim for regular appointment, should be clearly spelt out in the orders of appointment. It should also be made clear that the service rendered on ad hoc basis in the grade concerned would not count for the purpose of seniority in that grade and for eligibility for promotion to next higher grade." The respondents in their first counter in para-7 have stated that the orders appointing the applicants to the post of Administrative Officer on ad hoc basis, it was clearly stipulated that the ad hoc appointment will not bestow on them any claim for regular appointment or seniority. The ad hoc appointment, therefore, cannot now been taken advantage of by the applicants for the next higher promotions. In the case of K.S. Vohra Vs. State of Gujarat, 1988 Labour and Industrial Cases p-43, it has been held that the framing of the Recruitment Regulations is a prerogative of the employer and no grievance can be made even if the prospects of the promotion in future of some employees are prejudiced thereby. In the case of R.N. Hindora, ATR 1987 (1) CAT 455, the Tribunal has already held that the Government has sovereign right to change the Recruitment Rules and the employee could not shackle that right on the mere plea of possible dilution of their chances of promotion. When the statutory rules provide the counting of only the regular service, then in that event, the ad hoc service rendered by the applicants

cannot be counted for creating eligibility in their favour. The learned counsel for the applicants has referred to the cases of Narendra Chadda & Others Vs. Union of India, 1986(2) SCC page-157 and Direct Recruits Class-II Engineering Officers' Association & Ors. Vs. State of Maharashtra & Ors., Judgement Today 1990(2) SC page-624. These cases do not help the applicants at all. In the case of Narendra Chadda, the employees were working on ad hoc basis for a number of years and they were not regularised. A direction was issued to regularise them and give them due benefits. In the case of Direct Recruit Class-II Engineering Officers' Association, the Hon'ble Supreme Court laid down the guidelines for determination of seniority when there are entrants to the same service from different sources and it was laid down that if initial appointment has been according to the Rules, then that ad hoc service can be counted for seniority, at the same time holding that if the initial appointment is de-horse the Rules, the full length of ad hoc services cannot be counted for seniority. In the present case, the applicants are not claiming seniority, though indirectly they have brought seniority in issue. The claim of the applicants only is restricted to the counting of ad hoc service for eligibility for consideration for promotion to the post of Deputy Director (A), while the Recruitment Rules do not provide so. The OM issued by the Ministry of Personnel (Annexure R1) quoted above also clearly debars the counting of ad hoc service for the

purpose of next promotion and only regular service is to be counted. There appears to be no arbitrariness in this proposition nor there is any discrimination meted out to any body. The applicants are not deprived of their promotion permanently and they will come in the zone of consideration for promotion as they complete 8 years of service on regular basis in the cadre of Administrative Officer.

12. The learned counsel for the applicants has placed reliance on the authorities of Gopal Anant Musalgaonkar Vs. Union of India (1987(2) ATC 444), J.P. Shukla Vs. Union of India (1990(12) ATC 475) and the case of P.L. Tiwari Vs. Union of India (1988(6) ATC 148). None of these authorities is to the point. The cases of Gopal Anant and J.P. Shukla purely governs the matter of seniority and the case of P.L. Tiwari governs the case of promotion and a right of the person to be considered for promotion and it has been held that every supersession in promotion gives rise to a fresh cause of action and fresh limitation period starts from the date of that cause of action. In the present case, there is no question of supersession of the applicants. The applicants have specifically challenged the order rejecting their representation for non consideration of their counting of ad hoc period by the memo dt. 21.9.1988. Here the question of supersession does not come into picture. What is to be seen is the grievance of the applicant which was that the ad hoc period of service of the applicants was not considered towards the regular service in the cadre of Administrative Officer.

13. In view of the above discussion, we find that the present application is devoid of merits and is dismissed leaving the parties to bear their own costs.

Sharma
(J.P. SHARMA)
MEMBER (J)

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Chakraborty
(D.K. CHAKRAVORTY)
MEMBER (A)

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