

Central Administrative Tribunal, Principal Bench

O.A. No. 215/2004

New Delhi this the 15<sup>th</sup> day of March, 2005

**Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**  
**Hon'ble Mr. S.K. Malhotra, Member (A)**

Rajendra Prasad  
Assistant Director Horticulture  
Sub Division-3,  
Division No. VI, CPWD,  
I.P. Bhavan,  
New Delhi.

...Applicant

By Advocate: Shri K.B.S. Rajan.

Versus

1. The Union of India Through  
The Secretary,  
Ministry of Urban Development,  
Nirman Bhavan,  
New Delhi.
2. The Director General of Works,  
CPWD,  
Nirman Bhavan,  
New Delhi.

... Respondents

By Advocate: Shri K.R. Sachdeva.

**ORDER**

**By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**

The applicant has filed this OA for a direction to the respondents to regularize his promotion to the post of Assistant Director (Horticulture) w.e.f. 30.6.1997, i.e., the date on which he was given ad hoc promotion to the said post and further direction to the

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respondents to consider him for further promotion to the post of Deputy Director (Horticulture) against the ST vacancy.

2. Briefly, the facts stated in the OA are that the applicant was working as Sectional Officer in the Horticulture Department of CPWD. He belonged to ST category. He was given ad hoc promotion to the post of Assistant Director w.e.f. 20.6.1997. At that time the vacancies for promotion under ST quota were available and the applicant had also the requisite qualification for promotion. In the year 2000, there were 16 posts of Deputy Director (Horticulture) which were increased to 18 posts in 2002. Under the point based roster, point No.14 was reserved for ST candidate. One Shri H.R. Warkade (ST) retired on superannuation on 31.8.2002 and under the post based roster, the vacancy was to be filled up by a ST candidate as per the government instructions. For promotion to the post of Deputy Director (Horticulture), the eligibility condition was minimum regular service of 8 years. Since the vacancy was available for regular appointment of the applicant even in 1997 when on the recommendation of the DPC he was given ad hoc appointment w.e.f. 2.7.1997, the regular service of the applicant should be counted from that date. The applicant, as such, would be eligible for further promotion to the post of Deputy Director. In case the post of the Deputy Director (Horticulture) reserved for ST candidate is not filled up till the vacancy may be dereserved since there is no other ST candidate to fill it. Hence the OA.

3. The respondents in the counter-affidavit pleaded that no vacancy in promotion quota in the cadre of Assistant Director (Horticulture) was available in the year 1997. The applicant was promoted to the post of Assistant Director (Horticulture) w.e.f. 27.6.1997 on ad hoc basis in the vacancy which fell in direct recruitment quota. The ad

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hoc appointment of the applicant was extended from time to time till a vacancy became available and the applicant was appointed as Assistant Director (Horticulture) on regular basis w.e.f. 31.8.2001. He will be considered for further promotions as per the Recruitment Rules.

4. In the rejoinder, the applicant reiterated his own allegations and denied the allegations of the respondents.

5. We have heard the learned counsel for the parties and gone through the record.

6. The counsel for the applicant has vociferously argued that the applicant was given ad hoc promotion in 1997 when a clear vacancy was available for his regular promotion. However, he has not been able to produce any material and documentary evidence to support his argument. Conversely the respondents have placed on record the copy of the recruitment rules, Annexure R-I which showed that 66.2/3% of the posts in the cadre of Assistant Director were to be filled in by promotion from the cadre of Sectional Officer (Horticulture) with 8 years regular service in the grade, failing which by direct recruitment and remaining 33.1/3% of the posts were to be filled in by direct recruitment. The respondents in the counter-affidavit has stated that the applicant was given ad hoc promotion to the post of Assistant Director (Horticulture) in the vacancy which was in the quota of direct recruitment and no vacancy in the quota of promotion was available. Apart from making bald allegation in the OA that a vacancy for ST officer was available in promotion quota in the year 1997 the applicant has not cared to produce the seniority list of Assistant Director (Horticulture). According to the applicant there were 58 posts in this cadre and it would not have been difficult for the applicant to demonstrate that vacancies in promotion quota for ST or general candidates was available when on

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27.6.1997 he along with 8 other officers was promoted to the post of Assistant Director on ad hoc basis for 6 months vide Annexure R-3. Moreover had his allegation been true, he would have sought relief of regularisation on a available ST or general vacancy in 1997 and not on the basis of counting his ad hoc service. Furthermore, the applicant could not have remained silent and not made even a representation for giving him regular promotion against available clear vacancy instead of extension of his ad hoc term after every six months. We, therefore, have no hesitation in holding that applicant was promoted on ad hoc basis as no vacancy in promotion quota was available in 1997 and the vacancy in which he was promoted fell in direct recruitment quota which the respondents had directed not to fill in till Recruitment Rules were amended.

7. It has also been argued on behalf of the applicant that the ad hoc appointment of the applicant was on the recommendation of the DPC and this appointment continued till the applicant was promoted on regular basis w.e.f. 31.8.2001 vide order Annexure R-4, therefore, ad hoc appointment of the applicant should be counted towards regular service in the cadre of Assistant Director (Horticulture).

8. He has referred to a judgment of the Hon'ble Supreme Court in Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra, 1990 (2) SCC 715. The Hon'ble Supreme Court has held that "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. If the initial appointment is not made by following the procedure laid down in

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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".

He next cited the case of Rudra Kumar Sain Vs. Union of India, 2000 (8) SCC 25.

The Hon'ble Supreme Court has held that "in service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be 'stop gap or fortuitous or purely ad hoc'." Counsel has, thus, argued that since the appointment of the applicant on ad hoc basis is followed by regular appointment on 31.8.2001, the period of ad hoc promotion shall also be counted towards regular service.

9. The argument is not tenable. The facts in the two cases cited above are totally distinguishable. In the present case no vacancy for promotion quota was available much less a vacancy reserved for ST candidate for promotion to the cadre of Assistant Director (Horticulture) when in 1997 ad hoc promotion was given to the applicant it was clearly mentioned in writing that it was for six months or till the regular appointment was made to the post. It was extended after every six months till a vacancy became available for the promotion of the applicant in August, 2001. The appointment of the applicant in 1997 was not in accordance with rule. May be he was screened by the Departmental Promotion Committee before the ad hoc was made, but no approval of UPSC was obtained. Since the vacancy was not available for promotion quota in 1997, the ad hoc appointment was given to the applicant by the respondents' - department in the exigency of the work. Even in the case of Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra (Supra) it has been laid down that where the

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initial appointment was ad hoc and not in accordance with the rules and was made as a stop gap arrangement, the officiation on this post cannot be taken into account for considering the seniority. Therefore, the applicant cannot claim that his regular appointment should be counted from the date of his initial ad hoc appointment. It is not a case where the applicant was promoted without following the procedure laid down in rules, (not on ad hoc basis as a stop gap arrangement), that continued till his regularisation in the service, so the period of officiating service should be counted as regular service. Similarly the law laid down in Rudra Kumar Sain (Supra) also does not advance the case of the applicant since this is not a case where the applicant was appointed in the same manner in which the regular appointments are made. Since no vacancy for promotion quota was available, the ad hoc promotion of the applicant to the post of Assistant Director (Horticulture) was clearly a stop gap arrangement till the direct recruitment was made to the post.

10. Learned counsel for the applicant next argued that in OA 2281/99 the Tribunal has noted that the respondents in the counter-affidavit dated 19.8.1999 had stated that no direct recruitment to fill up the post of Assistant Director (Horticulture) would take place through UPSC without amendment of the Recruitment Rules in terms of the order dated 11.11.1996 passed by the Tribunal. It is submitted that the Recruitment Rules have not been amended which means that the respondents had undertaken not to fill up the vacancies by direct recruitment. As a result, the vacancies which were meant for direct recruitment would become available to be filled in by promotion quota. The argument has no merit. The order of this Tribunal which is Annexure II of the rejoinder simply indicated that the respondents had deferred direct recruitment to the post of Assistant

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Director (Horticulture) till the recruitment rules were amended. It did not mean that the vacancies which were to be filled up by direct recruitment on account of this undertaking, would become available to be filled in by promotion from the feeder cadre. The respondents had at no time decided that the direct recruitment vacancies would be filled in by promotion. In Dr. K. Ramlu and Another Vs. DR. S. Suryaparakash Rao and Others, 1997 (3) SCC 59 it was held by the Hon'ble Supreme Court that when the Government had taken a decision to amend the Recruitment Rules and had also taken a conscious decision not to fill up the vacancies till such amendment, there is no right to fill up the post under the old recruitment rules. In Shankarsan Dash Vs. U.O.I., 1991 (3) SCC 47 the Hon'ble Supreme Court held that "unless the relevant recruitment rules have so indicated that State was under no legal duty to fill up all or any of the vacancies. It is for the administrative authorities to take a conscious decision about filling or not filling of a vacancy. The applicant does not get any indefeasible right to his promotion in the year 1997 against the regular vacancy which was reserved for direct recruitment quota.

11. The learned counsel for the applicant has further argued that the vacancy in the cadre of Deputy Director (Horticulture), which is to be filled up by ST candidate, is now vacant but the applicant who is the only candidate of ST category would be ineligible for promotion to the said post if his regular appointment as Assistant Director is not counted from 1997 and that the vacancy might be dereserved in 2005 if it not filled in by them.

12. The applicant has also cited Superintending Engineer, Public Health, UT Chandigarh and Others Vs. Kuldeep Singh and Others, 1997 (9) SCC 199 in which para 6 of the judgment, the Hon'ble Supreme Court has made the following observation:-

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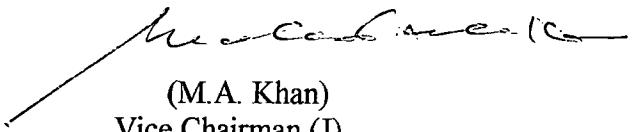
“ 6. It would thus be clear that the petitioner was under a constitutional duty coupled with power. Every public servant is a trustee of the society and in all facts of public administration, every public servant has to exhibit honesty, integrity, sincerity and faithfulness in implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence and efficiency in the public administration. A public servant entrusted with duty and power to implement constitutional policy under Articles 16(4), 16 (4-A), 15 (4) and 335 and all interrelated directive principles, should exhibit transparency in implementation and should be accountable for due effectuation of constitutional goals. Maintenance of the roster and strict adherence to it in accordance with the Brochure issued by the Government of India in that behalf to implement the rule of reservation in promotion is the charge and trust put on public servants. The Constitution has trusted the public servant as honest administrator to effectuate public policy and constitutional goals. The petitioner herein, has betrayed that trust and tended to frustrate the public policy. It is deducible from the facts that the petitioner failed to perform that constitutional duty. The Administrator of the Union Territory of Chandigarh should look into and take appropriate action against the erring officers concerned and report compliance to the Registry of this Court within two months”.

13. It is not explained how this judgment is relevant to the case of the applicant. It is not that the applicant is eligible for consideration for promotion to the post of Deputy Director (Horticulture) which as per Recruitment Rules is to be filled in by an officer of ST reserved category and that he was being denied this consideration. The vacancy in the cadre of Deputy Director (Horticulture) is to be filled up as per the relevant recruitment rules. The applicant does not fulfill the eligibility conditions.

14. For the aforesaid reason, we do not find any merit in this OA and the same is dismissed but without any order as to costs.

  
(S.K. Malhotra)  
Member (A)

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(M.A. Khan)  
Vice Chairman (J)