

8

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1658/2004

New Delhi this the 12th day of January, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

1. Birender Singh, DEO-D,
S/o late Shri Ram Pujan Singh,
4/33, Panchkuyan Road,
New Delhi.

2. Bhagwat Singh, DEO-D,
S/o late Shri Bishan Singh Bora,
House No. 318, Sector-III,
Sadiq Nagar, New Delhi.

3. Jai Bhagwan, DEO-D,
S/o late Shri Raghu Nath,
RZ 274/291, Gali No. 5,
Gitanjali Park, West Sagarpur,
New Delhi. **Applicants.**

(By Advocate Shri Deepak Verma)

Versus

Union of India through

1. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.

2. The Secretary,
Department of Personnel & Trg.,
North Block,
New Delhi. ... **Respondents.**

(By Advocate Shri M.M. Sudan)

B

O R D E R (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (J).

By this O.A., applicants, three in number, have sought direction to the respondents to treat the appointment/promotion of applicants to the posts of Data Entry Operator-D (DEO-D) as regular w.e.f. 5.8.2002 and grant any other or further relief which this Tribunal deems fit in the circumstances of the case.

2. The facts of this case are not really disputed. It is submitted by the applicant that on the recommendations of the Seshagiri Committee, the pay scales and designation of EDP posts were revised in all Ministries/Departments by the Department of Expenditure (MOF) O.M. dated 11.9.1989 with effect from the same date. The date of implementation with effect from 11.9.1989 was challenged in a number of petitions and a Full Bench judgment held that the revised pay scales shall be applicable w.e.f. 1.1.1986 instead of 11.9.1989 with consequential benefits. The said judgment was upheld by the Hon'ble High Court and implemented by the Union of India.

3. In 1991, the Department of Personnel & Training (DOP&T) circulated Model Recruitment Rules and all the Ministries/Departments were asked to frame recruitment rules, inter alia, in respect of the re-designated EDP posts. The Model Recruitment Rules dated 13.2.1990 are annexed on page 10 of the O.A. However, no recruitment rules were notified for the posts of DEO-C, D & E but since 3 vacancies had arisen in the grade of DEO-D, the UPSC wrote a letter on 8.2.2002 (pages 37 and 38) that if the vacancies are kept unfilled for want of notified rules, the promotional prospect of employees would be adversely affected. Therefore, the

vacancies in the grade of DEO-C and DEO-D may be filled up by the method as per the draft recruitment rules.

4. As applicants fulfilled the eligibility conditions of the draft recruitment rules, therefore, they were considered by a duly constituted DPC and were promoted on ad hoc basis w.e.f. 5.8.2002. The applicants requested the authorities vide their representation dated 3.2.2004 to treat their promotion/appointment to the posts of DEO-D w.e.f. 5.8.2002 as substantive/regular since they were promoted by a regularly constituted DPC, in accordance with the method of recruitment and eligibility conditions provided under UPSC administrative order dated 8.2.2002 duly approved by the DOP&T in the absence of regular recruitment rules. However, the request of applicants was turned down vide O.M. dated 29.4.2004, on the ground that regular promotions in the grade of DEO-D and DEO-C can be made only after the notification of recruitment rules (page 8). Counsel for the applicants submitted that since respondents were delaying notification of the recruitment rules without any justification and they had been promoted as per the draft recruitment rules against the substantive vacancies after they were duly recommended by the constituted DPC, therefore, there is no justification to continue them as ad hoc promotees and the same should be regularized. In order to substantiate their claim, he relied on Chapter 21 of Swamy's Compilation on seniority and promotions, wherein it was held by the Govt. of India that Ministries and Departments shall not make appointments to any post on ad hoc basis, on the ground that no recruitment rules exist for the same. It was further clarified therein that ad hoc appointments are frequently resorted to on the grounds that the recruitment rules are in the process of being framed and if there are overriding compulsions for filling any Group 'A' or Group 'B' post in the absence of recruitment rules, then the Ministries may make reference to the UPSC for



deciding the mode of recruitment to that post and further action to fill the post may be taken according to the advice tendered by the UPSC. It was stated therein that all such appointments will be treated as regular appointments. As far as Groups 'C' and 'D' posts are concerned, since they are outside the purview of UPSC, it was clarified that since powers to frame recruitment rules without consulting the DOP&T have already been delegated to the Administrative Ministries vide O.M. dated 21.3.1985, therefore, no appointment may be made to any post on ad hoc basis on the ground that no recruitment rules exist for the same.

5. Counsel for the applicant also relied on the letter dated 8.2.2002 written by the UPSC to the DOP&T stating therein that the recruitment rules for the post of DEO-B, C & D and Supdt. (DP)/DEO-E could not be finalized till date and vacancies are available. Therefore, the vacancies in the grade of DEO-C and DEO-D may be filled by the methods and eligibility conditions, as mentioned in the letter dated 8.2.2002. He thus submitted that in the absence of notified recruitment rules since applicants were promoted against the substantive vacancies after following due process of law as they were recommended by the duly constituted DPC, therefore, the stand taken by the respondents while rejecting their claim is absolutely wrong and is liable to be quashed.

6. Respondents have opposed this O.A. on the ground that since recruitment rules for any of the posts of DEO-A, B, C or D were not finalized, therefore, it cannot be stated that applicants fulfilled the method of recruitment and eligibility criteria in accordance with the recruitment rules. They have explained that Respondent No. 2 had accorded their concurrence for filling up the posts of DEO-D on the basis of eligibility criteria prescribed in the Model Recruitment Rules. As per the Model Recruitment Rules, it prescribed 4 years regular service in the grade of DEO-C whereas in the draft recruitment rules,



it was 3 years regular service. The applicants had completed just 4 years regular service in the grade of DEO-C and since they were assessed and duly recommended by the duly constituted DPC, they were appointed on ad hoc basis against 3 clear vacancies of DEO-D. They have further submitted that regular appointment can be made only in accordance with the provisions of the notified recruitment rules which have not yet been issued. They are making all the efforts to frame the recruitment rules for the posts of various grades of DEOs on the basis of Model Recruitment Rules prescribed in that regard but due to functional requirement peculiar to the office of Respondent No.1, the entire cadre of DEOs have been proposed to be restructured, which is a process that by its very nature and complexity involved is a time consuming one because of which the recruitment rules could not be finalized. They have thus submitted that the O.A. may be dismissed.

7. We have heard both the counsel and perused the pleadings as well.

8. Counsel for the applicants relied on the judgment given by the Hon'ble Supreme Court in the case of Ramesh K. Sharma and Anr. Vs. Rajasthan Civil Services and Ors. (2001 (1) SCC 637), wherein it was held as under:

“In the service jurisprudence a post could be temporary or it could be permanent or it could be created for a definite period to meet a definite contingency. If an incumbent is appointed after due process of selection either to a temporary post or a permanent post and such appointment, not being either stopgap or fortuitous, could be held to be on substantive basis.....”

“....The expression 'service rule' does not necessarily mean rules framed by the Governor in exercise of power under the proviso to Article 309 of the Constitution. It is well settled that the service condition including the mode of recruitment to a service could be determined by a set of administrative orders in the absence of any statutory rule operative in the field....”.

9. We have applied our mind to the facts as stated above from which three things clearly emerge out, namely, (1) that substantive



vacancies of DEO-D were available in the Department; (2) Admittedly, applicants fulfilled the eligibility condition, as mentioned in the Model Recruitment Rules and DOP&T guidelines, as is apparent from the letter dated 8.2.2002 written by the UPSC to the DOP&T; (3) Applicants were promoted to the post of DEO-D after they were duly recommended by the DPC. In these circumstances, the question that is posed before us is whether applicants can be made to continue on ad hoc basis till the recruitment rules are finalized or their promotion can be treated as regular one? This need not detain us ^{for} too long as the issue has already been adjudicated upon and decided finally in the case of I.K. Sukhija & Ors. Vs. Union of India & Ors. (JT 1997 (6) SC 201). In the above said case, the facts were that the appellants, who were Junior Engineers of CPWD, were taken over by P&T (Civil Wing) in 1963 on formation of this wing without any deputation allowance etc. and were absorbed in P&T Department in 1969. They were promoted as Assistant Engineers (Elect.) on ad hoc between 1970 to 1977. The Hon'ble Supreme Court held that promotions of appellants as A.Es (E) were not contrary to any statutory recruitment rules as they were promoted after being found suitable by DPC and as per placement in merit list and when clear vacancies were available. Since the said appointments, though temporary and ad hoc, were not by way of stop gap arrangements only, they were entitled to get their seniority counted from the date of initial promotion as A.Es (E). In the said case, it was also observed by the Hon'ble Supreme Court that even if they proceed on the basis that in absence of statutory rules the draft recruitment rules of 1969 were applicable, appellants were still eligible for promotions and their cases were duly considered by the DPC. They were promoted only after they were found suitable by the DPC. In the said case also, the only reason for making their appointments as temporary and ad hoc was that the draft



recruitment rules could not be finalized till 1975. If the case of present applicants is seen in the backdrop of the judgments given by the Hon'ble Supreme Court (supra), we find that almost the same situation prevails in the present case as well. Admittedly, clear substantive vacancies were available, the draft recruitment rules were prepared which have not yet been finalized and applicants were promoted only after their cases were considered and recommended by the duly constituted DPC after taking concurrence from the DOP&T. The recruitment rules, we were informed, have still not been finalized and there is no such averment that they are likely to be finalized in near future. Admittedly, the earlier re-structuring had taken place in 1989, therefore, in 1990 the Model Recruitment Rules were issued. Respondents have not clarified as to when the process of re-structuring again was undertaken, what is the stage of the so-called re-structuring undertaken and how long it will take to finalize the said re-structuring. In these circumstances, when there is no certainty at all as to when the recruitment rules are going to be finalized, we are of the considered opinion that in the absence of recruitment rules, respondents had rightly promoted the applicants on the basis of Model/Draft Recruitment Rules. We, therefore, find no justification as to why applicants should be continued on the promoted posts of DEO-D on ad hoc basis for an indefinite period. After all as and when the recruitment rules are finalized after the restructuring is carried out by the respondents, law will take its own course at that relevant time but applicants cannot be made to suffer on account of inordinate delay in finalizing the recruitment rules. It is also held in Ramesh K. Sharma's case (supra) that appointment made by selection in accordance with the method of recruitment provided under Govt. Order in absence of relevant service rules does not amount to ad hoc appointment and in the absence of recruitment rules framed in exercise of powers under proviso to Article 309,



Department could always resort to administrative orders. In this case, since the recruitment rules were not yet finalized after 1989, respondents were giving promotions to the applicants on the basis of Model/Draft Recruitment Rules, which is very much permissible.

Therefore, according to us, the promotions given to the applicants can neither be said to be stop gap or fortuitous. On the contrary, since they have been promoted by following due process of law on the recommendations of the DPC against substantive vacancies, therefore, their promotions have to be treated as regular promotions.

10. In view of the above discussion, the stand taken by the respondents cannot be sustained in law. The respondents are directed to treat the promotion of applicants to the posts of DEO-D as regular w.e.f. 5.8.2002 in the peculiar facts of this case. O.A. is accordingly allowed. No order as to costs.

Malhotra
(S.K. MALHOTRA)
MEMBER (A)

'SRD'

Meera
(MRS. MEERA CHHIBBER)
MEMBER (J)