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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 1980/2004

New Delhi, this the 26th day of May, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.K.NAIK, MEMBER (A)

Shri S.R. Verma,
S/o Late Shri Chhaju Ram,
276/22, Onkar Nagar-B,
Trinagar, Delhi-35.

(By Advocate: Sh. S.M.Rattanpaul)

Versus

1. Union of India through the Secretary,
Ministry of Textiles,
Udyog Bhavan,
New Delhi-110001.
2. The Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
Department of Personnel and Training,
North Block,
New Delhi.
3. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.
4. The Development Commissioner (Handicrafts),
Office of Development Commissioner (Handicrafts),
Ministry of Textiles, West Block-7,
R.K.Puram,
New Delhi-110066.
5. Sh. S.Dkhar,
Deputy Director (Handicrafts),
Office of Development Commissioner (Handicrafts),
North Eastern Region,
Central Block, IInd Floor,
Housefed Complex, Belatala Bus Stop,
Bashistha Road, Guwahati (Assam).

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6. Shri A.T.Mesram,
Deputy Director (Handicrafts),
Office of Development Commissioner (H),
Eastern Region, MSO Building,
'A' Wing, IIIrd Floor, DF Blok,
Salt Lake City,
Kolkata (West Bengal).

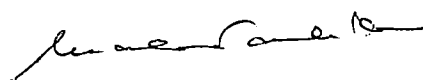
(By Advocate: Sh. K.R.Sachdeva for respondents No.1, 2 & 4
Sh. R.V.Sinha for respondent No.3
None for respondent No.5 & 6).

ORDER

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

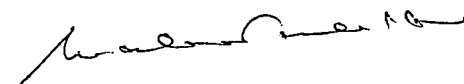
Applicant has filed this OA for quashing the order dated 9.3.2004 and 18.3.2004 and for declaration that the applicant is entitled to the benefit of the judgment of the Hon'ble Supreme Court and the Central Administrative Tribunal in the case of S/Sh. S.K. Sehgal, S. Ramamurthy and V.V.S. Suryanarayana, being similarly situated person and further declaration that he is entitled to the regularization as Handicraft Promotion Officer from 31.7.1976, the date of his initial ad hoc appointment, with all consequential benefits with regard to seniority, pay, promotion and arrears of pay and allowances etc.

2. In the OA, it is alleged that the applicant joined All India Handicrafts Board, now called the Office of Development Commissioner (Handicrafts), under the Ministry of Textiles as LDC on 30.7.1966. On 27.8.1973 he was appointed as direct recruit Technical Assistant (Marketing) on ad hoc basis. The post of Technical Assistant (Marketing) was subsequently re-designated as Investigator w.e.f. 27.8.1973 with retrospective effect. The next higher post in the panel of promotion is Junior Field Officer (JFO) subsequently designated as Handicrafts Promotion Officer (HPO) under Marketing Scheme. On 9.2.1976, the applicant on his selection by Selection Committee, in pursuance of the open advertisement was further appointed as Junior Field Officer subsequently re-



designated as Carpet Training Officer, an ex cadre post, on ad hoc basis in the then existing pay scale of Rs.550-900 under the "Carpet Scheme" of the respondent department. With a view to give impetus to handicrafts and its marketing in remote and far off areas, as per recruitment rules, 50% of recruitment of JFO (HPO) under the Marketing Scheme was required to be made on urgent and emergent basis through direct recruitment in consultation with the UPSC and 50% through promotion from the feeder cadres, i.e. Investigators etc. Since no eligible and willing person for promotion to JFO (HPO) in far off areas was available from the feeder cadres and the need was urgent and emergent, the respondent department decided to resort to direct recruitment through open market immediately. A number of posts of JFOs (HPOs) were, therefore, advertised on All India basis through a circular dated 4.11.1975. The direct recruitment was to be made in consultation with the UPSC as per recruitment rules. But due to emergency, it was decided to recruit JFOs (HPOs) initially on ad hoc basis through selection by a Selection Committee and UPSC's concurrence for their regularization was to be obtained thereafter. Large number of candidates applied for direct recruitment in response to the circular dated 4.11.1975. Applicant fulfilled all the requirements for direct recruitment and he too applied for the post and was selected in 1976 along with 8 other candidates from open market by a duly constituted Selection Committee. Out of those 9 persons, only 4, including the applicant, whose names are given below, accepted the offer.

- (1) Shri Srimanta Kumar Jana
- (2) Shri Sushil Kumar
- (3) Shri S.Ramamurthy
- (4) Shri S.R. Verma (applicant herein)



3. All the above 4 persons were appointed as JFOs (HPOs) on ad hoc basis till regularly appointed candidate, as per recruitment rules and in consultation with the UPSC, joins the vacancy. Since some more vacancies were required to be filled up on urgent basis, a similar selection on similar terms and conditions was made in the year 1977 and the following 3 persons were appointed as JFOs (HPOs) on the same terms and conditions as on 1976.

(1) Sh. V.V.S.Suryanarayana

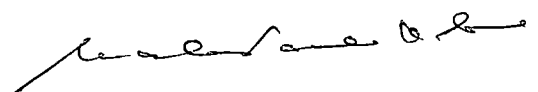
(2) Sh. S.Dkhar

(3) Sh. A.T.Meshram

4. Applicant accepted the offer of appointment and joined the post of JFO (HPO) at Sambalpur (Orissa) on 31.7.1976. The respondent, which was supposed to take action for regularization of the applicants in consultation with the UPSC, slept over for a long time. Applicant was holding a feeder cadre post of Investigator at the time of his ad hoc appointment as a direct recruit JFO (HPO) in 1976 was regularized through a Departmental Promotion Committee w.e.f. 17.9.1979. Out of the 4 officers of 1976 select panel, Sh. S.Ramamurthy was regularized in consultation with the UPSC w.e.f. 31.7.1985 as HPO. He approached the Madras Bench of this Tribunal for his regularization as HPO w.e.f. 23.4.1976, the date of his initial ad hoc appointment, with all consequential benefits, which was allowed by the Tribunal and upheld by the Hon'ble Supreme Court. The service of Shri Ramamurthy was regularized w.e.f. 23.4.1976. Shri S.K. Sehgal of the same select panel also filed similar application before the Chandigarh Bench of this Tribunal. The Tribunal dismissed the application but the Hon'ble Supreme Court in CWP No.3009/1989, which was filed against the order of Chandigarh Bench of the Tribunal, directed the respondent to treat Sh. S.K.Sehgal as substantive holder of

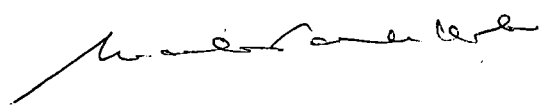
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the post of HPO and that his total service shall be taken into consideration for all purposes including the post-retiral benefits. Respondents had granted regularization of his services as HPO from 18.3.1976 with all consequential benefits. Not only the appointees of 1976 select panel but also the appointees of 1977 select panel agitated for their regularization from the dates of their initial ad hoc appointments as HPOs. Out of 3 ad hoc appointees of 1977 select panel, Shri V.V.S. Suryanarayana, who remained as HPO on ad hoc basis for 18 years, filed an OA in Hyderabad Bench of this Tribunal in 1995 for his regularization from the date of his initial ad hoc appointment as HPO with all consequential benefits, which was allowed in view of the judgment of the Hon'ble Supreme Court in the case of Sh. S.K. Sehgal. His service has also been regularized from the date of his initial appointment till 16.5.1977. In view of the 3 judgments of the Apex Court and this Tribunal in the cases of S/Sh. S.Ramamurthy, S.K. Sehgal and V.V.S. Suryanarayana, out of 7 ad hoc appointees of 1976 and 1977 batches, 4 from 1976 batch and 3 from 1977 batch were appointed as JFOs (HPOs) under similar circumstances and on same terms and conditions, 3 officers viz. S/Shri S.Ramamurthy, S.K. Sehgal of 1976 batch and V.V.S. Suryanarayana of 1977 batch were regularized from the date of their initial appointment with all consequential benefits on the basis of the judgment. Respondent's department, therefore, took a decision on 21.12.1995 to extend the benefit of the said 3 judgments to the remaining 4 JFOs (HPOs) namely S/Shri S.K. Jana and S.R. Verma (both of 1976 batch) and S. Dkhar and A.T. Meshram (both of 1977 batch) also with the approval of DOP&T. The respondent's department referred the case of the applicant and his 3 colleagues to the UPSC for its concurrence. Vide letter dated 17.6.1996 UPSC turned down the proposal due to absence of court directions in these remaining 4 cases. The respondent again wrote to the Commission vide its letter dated 11.7.1996 but UPSC again



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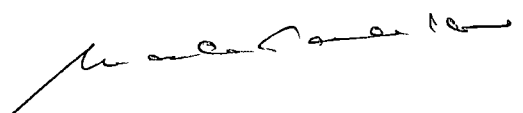
turned down the proposal. The respondent department again wrote to the UPSC on 24.1.97 but the UPSC still did not agree to concur. Thereafter, for reasons best known to it, the respondent wrote to the UPSC for its concurrence in the case of Sh. S.K.Jana only to which the UPSC readily agreed vide letter dated 22.4.1998 and Sh. Jana was regularized from the date of his initial ad hoc appointment, though his regularization and further promotion was quashed by the Chandigarh Bench of the Tribunal in an OA filed by his senior colleague Sh. Sushil Kumar Sehgal and stated that he is senior to him which was violation of the order of Hon'ble Supreme Court. After 3 years, respondent department again referred the case of 3 officers including the applicant for their regularization as HPO from the date of initial appointment with all consequential benefits vide letter dated 8.9.2000. After some information was furnished in response to the query of UPSC, the proposal was turned down on 19.2.2002 relying upon an irrelevant circular dated 23.7.2001 of DOP&T. UPSC, vide its letter dated 22.10.2002, insisted that for regularization of ad hoc services of the applicant and others, the DOP&T will have to relax its OM dated 23.7.2001. DOP&T vide its letter dated 16.4.2003 pointed out that the OM would not apply to the case of the persons. They had already been regularized prior to 1995 and that the circular dated 23.7.2001 did not lay down any fresh guidelines but reiterate the earlier guidelines. The respondent department being not satisfied with the decision of the UPSC took up the matter with the Ministry and asked the UPSC to reconsider the case of the applicant vide its letter dated 23.10.2003. UPSC finally approved the cases of two junior colleagues of the applicant viz. S/Shri S.Dkhar and A.T.Meshram but declined to recommend the case of the applicant on the ground of unexplained delay vide its letter dated 23.2.2004. The aforementioned two junior colleagues of the applicant were then appointed as HPOs with all consequential benefits and were given seniority as



HPO vide letter dated 9.3.2004. The respondent department has also promoted both of them as Assistant Directors (H) from 1980/1984 and as DD (H) vide order dated 9.6.2003. Both of them are being considered for regular promotions as Regional Directors from 1993 and were appointed as a direct recruit JFO (HPO) on similar circumstances and on the same terms and conditions. Hence this OA.

5. Respondent No.1 Union of India in its counter has stated that the applicant was a regular Investigator and working as JFO, CWTSC run by the Department whereas others names in the para 4.5 were freshers for the department. In the year 1977 it was not 3 but 4 persons who were selected as JFOs, the 4th one being Sh. Ashok Shah. The posts of JFO (HPO) were advertised by the department through UPSC in the year 1978-79 and again in the year 1983-84. The petitioner did not opt to apply for. It may be because he was a regular TA (Marketing) w.e.f. 27.8.1973, which was re-designated as Investigator. Out of 8 persons selected as JFO during 1976-77, the persons who had appeared before the UPSC in the year 1979 and 1985, are as under:-

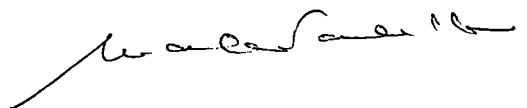
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|----|---------------------------|---|
| 1. | Shri S.K.Jana | did not appear |
| 2. | Shri S.K.Sehgal | did not appear |
| 3. | Shri S.Ramamoorthy | did not qualify in 1979
but qualified in 1985 |
| 4. | Shri S.R.Verma | did not appear |
| 5. | Shri V.V.S.Suryanarayanan | did not appear |
| 6. | Shri Ashok Shah | appeared but failed, didn't
appear subsequently |
| 7. | Shri S.Dhkar | appeared & qualified in 1979 |
| 8. | Shri A.T.Meshram | failed to qualify in 1979 but
qualified in 1985. |



6. Applicant on the strength of being a regular TA (Marketing)/Investigator was regularized as HPO w.e.f. 17.9.1979 in accordance with recruitment rules and he did not opt to appear before the UPSC for consideration against the same post in capacity of being a direct ad hoc recruit. UPSC has regularized Sh. S.Dhkar and Shri A.T.Meshram, who appeared before UPSC and qualified for the post of HPO as required under recruitment rules. They were subsequently given regular status by UPSC in the cadre of HPO w.e.f. 1.4.77 and 13.12.76 respectively. They were senior to the applicant in the cadre of HPO and, therefore, their cases were considered by review DPC for the post of Assistant Director (H) from the date they qualified for the same. The applicant did not claim seniority over Sh. Dhkar and Sh. Meshram. Applicant was not similarly placed to those whose service has been regularized with a condition that his regularization from the date of his entry in the cadre of JFO/HPO in ad hoc capacity as a direct entrant. The seniority list as a matter of procedure and rules is always framed on the basis of dates on which the incumbents figuring therein have been discharging their duties in that cadre on regular capacity. Applicant has been assigned proper slot as per the date his services have been regularized in the cadre of HPOs. Therefore, no injustice has been done to the applicant. Sh. Ramamoorthy, a selectee of 1976 batch, appeared before UPSC but failed to qualify. He appeared again in 1985 and succeeded and was assigned regular status with effect from the date of his qualifying UPSC. He approached Madras Bench of this Tribunal for regularization of his ad hoc services from the date of his joining as ad hoc JFO. The order dated 9.3.2004 is based on the prevalent rules determining the seniority of officials in Government set up and the order dated 18.3.2004 has been issued on the basis of the communication received from UPSC.

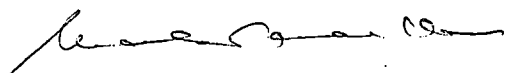
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7. Respondent No.3 UPSC stated that it is an advisory body set up under Article 315 of the Constitution and they have a constitutional obligation to ensure that all the selections made for regular appointments to the services/posts of the Union of India as falling under the purview of the UPSC are made strictly in accordance with the statutory recruitment rules and the relevant instructions issued by the Govt. of India from time to time. The UPSC, as a matter of policy and in accordance with the instructions issued by the Govt. of India from time to time, do not agree to regularization of such ad hoc appointments since such appointments and their subsequent regularization dilute and negate the role and functions of the Commission as per Constitution. DOP&T OM dated 29.10.1975 has impressed upon the Ministries/Departments to ensure that ad hoc appointments are not continued for indefinite period and for taking steps for regular appointment for replacing the ad hoc appointees in accordance with recruitment rules. The OM also requires it to be clearly spelt out in the orders of appointment and it should be made clear that the service rendered on ad hoc basis in the grade concerned would not for the purpose of seniority in that grade and for eligibility for promotion to next higher grade. DOP&T circular dated 9.7.85 reiterated the same rule that ad hoc appointment be not made for a period of more than one year and that if the vacancy that has arisen is of such a nature that it is likely to last for more than a year appointment should not be made except in consultation with the Commission as per recruitment rules. Subsequent instructions issued by OM dated 30.3.1988 still made clear that all posts should be filled in accordance with the prescribed procedure and recruitment rules on a regular basis and they are required to ensure that all ad hoc appointments are limited to posts which cannot be kept vacant until regular candidates become available and the same fact was stated in the OM dated 23.7.2001 which



impressed upon replacement of ad hoc appointees with regular appointees under the recruitment rules.

8. The ad hoc appointees do not have any right of regularization in absence of any scheme or policy of the Government and as per judicial pronouncement on the subject of Hon'ble Supreme Court particulars of which are furnished in para 3. The UPSC did consider the case of regularization of ad hoc appointment of officers in past cases where the Courts and the Tribunal have so ordered as also in similarly situated cases. In the case of Shri S.K. Sehgal, his ad hoc appointment was regularized w.e.f. 22.3.1976 in accordance with the order of the Hon'ble Supreme Court in the petition filed by him. The ad hoc service of Shri V.V.S. Suryanarayana was regularized w.e.f. 16.5.77. Sh. S.K. Sehgal was also given the benefit of the order of the Hyderabad Bench of this Tribunal and the OA filed by him on the basis of the judgment of the Hon'ble Supreme Court. Sh. S.K. Jana was similarly situated as Sh. S.K. Sehgal for whom UPSC recommended for regularization of ad hoc services also. Ad hoc service of Shri Ramamoorthy was regularized w.e.f. 31.7.1985 as a direct recruit but pursuance to the order of Madras Bench of this Tribunal in OA-79/1990 his service was regularized w.e.f. 23.4.1976. As regards Sh. Meshram and Sh. S. Dkhar, the Commission recommended for regularization of their ad hoc appointment w.e.f. 13.12.1976 and 1.4.1977 respectively on the basis of their qualifying the examination for direct recruitment conducted by the Commission. It is clear that all the officers mentioned above were initially recruited in the post of HPO on ad hoc basis and they were not possessing any lower post with the Department before their appointment. But the applicant was holding the post of Technical Assistant (Marketing)/Investigator on regular basis w.e.f. 27.8.1973. It is the feeder post to the post of HPO. The respondent had promoted him as HPO from the feeder post of Investigator w.e.f. 17.9.1979. The applicant being



holder of a feeder post, he was eligible for consideration for promotion to the post of HPO but his case is not covered by the cases of S/Shri S.K.Sehgal, V.V.S.Suryanarayana, S.K.Jana, S. Ramamoorthy, A.T.Meshram and S.Dkhar. So the respondent rightly did not agree to the regularization of his ad hoc appointment from 31.1.1976 to 16.9.1979.

9. In the rejoinder applicant has reiterated his own case and denied the allegations of the respondent.

10. Applicant was working as Investigator when the respondent issued circular dated 4.11.1975 (Annexure A-4) inviting applications for "appointment to the post of Assistant Directors and Junior Field Officers on ad hoc basis, which will continue till regular appointment was made in accordance with the recruitment rules". In response to this circular, applicant also submitted his application. He along with 8 others was selected and offer of appointment was issued to them but 4 out of 9 from the select panel namely S/Sh. S.K.Jana, S.K.Sehgal, S.Ramamoorthy and the applicant S.R.Verma accepted the offer. Applicant joined as JFO (HPO) w.e.f. 31.7.1976 on ad hoc basis. There were still some vacancies. A similar selection was done in the year 1977 and 3 more persons were selected and appointed as JFO (HPO) on ad hoc basis. They are S/Sh. V.V.S.Suryanarayana, S.Dkhar and A.T.Meshram. Out of these 7 persons, 4 from the select panel of 1976 and 3 from the select panel of 1977, barring the applicant, ad hoc service of all the remaining 6 persons has been counted towards regular service and they have been given seniority from the date of their original ad hoc appointment. Though the case of the applicant has been repeatedly referred to the UPSC but on flimsy grounds, his case has been distinguished by the Commission and concurrence has not been accorded for his regularization also with effect from the date of his original appointment on ad hoc basis in 1976.

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11. The contention of respondent No.3, UPSC is that while other persons whose cases have been recommended for regularization of ad hoc service, were direct recruits, the applicant herein was holding a post in the feeder cadre and on that basis he was given promotion by a Departmental Promotion Committee w.e.f. 17.9.79. We fail to appreciate the distinction made by the UPSC in the case of the applicant vis-à-vis other 3 persons from the select list of 1976 and 3 from the select panel of 1977. Neither the UPSC nor the official respondent have denied that the selection to the post of JFO (HPO) in 1976 and 1977 was made from the open market and the selected persons were appointed on ad hoc basis. Applicant was not given promotion to the post of JFO (HPO) on ad hoc basis being holder of a feeder cadre post of Technical Assistant (Marketing)/Investigator. Applicant, like the remaining 3 from the batch of 1976 and 3 from the batch of 1977, was a direct recruit even as per the case pleaded by the respondents. His appointment to the post of JFO (HPO) on 31.7.1976, as observed above was not on his ad hoc promotion but by virtue of his selection as a direct candidate. There was no distinguishable feature in the nature of the appointment of the applicant and 6 other appointees.

12. It is also interesting to note that in para 4.7 of the reply the respondents 1,2 and 4 have alleged that Sh. S.Ramamoorthy and A.T.Meshram, had appeared before the Commission in 1979 and failed but they had qualified in the year 1985. But Sh. S.K.Jana, and Sh. S.K.Sehgal, Sh. V.V.S.Suryanarayana and applicant did not appear before the Commission for their selection. Only Sh. S.Dkhar appeared and qualified in 1979. Therefore, the case of the applicant, as per the respondents' own averment, was not dissimilar to the case of S/Sh. S.K.Jana, S.K.Sehgal and V.S.S.Suryanarayana. Rationale behind the differential treatment given to the applicant by the Commission cannot be appreciated.

13. The respondents in their reply have admitted that the ad hoc appointees from the batch of 1976, excepting the applicant, and the ad hoc appointees from the select list of 1977 have been regularized in service from the date of their original appointment on ad hoc basis on the basis of the judgment of the Hon'ble Supreme Court, the Bench of this Tribunal or persons similarly situated to those whose ad hoc tenure was counted towards regular service under the judicial verdict. The applicant was a similarly placed and similarly situated persons with those other persons in all respect. He was also entitled to be given the benefit of the order of the Hon'ble Supreme Court, the order of the Tribunal and the orders, which were passed by the respondents.

14. Learned counsel for respondent No.1 Union of India has argued that the OA is barred by time but the representation of the applicant for regularization of his ad hoc service as JFO (HPO) was rejected by the respondents vide order dated 12/18.3.2004 on the ground that UPSC has not recommended regularization of his ad hoc service. The present OA was filed on 11.8.2004. The respondents entertained the representation of the applicant and have rejected it on merit. Therefore, by virtue of clause (a) sub Section (1) of Section 21 read with Sub Section (2) (a) of Section 20 of the Administrative Tribunals Act, 1985 the present OA is in time.

15. The next contention raised on behalf of the respondent No.1 is that the applicant was not entitled to the benefit of the order of the Tribunal. It has been noticed that the case of the applicant is not different from the case of other ad hoc appointees from the 1976 batch and 1977 batch. It does not become different simply because in the meantime the applicant has also been promoted in 1979 in accordance with recruitment rules since he was a holder of the post which was feeder to the post of JFO (HPO). Such a promotion cannot prejudice the rights of the applicant to be treated with equality. Article 14 of the

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Constitution of India enjoins upon the State to treat all persons equal before the law and Article 16 of the Constitution demands that all persons shall be treated equally in the matter of employment. Having given the benefit of regularization of ad hoc tenure to all other persons, the applicant could not have been treated with discrimination. It is not understood how the benefit of judgments and regularization of services of others would not accrue to the applicant.

16. The counsel for respondent No.3 UPSC besides reiterating the plea raised in the reply, which we do not find tenable, has contended that the applicant wanted his regularization in contravention of the rules. The applicant has prayed that he should be given the benefit of order of Hon'ble Supreme Court, this Tribunal and the respondents own order and his ad hoc term should also be counted towards regular service like it has been counted in the case of others who were appointed from the select panel of 1976 and from the select list of 1977. The respondent No.1 & 2 had repeatedly recommended the case of the appointment for regularization of his ad hoc tenure. It is only the UPSC which took absolutely unreasonable stand and tried to distinguish it on flimsy ground. The arguments of the respondents are not tenable so repelled.

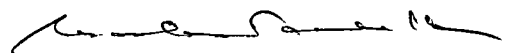
17. It has also been argued by the learned counsel for respondent No.3 that the applicant was an ad hoc appointee and it does not confer any legal right upon the applicant to claim regularization of his service from the date of his original appointment in contravention of the rules and the statute. It was further argued that the judgment of the Hon'ble Supreme Court was not on merit. However, the benefit of the judgment of the Hon'ble Supreme Court and this Tribunal has already been given to other persons who were similarly situated and had set up their claim on the same ground which the present applicant is pleading in the present OA. The respondents have already implemented the orders of the Hon'ble Apex Court and the Tribunal and regularized the ad hoc appointment of

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other persons for parity reasons. The applicant cannot be subjected to a hostile discrimination as it will be violative of Article 14 & 16 of the Constitution of India.

18. Referring to the judgment of Hon'ble Supreme Court in Dr. Chanchal Goyal vs. State of Rajasthan 2003 (3) SCC 485, the learned counsel for the respondents has argued that the continuance of ad hoc appointment by virtue of successive extension orders could not provide a ground for legitimate expectation against termination of service. The applicant has not pleaded doctrine of legitimate expectation or promissory estoppel as ground for granting him relief. His case is for granting him parity and treating him with equality with other appointees from the same select list of 1976/77. It is also argued that a wrong order would not give right to the applicant for parity. But it is not a case that other appointees from the select list of 1976 and 1977 were given seniority from the date of their initial appointment on ad hoc basis under a wrong or illegal order. A wrong cannot be perpetuated by applying the principles enshrined in Articles 14 & 16 of the Constitution of India. The respondents have not pleaded that the judicial orders were wrong, illegal, nul and void. So we do not see any force in any of these submissions. The judgment cited also does not advance the case of the respondent. It is well settled that even order which may not be strictly legal become final and are binding between the parties if they are not challenged before the superior courts as held by the Hon'ble Supreme Court in Authorised Officer (Land Reforms) vs. M.M.Krishnamurthy Chetty (1998) 9 SCC 138. The argument, therefore, has no force.

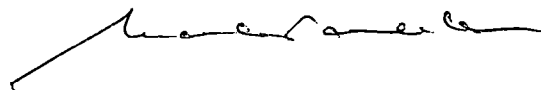


20. Applicant has cited Dr. A.K.Jain and others vs. Union of India and others 1987 (Supp) SCC 497 where the Hon'ble Supreme Court had allowed ad hoc Assistant Medical Officers to continue in service in terms of the directions given in the order. He also referred to Puranjit Singh vs. Union Territory of Chandigarh and others JT 1994 (6) SC 239 in which it was held that the petitioner's seniority was to be counted in his parent department which was Engineering Department of Chandigarh Administration and he was also to earn his promotion in the said department in accordance with the rules as and when the appointments were made to the vacancies which became available in that department. He could not count his seniority on the basis of his service prior to his fresh career nor can he claim promotion on the post that he had hold in the organization to which he was deputed. Both the decisions are on the peculiar facts and have no relevance to the question involved in this case.

21. Respondent No.1, on the other hand, has referred to order of this Tribunal dated 5.7.2004 in OA-3341/2001 titled R.P.Azad vs. Union of India where the applicant had filed the OA for quashing of an order of the respondent whereby his case for regularization was sent to the UPSC 20 years after he deemed to have been regularized in the pay scale of Rs.550-800 just because he was upgraded to the Group 'B' non-gazetted post in the scale of Rs.550-800 w.e.f. 1.3.1978. The case pertains to the post of JFO. The Tribunal observed that the applicant was recruited in the Carpet Scheme as JFO and subsequently he had been regularized as CTO in the pay scale of Rs.550-800 and his case for regularization in higher scale of Rs.550-900 has also been considered in terms of the directions contained in Tribunal's order in OA filed by him. It was further observed that the order of the Tribunal directed that the regularization is to be done as per the rules and instructions. Since the applicant has been placed in Group 'B' pay scale of Rs.550-900 it requires reference to the UPSC for

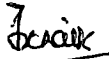


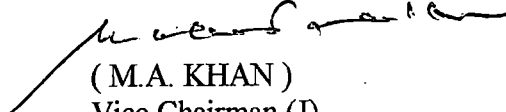
regularization. It was further observed that the case of the applicant has been placed under sealed cover because of the vigilance case. The Tribunal had dismissed the OA but observed that it would like to add that the respondents should take action to complete the disciplinary proceedings within six months. It is not understood how the ratio of law of this order would help the respondent. The facts were absolutely distinguishable and the decision will not apply to the present case. In the present case, the applicant has founded his claim mainly on parity with 6 other similarly situated persons. The respondent have also referred to the case of Sh. S.K.Sehgal vs. Union of India decided by the Chandigarh Bench of this Tribunal on 14.1.2003. In the case titled Sushil Kumar Sehgal vs. Union of India and others, Sushil Kumar who is one of the persons who were selected and appointed on ad hoc basis along with the applicant had filed this OA challenging the seniority of S/Shri S.K.Jana and V.V.S.Suryanarayana above the applicant in the seniority list of HPOs. He also sought quashing of the order whereby Sh. S.K.Jana was promoted as Assistant Director (Handicrafts) and the order dated 22.4.98 whereby Sh. V.V.S.Suryanarayana another person who was appointed on ad hoc basis from the select list of 1977 was promoted as Assistant Director w.e.f. 15.5.1980. The Tribunal allowed this OA and quashed the order Annexure A-1 to A-4 qua respondent No.5 & 6 with direction to the respondent to consider the claim of the applicant for promotion as Dy. Director w.e.f. 5.9.1989 and promotion as Regional Director without taking into consideration the names of Sh. S.K.Jana and Sh. V.V.S.Suryanarayana. The judgment itself shows that it was a dispute inter se these 3 persons, namely, S/Sh. Sushil Kumar Sehgal, S.K.Jana and V.V.S.Suryanarayana for consideration to the higher posts. The question involved was not of regularization of the ad hoc tenure of the officers on the



date on which they were originally appointed as JFO/HPO. This order is also not relevant.

22. The result of the above discussion is that the OA succeeds. The order of the respondent dated 18.3.2004 Annexure A-2 is quashed. The respondents are directed to regularize the service of the applicant as JFO/HPO counting the service rendered as ad hoc appointee w.e.f. 31.7.1976. He shall be given the consequential benefits including that of seniority. However, since the applicant has filed this OA in 2004 the applicant shall not be paid any monetary benefit/ arrears due as a consequence of his regularization in the service from the date of his original appointment as ad hoc JFO/HPO. The order shall be implemented within 3 months. Parties shall bear their own costs.


(S.K. NAIK)
Member (A)


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

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