

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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OA NO. 1185/2004

This the 17th day of February, 2006

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. N.D.DAYAL, MEMBER (A)

1. Shri H.N.Rai,
H.No.17,
Block 'E', Sector 20,
Noida,
Uttar Pradesh-201301.
2. Shri K.C.Saxena,
8819, Shidipura,
Rohtak Road,
Karol Bagh,
New Delhi-110005.

(By Advocate: Sh. C.Hari Shankar along with Sh. S.Sunil)

Versus

Union of India
Through the Secretary,
Ministry of Statistics & Programme Implementation,
Sardar Patel Bhavan,
New Delhi.

(By Advocate: Sh. B.S.Jain)

ORDER

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

Having attained more than what they had originally aspired and peacefully superannuating in the year 2000-01 with full pension and pensionary benefits, these applicants are still dissatisfied with the regularization of their services as Senior Investigator w.e.f. 29.6.1977 and desire it to be further antedated to 29.12.1976, i.e. by about 6 months with no apparent monetary pre and post retirement benefits. In the present OA they are challenging the order of the department dated 19.12.2003 (Annexure A-1) whereby their representations, which were considered pursuant to the order of the Tribunal in MA-4/96 arising out of OA-1631/89 dated 3.9.2003 for antedating their date of regularization in service, were rejected. Applicants are also seeking, as observed above, their regularization in the grade of Senior Investigator from 29.12.76 when, according to the applicants, vacancies were available for such regularization.

2. The background of the case is as follows. Some of the officers in Statistical Organisation were promoted to the post of Assistant Directors on ad hoc basis and their ad hoc appointment was continued for a pretty long period. They were aggrieved that their services were not regularized from the date of their ad hoc promotion. The Hon'ble Supreme Court in the case of Narender Chadha vs. Union of India AIR 1986 638 directed the petitioners, who were Senior Investigators and promoted on ad hoc basis as Assistant Directors and had continued without interruption for 15 to 20 years, to be regularized w.e.f. 11.2.1986. Applicants herein along with a number of other Senior Investigators working on ad hoc basis then approached this Tribunal in OA-1631/89 in the case titled H.N.Rai and 21 others vs. Union of India and one Vijay Bhushan Gupta filed a separate OA No.2051/89 for their regularization on the post of Senior Investigators from the respective dates on which they were promoted to the said post on ad hoc basis. The Tribunal though did not find their claim tenable on merit but considering that the direct recruits appointed between 1986 and 1990 may have stolen a march over these applicants in the matter of seniority gave following directions:-

“43..... Therefore, while we find no merit in the OAs, in so far as the specific prayers made in them are concerned and would have dismissed them, we find it necessary to grant the applicants partial relief by quashing the orders dated 10.9.90 and directing the respondents to consider the cases of the applicants by a Review DPC for regularization, in accordance with the rules, as and when the regular vacancies arose, i.e., in 1986 and thereafter and regularize them with effect from the date on which the vacancies were available for regularization of promotees. We do so accordingly. This shall be done within a period of three months from the date of receipt of this order and the applicants shall be intimated.”

3. Applicant thereafter moved a miscellaneous application for the prosecution of the respondent for committing offence of perjury under Section 193 of the IPC etc. They complained that the respondents had not given correctly the factual position of vacancies that were available for the regularization of the applicants as Senior Investigator. The respondent filed a reply to the said application wherein taking a broad view of the order of this Tribunal dated 22.11.93 in the aforesaid OA, and rightly, stated that they had counted the vacancy position from 1964-1982 and have granted the seniority and have regularized the services of the applicants from the date of available vacancies. By holding review DPC on 10.1.1995 they have been appointed as regular Senior Investigator w.e.f. 16.11.1983 the date on which the original DPC meeting was held. Later on the applicants

16.11.1983

were regularized as Senior Investigator w.e.f. 9.6.1997 to give effect to the Tribunals order even though there was 5 years eligibility condition to the promotion from the post of Junior Investigator to the post of Senior Investigator in the recruitment rules. MA-4/96 was disposed of by the Tribunal on 10.7.2003 with direction to the respondents to decide the representation of the applicant by a speaking order which the respondent did vide order dated 19.12.2003 impugned in the present OA. The representation was rejected primarily on the ground that these applicants were regularized as Junior Investigator w.e.f. 4.11.1976 and as per the stipulation in the recruitment rules 5 years eligibility condition was required for promotion from the post of Junior Investigator to the Senior Investigator yet the respondent were regularized from service w.e.f. 9.6.1997. It was refuted that any vacancy was available for the applicant for regularization from a prior date or the applicant were eligible to be promoted from 29.12.1976.

4. Applicant in the present OA after narrating the sequence of events which led to the passing of the order of Tribunal in OA-1631/89 on 22.11.93 and the order of the Tribunal in MA-4/96 dated 3.9.2003 stated that entire controversy raised in the OA was in relation to actual date of occurrence vacancy for the post of Senior Investigator as well as eligibility date for regularization of the applicant against that vacancy. It was stated that as per the seniority list of 1984 these applicants were shown as holding regular post w.e.f. 11.5.1971. They were officiating as ad hoc Junior Investigator pursuant to the office order dated 7.7.1971. This order was issued keeping in view the fact that the vacancies of Senior Investigator against which these applicants were adjusted had fallen vacant on account of promotion of the Senior Investigators. By another order dated 23.2.1989 those Senior Investigators were regularized w.e.f. 1.7.1971 so the applicant ought to have been regularized as Junior Investigator from the date, i.e. 11.5.1971 or 1.7.1971. The corrigendum dated 24.7.1984 which stated that the appointment of the applicants as Junior Investigators shown in the column 3 of the seniority list should be read as 4.11.1976 had no relevance when the date of regularization was antedated once in 1983 and again in 2000 by the respondents themselves not only for the seniors but for the juniors as well. The counter affidavit filed to MA-4/96 depicted arbitrariness of the corrigendum. As per the recruitment rules minimum 5 years regular service as Junior Investigator was essential for promotion and the applicants were shown as holding a post

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of regular Junior Investigator w.e.f. 1.9.71 in the seniority list of 1984 so they had fulfilled the eligibility condition for promotion w.e.f. 11.5.1976. According to the applicant the date on which the vacancy arose would not in any case be after 14.3.1977.

The respondents, as such, chosen the date of 29.6.1977 as arbitrary. The reason given by the respondent while rejecting the claim of the applicant in the representation is not tenable.

5. The respondents resisted the OA in the counter reply have pleaded that some of the Junior Investigators who are working as Senior Investigator on ad hoc basis, including the present applicants had filed OA-1361/1989, for their promotion from the date of occurrence of the vacancy. The Tribunal though did not accept the principle urged but considering the date in holding all the DPCs and the direct recruitment in between getting the seniority over them, directed the respondents to hold a review DPC for regularisation of the applicants in accordance with rules as and when regular vacancies arise in 1986 and thereafter.

6. Applicants were considered by review DPC and were granted promotion from 1983 when the original DPC had met. Consequent to an order of the Hon'ble Supreme Court in the case of Narender Chadha (supra) vacancies in the grade of Senior Investigators were deemed to have arisen from 1964 onwards. The Tribunal by common order dated 16.2.2000 in a bunch matter again gave directions for regularization of the ad hoc promotees in view of the resultant vacancies having become available on implementation of the order of the Hon'ble Supreme Court. The respondents were directed to convene a DPC and consider the claim of the applicant for regularization on the date they were promoted on ad hoc basis as per the recruitment rules with all consequential benefits as and when the regular vacancies arose. Accordingly, a further review DPC was held and the applicants were regularized from the date of ad hoc promotion in the grade although many of them as on the date of officiation in the higher grade had not then completed the required eligibility service. Some of the petitioners had filed contempt petition complaining that the order of the Tribunal has not been implemented correctly and the date of their promotion should be further antedated from the date on which the vacancies became available. It was dismissed. The directions given by the Tribunal in its order dated 22.11.2003 would be read in the light of the

Amrit Lalit

observations made in para 32 of the order that the eligibility condition of minimum length of service in the feeder post has to be fulfilled on the date of appointment. The



regularization from the date of occurrence of the vacancy would, thus, apply only to those who had completed the eligibility service as on the date of occurrence of vacancy. Subsequent common order of the Tribunal dated 16.2.2000 in the bunch matters of OA-390/96, 710/96 and 1144/96 be directed the regularization of the applicant from the date of ad hoc appointment has to be read with the earlier order of the Tribunal dated 22.11.93.

7. The respondent further alleged that the applicants were appointed as Computer (Sr. Scale) in Central Statistical Organization. They were promoted as ad hoc Junior Investigator on 11.5.1971 by order dated 12.5.71. They were adjusted on ad hoc basis against the posts vacated by persons who were promoted as Senior Investigator on ad hoc basis. As per the seniority of Junior Investigators as on 1.6.1984 the persons holding the post of Computer on permanent basis is reflected against their names in column 4 of the said seniority list and not as Junior Investigator. The promotion of the applicant was purely on ad hoc basis to the post of Senior Investigator w.e.f. 29.6.1977 vide order dated 30.6.1977. In the order it was mentioned that ad hoc appointment will not confer on these persons any right to claim regular appointment to the grade of Senior Investigator nor would the ad hoc service rendered by them as Senior Investigator would be counted for seniority in the grade of Senior Investigator or for eligibility for regular promotion to that grade in the common order dated 22.11.1993. Pursuant to the order of the Tribunal dated 26.11.1993, a review DPC was held and vide order dated 21.2.94 the applicant and 11 others were appointed as regular Senior Investigator w.e.f. 8.5.1986. Subsequently, the order was revised and those persons were regularized as Senior Investigator w.e.f. 15.1.1983 by the review DPC held on 10.1.1995. It was stated that the Tribunal in CCP No. 2/96 did not find any legal infirmity in the order. In fact in accordance with the Narender Chadha's case (supra) the officers working as Assistant Director were to be regularized and the respondent understood that the regular vacancies in the feeder post of Senior Investigator would arise only thereafter. In order to carry out the directions of the Tribunal all vacancies which arose since 1964 on account of implementation of the order of the Hon'ble Supreme Court in Narender Chadha's case under which ad hoc

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service of 58 Assistant Directors by notification dated 5.5.86 have been reviewed and seniority list of Junior Investigator as on 1984 has been taken into account being the nearest seniority list available at the time of order of the Hon'ble Supreme Court. Thereafter the vacancies in the grade of Senior Investigator arose, as mentioned in para 8 of the counter. Applicants were posted against the vacancies caused by officiating promotion of some Junior Investigator to the grade of Senior Investigator vide order dated 12.5.1971, so their claim for regularisation as Junior Investigator from the same date was not correct. They were not promoted as regular Junior Investigator w.e.f. 11.5.71. The recruitment rules for the post of Senior Investigator was amended w.e.f. 16.2.1976 under which a minimum of five years of regular service in the grade of Junior Investigator was required for consideration for promotion of the Junior Investigator to the grade of Senior Investigator. Applicant had not put in requisite service in the grade of Junior Investigator by 1976-1977. The post of Senior Investigator is a selection post so rules for promotion to a Selection post have to be followed.

8. In the rejoinder applicant has reiterated his case and controverted the allegations made by the applicant.

9. We have heard the learned counsel for the parties and have perused the record.

10. Applicants in their representations dated 2.11.88 and 29.11.88 (Annexure-VIII) collectively, had prayed that they should be regularized as Senior Investigator on 29.6.1977. Their request was granted and they were regularized in the grade of Senior Investigator w.e.f 29.6.77. This Tribunal while deciding the OA-1631/89 filed by these applicants by order dated 22.11.1983 did not find merit in the case of the applicant but in the peculiarity of the facts gave certain directions for convening of the DPC and regularization of the services of the applicant against vacancy which became available after 1986. The respondent taking this order in its true spirit convened the DPC and regularized the applicants in the grade of Senior Investigator first w.e.f. 1983 and subsequently called another review application and regularized the services of the applicant w.e.f. 29.6.1977 on which date vacancies were available even though the applicant as per respondents' allegation had not fulfilled minimum 5 years eligibility condition for promotion from the post of Junior Investigator to the post of Senior Investigator. Applicants were still not satisfied. They have filed the present OA for

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regularization of their services w.e.f. 29.12.1976, i.e. to be antedated by almost 6 months. The applicant have alleged that they were promoted to the post of Junior Investigator on ad hoc basis by order dated 7.7.1971 and that they were to be regularized w.e.f. 1.7.1971 yet the respondents have regualrised them in the grade of Junior Investigator from 11.5.1971. Conversely, the respondents in the counter have stated that a clear vacancy in the post of Senior Investigator became available only on 4.11.1976 so the applicants who were working as Junior Investigator ad hoc w.e.f. 11.5.1971 were appointed on regular basis only on 4.11.1976. The applicants have not been able to produce any documents to show that they were regularized as Junior Investigator against a clear vacancy prior to 4.11.1976. The seniority list of 1984 does not prove that they were regular Junior Investigator from 11.5.1971. Admittedly, they were appointed to that post initially on ad hoc basis. Their ad hoc appointment was to be regularised on the post of Senior Investigator. The applicants have not been able to establish before us that a clear vacancy for their regularisation as Senior Investigator had become available in 1971 or even prior to 4.11.1976. No order has been produced to show that they were regularized as Junior Investigator w.e.f. 11.7.1971, the date on which they were given ad hoc promotion against the vacancy of Junior Investigator which became available on ad hoc promotion of Junior Investigator to Senior Investigator to the higher post. There was no material on record to show that there were any regular vacancy available for regular appointment/deemed appointment from the date of 11.5.1971. Therefore, their contention that they fulfilled the eligibility condition of 5 years minimum service as Junior Investigator for promotion to the grade of Senior Investigator even according to the amended recruitment rules which came into force on 16.2.1976 to our view is not tenable. For promotion from the grade of the Junior Investigator to the grade of Senior Investigator 5 years minimum regular service was the essential eligibility condition. They were appointed as ad hoc Senior Investigator on 29.6.77. They would not have been considered for regularisation w.e.f. 29.12.76 when they were not even working on the post of Senior Investigator on ad hoc basis.

11. During the course of hearing, counsel for applicant has not been able to demonstrate as to how a vacancy became available in the grade of Senior Investigator for these applicants on 29.12.76 and why the case of the respondent that the vacancy arose

to be regularised

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on 29.6.77 against which these applicants were regularized while implementing the order of the Tribunal should not be accepted. The onus was on the applicant to satisfy the Tribunal that despite having the vacancies available on 29.12.1976 for regular promotion of the applicant they, otherwise eligible for promotion as per the recruitment rules, were not considered for their regular promotion. The applicant have failed to establish their right of consideration for regularization w.e.f. 29.12.76. We do not find any legal infirmity in the order of the respondents.

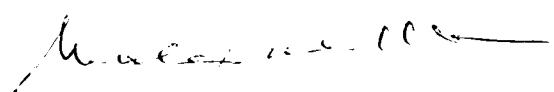
12. During the hearing of the case, we wanted to know from the applicant as to what monetary or other benefit would accrue to the applicant by antedating the date of his regularization in the grade of Senior Investigator by 6 months, i.e. 29.11.76 in place of 29.6.77. Applicant could not give the satisfactory answer. Antedating the regularization by 6 months would certainly not lengthen the qualifying service for pension and effect the pension and pensionary benefits. It would also not affect the last emolument which would be the basis of the applicant's pension and other retrial dues. All the applicants in OA 1631/1989 except these two applicants in whose favour the order dated 23.11.93 was passed by the Tribunal seemed to be satisfied. The applicants who had since retired from service, are agitating for antedating them regularization on the post of Senior Investigator by about 6 months, for no apparent good reason. The seniority in the grade of Senior Investigators and above has been settled and large number of promotions might have taken place so disturbing the seniority now would have far reaching effect in the cadre of Senior Investigator and above. Unsettling the settled position, that too on the request of the applicants who are no more in service for the past 4-5 years is not at all warranted in exercise of power of judicial review of this Tribunal. For this reason also we do not find that the impugned orders should be interfered with.

13. For the reasons stated above, we do not find the claim of the applicant tenable.

14. Accordingly, OA is dismissed but without cost in the circumstances.



(N.D. DAYAL)
Member (A)



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

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