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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI



O.A. NO. 1741/92

DECIDED ON : 31.3.93

Jasvinder Singh

... Applicant

Vs.

Union of India & Others

... Respondents

CORAM :

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Shri K. L. Bhandula, Counsel for Applicant

Shri M.L. Verma, counsel for the Respondents.

J U D G M E N T

Hon'ble Shri J. P. Sharma, Member (J) :-

The applicant, a Professional Assistant (Statistics)/ Statistical Assistant, P.P. Organisation, Central Water Commission, has assailed the order dated 11.5.1992, rejecting his representation dated 20.3.1992, claiming seniority with effect from the date of ad-hoc promotion followed by regular promotion as has been given to his colleagues in the same cadre, i.e., Sithal Das and Harpal Singh vide judgment and order in O.A.1783/88 decided on 5.9.1990 by the Principal Bench of the Tribunal.

2. The applicant has prayed for the following reliefs :-

- i) To count uninterrupted ad-hoc service in the grade of Professional Asstt. (Stat)/Statistical Assistant from 29.8.77 for the purpose of seniority.
- ii) To give the applicant seniority from 29.8.77 in the aforesaid grade as the same was followed by regularisation without break.
- iii) To grant such other benefits as the Hon'ble Tribunal may deem fit."

3. The facts of the case are that the applicant was promoted on ad-hoc basis w.e.f. 29.8.1977 and was regularised as Professional Assistant (Stat)/Statistical Assistant w.e.f.

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5.1.1985 without any break in service. In the seniority list of officers borne on the cadre of Statistical Assistants/Professional Assistants in the Central Water Commission as on 1.1.1986 the name of the applicant has been at sl. No. 26 while the name of Shri Sithal Das is at sl. No. 34 and that of Shri Harpal Singh is at sl. No. 38. Both Sithal Das and Harpal Singh are promotees. Sithal Das was given ad-hoc promotion w.e.f. 3.9.1979 and Harpal Singh was given ad-hoc promotion w.e.f. 23.4.1978. Both these persons have claimed in O.A. 1783/88 the counting of their ad-hoc service for purposes of seniority and that was considered and decided by the Principal Bench on 5.9.1990. It was directed in that case that the seniority of these two applicants be computed from the date of their uninterrupted service leading to regularisation. The respondents in pursuance of the aforesaid direction issued a revised seniority list on 11.10.1991 (Annexure-V) and in that seniority list the name of the present applicant appears at sl. No. 16 and that of Sithal das at sl. No. 3 and Harpal Singh at sl. No. 4. By virtue of this revised seniority list both the aforesaid Professional Assistants, i.e., Sithal Das and Harpal Singh who were juniors to the applicant in the seniority list as on 1.1.1986 have become senior to the applicant. The applicant, therefore, made a representation dated 20.3.1992 to the Chairman, Central Water Commission highlighting his grievance and claiming the same benefit as had been given to the aforesaid two staff members, i.e., Sithal Das and Harpal Singh by the judgment of the Tribunal referred to above. The request of the applicant was, however, turned down vide impugned order dated 11.5.1992 wherein the applicant was informed that the judgment in the case of Sithal Das and Harpal Singh was a judgment in personam and not a judgment in rem, hence the benefit of this judgment cannot be extended to him.

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4. The respondents in their reply have contested the application taking the preliminary objection that the applicant has no cause of action and that ad-hoc promotion cannot confer any seniority and further taking the plea that the present application is barred by principles laid down in section 21 of the Administrative Tribunals Act, 1985 and also by the Provisions of section 20 of the said Act. On merits, it has been contended that the applicant was promoted as Professional Assistant on regular basis w.e.f. 5.1.1985 though he was given ad-hoc promotion on 29.8.1977 but in the aforesaid appointment letter it was specifically mentioned that ad-hoc appointment will not confer any right on him for regular appointment in the grade and that the service rendered by him on ad-hoc basis would not count for the purposes of seniority in the grade or eligibility for promotion to the next higher grade. It is further stated that the judgment given in the case of Sithal Das and Harpal Singh (supra) cannot be extended to the present applicant. Thus, it is stated that the present application is devoid of merit and be dismissed.

5. We have heard the learned counsel for the parties at length and perused the record. From the side of the applicant reliance has been placed on the judgments of the case Amrit Lal Beri vs. Collector of Central Excise & Ors. : 1975 (1) SLR SC ; A. K. Khanna vs. Union of India : ATR 1988 (2) CAT 516; and Dharam Pal & Ors. vs. Union of India : 1988 (6) ATC 396. The contention of the learned counsel on the basis of the above judgment is that those who are similarly situated should be given the benefit. In the case of Amrit Lal Beri (supra) the Hon'ble Supreme Court has observed that "When a citizen aggrieved by the action of Govt. Deptt. has approached the Court and obtained a declaration in law in his favour, others in like circumstances, should be able to rely on the sense of responsibility of the Deptt. concerned and

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to expect that they will be given benefit of this declaration without the need to take their grievances to Court." Further, it is also contended that in the present case the applicant is aspiring for the counting of his ad-hoc promotion which continued without any break till he was regularised on the promotional post according to rules. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of Narender Chadha vs. Union of India : AIR 1986 SC 638. The contention of the learned counsel for the respondents that the present application is barred by limitation has no basis because the applicant in this case has assailed the rejection of his representation dated March, 1992 on the basis that those who were once junior to him in the earlier seniority list have been shown senior to him by giving them higher position in the seniority list on the basis of counting their ad-hoc service though they were given ad-hoc promotion much after the applicant. The applicant is, therefore, aggrieved by the fresh seniority list which was issued by the respondents on 11.10.1991. The present application, therefore, cannot be said to be barred by section 21 of the Administrative Tribunals Act, 1985. The application is not also barred by the provisions of section 20 of the said Act as the applicant has made a representation before coming to the Tribunal in March, 1992 when a copy of the representation is annexed as Annexure-II to the O.A. Thus, the preliminary objection of the respondents has no force.

6. On merits, the learned counsel for the applicant has referred to a decision of the Hon'ble Supreme Court reported in AIR 1993 SC 299 - V. V. Joseph & Ors. vs. Union of India & Ors. However, the facts of the reported case are totally different. In that case the challenge was made by one of the employees to the fixation of seniority and that was dismissed. Subsequently, there was implementation after it became final as a result of

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which the said Shri V. V. Joseph was also pushed down and he subsequently challenged that matter. The Hon'ble Supreme Court therefore, did not accept that contention. In the present case, that facts are that the applicant was senior to Sithal Das and Harpal Singh and it was only on the basis of revision of the seniority list issued on 11.10.1991 that he was pushed down and those who were once junior to him have been pushed up and made senior though their date of ad-hoc promotion has been subsequent to that of the applicant.

7. Learned counsel for the respondents also referred to the decision of Pt. Raj Mal Johri vs. Union of India : AIR 1993 (1) CAT 331. This authority also is on different footing. Here, the promotion has to be given effect to from the date of availability of vacancy and seniority has to be counted from the date of promotion. The matter in issue in the present case is totally different inasmuch as the applicant has prayed that he should be treated alike when the persons who were once junior to him have been given benefit of ad-hoc promotion, then it shall not only be discriminatory, but also arbitrary if he is deprived of that benefit and those once junior to him will be eligible for promotion to the next higher grade while the applicant will be deprived without any fault of his own.

8. In view of the above facts and circumstances, the impugned order dated 11.5.1992 cannot be sustained.

9. The application is, therefore, allowed with the direction to the respondents to give the benefit of continuous officiation of the applicant also also to count his seniority for the purposes of eligibility for promotion to the next higher grade

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with effect from the date of his ad-hoc promotion, i.e.,
29.8.1977. The respondents are directed to implement these
directions within a period of three months from the date of
receipt of a copy of this order. On the facts and in the
circumstances of the case, the parties are left to bear their
own costs.

S. R. Adige
(S. R. Adige)
Member (A)

J. P. Sharma
31.3.93
(J. P. Sharma)
Member (J)

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