

Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-483/2004

New Delhi this the 6<sup>th</sup> day of December, 2004.

Hon'ble Shri Shanker Raju, Member(J)  
Hon'ble Shri S.K. Malhotra, Member(A)

Sh. N.C. Jain,  
Computer,  
Department of Company Affairs,  
Shastri Bhavan, 5<sup>th</sup> floor,  
A-Wing, Dr. R.P. Road,  
New Delhi.

-Applicant

(through Sh. Thomas Oommen, Advocate)

Versus

Union of India through

1. The Secretary,  
Ministry of Finance & Company Affairs,  
North Block, New Delhi.
2. The Secretary,  
Department of Company Affairs,  
Shastri Bhavan,  
Dr. R.P. Road, New Delhi.

-Respondents

(Present : None even on second call)

Order (Oral)  
Hon'ble Shri Shanker Raju, Member(J)

Applicant impugns respondents' order dated 25.4.2003 whereby his request for treating ad hoc service as regular service for seniority, promotion and grant of ACP was turned down. This has been a common order on the representation filed by the applicant as well as Sh. Naresh Kumar and Sh. Udai Ram.

2. Applicant was appointed as Computer in 1982. As per recruitment rules where there was no requirement for appointment

through SSC rather they had been exempted subsequently. On continuing from time to time, the orders passed do not show any stipulation in the orders as to non-accord of seniority or any right for regularisation. Subsequently, on 10.1.1991 applicant was appointed on regular basis. A Coordinate Bench of this Tribunal in a common order passed in OA-2135/2003 and OA-2138/2003 filed by Naresh Kumar and Udai Ram respectively after meticulously discussing the contentions of the rival parties observed as under:-

"30. Now coming back to the objections of the respondents that appointment was de hors the rules as SSC was not consulted in 1983 when the applicants were regularised prospectively, even then the SSC was not consulted as if the requirement was exempted as relaxation, this is very illogical that the respondents adopt two different criteria and defence while contesting the above position of law.

31. Doctrine of legitimate expectations is an equitable principle sine qua non of which is fairness in the action of the administration. Though the applicants were appointed in 1983 and the provision of consultation with SSC came in 1987, no regular appointments had been made and the applicants had been continued for about ten years, now loss of 10 years from their service would cause substantial prejudice to the rights of pension further progression in career as well financial upgradation.

32. In our considered view, following the ratio in the case of Rudra Kumar Sain's case (supra) we have no hesitation to hold that the appointment of applicants was in accordance with rules and ad hoc was only a misnomer as they had continued for a fairly long period, the aforesaid period cannot be treated as no service and the appointment as *fotuitous ad hoc*. This is only the guise."

3. Applicant is similarly circumstanced, in all fours covered by the above ratio.

4. None appeared for the respondents even on second call. Accordingly, they are proceeded *ex-parte* under Rule 16 of the Central Administrative Tribunal (Procedure) Rules, 1987.

5. Applicant who was appointed in accordance with the rules cannot be deprived of service rendered which is deemed to be a regular service. It is to be counted not only for seniority as a qualifying service but service for the basis of ACP also.

6. In the result, OA is allowed. Impugned order is set aside. Respondents are directed to treat the entire service from 1982 to 1991 of the applicant as regular service and in that event the applicant will be entitled to all consequential benefits including grant of ACP as well.

7. However, in the event of implementation of the directions if the rights of others are adversely affected in the matter of seniority, the concerned affected persons be put to notice before an adverse decision is taken against them.

8. The above directions shall be complied with within a period of three months from the date of receipt of a copy of this order.

  
(S.K. Malhotra)  
Member(A)

  
(Shanker Raju)  
Member(J)

/vv/