

9

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.1973/2004

This the 10th day of February, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SMT. MEERA CHHIBBER, MEMBER (J)

Dr. Raghu Raj Singh Chauhan,
Assistant Director (Exhibition Cell),
National Museum, Janpath,
New Delhi-110011.

... Applicant

(By Shri R.K.Singh, Advocate)

versus

1. Union of India through
Secretary, Department of Culture,
Ministry of Culture,
Shastri Bhawan, New Delhi.
2. Director General,
National Museum, Janpath,
New Delhi-110011.
3. Shri U.Das,
Assistant Director (Administration),
National Museum, Janpath,
New Delhi-110011.
4. Shri S.P.Singh,
Director (Conservation),
[formerly known as Chief Restorer],
National Museum, Janpath,
New Delhi-110011.

... Respondents

(By Shri Rajinder Nischal, for Respondents 1-3 and Ms. Meenu Mainee for
Respondent No.4, Advocates)

ORDER

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

Applicant has challenged Annexure A-1 dated 11.8.2003 whereby
applicant's representation dated 24.6.2003 seeking counting of his seniority from
2.1.1996 when he held the post of Keeper (Publications) in the National Museum

10

- 2 -

10

in the lower scale from which he came on deputation (on *ad hoc* basis) to the post of Assistant Director (Exhibition Cell) has been rejected, stating that his seniority would be counted from the date of absorption (29.5.2001) as he did not hold same or equivalent grade on regular basis in the post held by him in his parent department prior to the holding of the post on deputation. Applicant has sought that he should be given seniority on the post of Assistant Director (Exhibition Cell) for the period 2.1.1996 to 2.12.1998 as continuous *ad hoc* deputation and also that his services w.e.f. 3.12.1998 should be declared as regular on the post of Assistant Director (Exhibition Cell) and he should be accorded seniority w.e.f. 3.12.1998 on regular basis on the post of Assistant Director (Exhibition Cell).

2. Briefly stated, the facts of the case are that applicant had joined the National Museum on the post of Keeper (Publications) (Group 'A') in the scale of Rs.3000-4500 on 12.12.1989. He was confirmed as such on 12.12.1991. He joined as Assistant Director (Exhibition Cell) in the scale of Rs.3700-125-4700-150-5000 on 2.1.1996 on deputation basis on *ad hoc* basis). Later on vide Annexure A-13 dated 24.11.1998 on UPSC's recommendations applicant was offered appointment on transfer on deputation basis to the post of Assistant Director (Exhibition Cell) in the National Museum in scale Rs.12000-16500. Applicant had earlier on filed OA No.459/1998 seeking direction to respondents to complete the process of selection to the post of Assistant Director (Exhibition Cell) and Assistant Director (Administration). On 28.5.1998, OM dated 26.5.1998, which stated that applicant has been appointed as Assistant Director (Exhibition Cell) in the National Museum purely on *ad hoc* basis for a period of six months only w.e.f. 2.1.1996 or till the post was filled on regular basis, was stayed and status quo ante was directed to be continued till further orders. Ultimately, the aforesaid OA was disposed of directing that applicant should be considered as continuing in the post of Assistant Director (Exhibition Cell) till the date of notification, i.e., 26.5.1998 and would not be reverted from a retrospective

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— 3 —

date. Applicant was held entitled to consequential benefits by way of difference of pay in holding the *ad hoc* post of Assistant Director (Exhibition Cell) in accordance with rules which were to be paid to him within two months. As respondents admittedly were to complete the process of selection to the post of Assistant Director (Exhibition Cell) in due course after completion of formalities in accordance with the relevant rules, no directions were issued regarding completion of the process of selection within a stipulated period. According to applicant, although UPSC made its recommendations for appointment of applicant on 16.9.1998, he was offered the post on 24.11.1998 whereupon he joined the post on 3.12.1998. The learned counsel of applicant stated that applicant had continued on the post of Assistant Director (Exhibition Cell) from 2.1.1996 to 28.10.1998 and in view of the UPSC's recommendation having been made on 16.9.1998, even the gap of 29.10.1998 to 2.12.1998 also stands covered.

3. The learned counsel relied upon the following in support of applicant's reliefs:

- (1) ***Ramesh K. sharma & another v Rajasthan Civil Services & Others*** [Civil Appeal Nos.6298-99 of 1995 with C.A. No.9146 of 1995 decided on 23.11.2000) and reported as 2000 (7) Supreme To-Day 622;
- (2) ***Devdutta & Others v Chief Secretary to Govt. of M.P. & Others*** – 1990 (2) SCALE 152; and
- (3) Order dated 4.1.2002 in OA No.1689/2000 (CAT, Principal Bench) – ***D. K. Vijh v Union of India & Another***.

4. The learned counsel further submitted that in a similar case Shri S.P.Singh, Chemist, National Museum had been granted seniority right from his appointment in the National Museum. As such applicant has been discriminated against and not accorded the benefit of seniority as given to Shri S.P.Singh.

5. On the other hand, the learned counsel of respondents contended that as applicant had come on deputation and was subsequently absorbed, his seniority in the grade in which he is absorbed has to be counted from the date of absorption. In this connection, the learned counsel relied on Annexure-I to the counter reply

- 4 -

12

which are instructions on seniority of persons absorbed after being on deputation. The learned counsel stated that applicant did not hold prior to the date of absorption a post in the same or equivalent grade on regular basis in the parent department and as such, his seniority could not be fixed from the date he had been holding the post on deputation or from the date when he was holding a post lower in the parent department than the present post.

6. As regards objection of applicant regarding discrimination vis-à-vis the case of Shri S.P.Singh, learned counsel of respondents pointed out that Shri S.P.Singh had been appointed on absorption basis right from the beginning and he had not been taken on deputation and absorbed at a later stage like applicant. As such both the cases are entirely dissimilar.

7. We have considered the respective contentions of all sides and also gone through the records.

8. Applicant who was holding the post of Keeper (Publications) in the National Museum, was appointed vide Annexure A-4 dated 1.1.1996 in the post of Assistant Director (Exhibition Cell) in scale Rs.3700-5000 on deputation basis on *ad hoc* basis) for a period of six months from the date of his assumption to the post, or till the post was filled on regular basis, whichever was earlier. As per the recruitment rules for the post of Assistant Director (Exhibition Cell) notified on 4.5.1983 (Annexure A-3), this post can be filled "by transfer on deputation (including short term contract/transfer) failing which by direct recruitment". Applicant who was working as Keeper (Publications) in the scale Rs.3000-4500 was appointed on deputation basis (on *ad hoc* basis) as is clear from Annexure A-4. Rules permit appointment by direct recruitment only in case of failure in filling the post by transfer on deputation including short-term contract/transfer. Applicant was taken on deputation as rules permit that persons holding a post in scale of Rs.3000-4500 for five years could be taken on deputation provided that they possessed educational qualification and experience prescribed for direct

11

17

- 5 -

recruits. Applicant never challenged his appointment on deputation basis on *ad hoc* basis. On the other hand, Shri S.P.Singh, Chemist, National Museum was appointed as Chief Restorer (Inorganic and Organic Objects) in pursuance of selection through UPSC vide order dated 1.9.2000 w.e.f. 30.8.2000 on absorption basis. Recruitment rules for the post of Chief Restorer (Inorganic and Organic Objects) notified on 26.5.1987 are available at Annexure A-41. These rules also provide for transfer on deputation including short-term contract/transfer. However, Shri S.P.Singh was appointed as Chief Restorer on absorption basis right from the inception as is clear from his orders of appointment dated 1.9.2000.

9. We cannot go into the correctness of the orders of appointment of Shri S.P.Singh. If he was appointed right from the beginning on absorption basis, applicant cannot seek similar treatment under rules related to him when he had not challenged his appointment as Assistant Director (Exhibition Cell) on *ad hoc* basis.

10. From the facts of the case, it is clear that prior to coming on deputation on the post of Assistant Director (Exhibition Cell) applicant held the post of Keeper (Publications) in the same department. Admittedly, the post of Keeper is lower in scale than the post of Assistant Director.

11. In the case of **Rakesh K. Sharma** (supra) it was held that the post held by the absorbent in parent department was equal to the post held by direct recruits and such absorbents having been appointed after due process of selection either to a temporary or a permanent post, and such appointment not being either stop gap or fortuitous, could be held to be held on substantive basis. In the present case applicant's earlier post was clearly a lower post. Applicant was neither appointed on a temporary post or a permanent post; he was appointed only on a deputation (on *ad hoc*) basis. As such in his case rules of absorption of deputationists have to be applied. Applicant's case is not that of a temporary appointment followed by

18

- 6 -

regularisation. In this view of the matter, the ratio in the case of *Rakesh K. Sharma* would not be applicable here.

12. In the case of *Devdutta* (supra) surplus Level Extension Officers were absorbed in the post of Sales Tax Inspectors. Those were cases of absorption by transfer from one Government department to another. The present case is not a case of absorption on transfer. Applicant had come on deputation and later absorbed. He had not come on transfer at all. This ruling shall also not be attracted here.

13. In the case of *D.K. Viji* (supra) it was held that continuous and uninterrupted *ad hoc* appointment followed by regularisation had to be taken into consideration for determining seniority as applicant's *ad hoc* promotion was not a stop-gap-arrangement but one made against a regular vacancy. The present case is not that of *ad hoc* promotion made against a regular vacancy. It is a case of deputation followed by regularisation and would be governed only by rules and instructions related to absorption in deputation cases.

14. Instructions contained in OM dated 22.12.1959 relate to seniority of persons absorbed after being on deputation. The relevant instructions are reproduced below:

“(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e., where the relevant Recruitment Rules provide for Deputation/Transfer), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent Department such regular service in the grade shall also be taken into account in fixation of his seniority, subject to the condition that he will be given seniority from

- the date he has been holding the post on deputation

or

- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent Department

whichever is later.



- 7 -

The fixation of seniority of a transferee in accordance with the above principles will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up vacancies in higher grade taking place after such absorption. In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption."

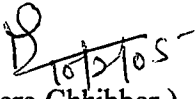
There is no ambiguity in these instructions. They clearly envisage that in cases of deputation followed by absorption, seniority has to be counted from the date of such absorption. As stated earlier, applicant had been appointed as Assistant Director (Exhibition Cell) on 1.1.1996 on deputation basis (on *ad hoc* basis) for a period of six months or till the post was filled on regular basis, whichever was earlier. He functioned as such till 28.10.1998 on the strength of interim orders dated 28.5.1998 in OA No.459/1998. Thereafter, there is a break when applicant did not function as such from 29.10.1998 till 2.12.1998. He started functioning again as such when he joined the post again on 3.12.1998 on deputation basis. However, in terms of DOP&T OM dated 1.7.1991 (Annexure P-14) applicant's appointment on transfer on deputation basis as Assistant Director (Exhibition Cell) scale Rs.12000-16500 has to be considered as effective from the date of recommendations of the UPSC. UPSC is stated to have made these recommendations on 16.9.1998. As such, the period of break from 29.10.1998 to 2.12.1998 is certainly covered in terms of this circular. However, this will not lend any support to applicant's claim that he should be accorded seniority on the post of Assistant Director (Exhibition Cell) for the period from 2.1.1996 to 2.12.1998 as continuous *ad hoc* deputation and later on to treat his services from 3.12.1998 as regular on the post of Assistant Director (Exhibition Cell). Having joined the post of Assistant Director (Exhibition Cell) from 2.1.1996, his services can be considered to be continuous *ad hoc* deputation till the date of his absorption, but he cannot be accorded any seniority on the basis of his being on deputation from 2.1.1996 till the date of absorption, i.e., 29.5.2001 as being on

- 8 -

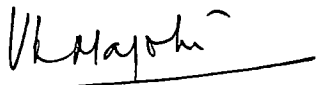
deputation followed by absorption subsequently, his seniority has to be counted from the date of such absorption only in terms of the rules and relevant instructions as discussed above.

15. In the facts and circumstances of the case as discussed above, we do not find any merit in the claims of applicant. Accordingly, this OA is dismissed.

No costs.


(Meera Chhibber)
Member (J)

/as/


(V. K. Majotra)
Vice-Chairman (A) 10.2.05