

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.2317/92New Delhi: this the 27th day of July, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. P. C. KANNAN, MEMBER (J)

Chander Pal Sharma,
MES-440128,S/o Shri P.N. Sharma,
R/o Gr. No. 75/6,Pinto Park,
Delhi Cantt.

working as Superintendent B/R Gr.I,

under Garrison Engineer,
Subroto Park,
Delhi Cantt.

.... Applicant.

(By Advocate: Shri S.S. Tewari)

Versus1. Union of India
throughSecretary,
Ministry of Defence,
South Block,
New Delhi.2. Engineer in Chief,
E-in-C's Branch,
Kashmir House,
Rajaji Marg,
New Delhi -0011

.... Respondents.

(By Advocate: Shri V.S. R. Krishna)

ORDERHON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns respondents' order dated 5.9.91 (Annexure-A) and seeks counting of the ad hoc (emphasis supplied) period rendered by applicant on the post of Superintendent, B/R Gr.I for the purpose of fixation of seniority in that grade with consequential benefits.

2. Applicant in his OA submitted that he joined service as Superintendent B/R Gr.II on 2.12.63. As per Recruitment Rules he was required to pass the departmental examination for promotion as Supdt. B/R Gr.I which he passed in 1965. He states that he was given adhoc promotion by order dated 11.11.82 (Annexure-B) as Supdt. B/R Gr.I along with nearly 300 others pursuant to the recommendation of a regular constituted DPC. He states that pursuant to this order dated 11.11.82 respondents implemented the same by promoting him on adhoc basis as Superintendent B/R Gr.I w.e.f. 19.1.83 and was eventually regularised as such on 30.12.85. He states that he represented to respondents for counting of this adhoc service towards seniority in terms of the judgment of Hon'ble Supreme in Direct Recruit Class II Maharashtra Engineers' case, but the same was rejected by impugned order dated 5.9.91 compelling him to file this OA.

3. Respondents in their reply challenged the OA. They stated that applicant was promoted as Supdt. B/R Gr.I on adhoc basis vide order dated 11.11.82 on the basis of seniority alone and not on the basis of the recommendations of a duly constituted DPC. They emphasised that promotion to the post of Supdt. B/R Gr.I as per RRs was by selection on the basis of merit-cum-seniority, and adhoc service rendered by applicant was not countable for purpose of seniority in grade of Supdt. B/R Gr.I.

4. Applicant in his rejoinder however filed a copy of respondents' order dated 2.1.84 (Ann-R1) in which he was designated as Supdt. B/R Gr.I (on prob) w.e.f. 19.1.83. On that basis, the Tribunal in the absence of respondents' representation, by ex parte order dated 9.10.97, after hearing applicant's counsel treated applicant to have been appointed on substantive basis as Supdt. B/R Gr.I w.e.f. 19.1.83 and allowed the OA with consequential benefits.

5. Thereupon the WOI filed RA No.34/99. Meanwhile applicant had separately filed CP No.81/99 alleging contumacious non-compliance of the Tribunal's order dated 9.10.97. When the RA came up for hearing none appeared on behalf of the review respondent (applicant in OA No.2317/92). After hearing counsel for review applicant (WOI), the review application was allowed by order dated 1.6.99 and the impugned order dated 8.10.97 was recalled and the OA was ordered to be listed for hearing on merits.

6. We have heard applicant's counsel Shri Tiwari and respondents' counsel Shri VSR Krishna. On an earlier date we had called for the relevant records relating to applicant's promotion on adhoc basis in 1983 and the relevant DPC records regarding his regular promotion in 1985.

7. During hearing Shri Tiwari complained that the notice on the RA had not been served upon him, and hence the order dated 1.6.99 was passed without giving him a hearing. He also contended that he had not received a copy of the order dated 1.6.99 till date. Furthermore he asserted that when respondents

themselves had designated him as a Supdt. B/R Gr.I (on prob.) w.e.f. 19.1.83 by their order dated 2.1.84 they could not now be allowed to contend, as Shri V.S.R. Krishna was trying to, that the aforesaid order had been issued in error, more particularly as no corrigendum had been issued till the time the rejoinder had been filed.

8. However, as stated above, we have heard both sides on merits and have considered the matter carefully. When applicant in his OA himself has pleaded that his promotion as Supdt. B/R Gr.I by order dated 11.11.82 which was implemented on 19.1.83, was on adhoc basis, we have no reason to doubt respondents' contention that their order dated 2.1.84 describing him as Supdt. B/R Gr.I (on prob.) w.e.f. 19.1.83 was a typographical error and applicant was appointed as such only on adhoc basis w.e.f. 19.1.83 as he himself has contended. Admittedly also he was regularised by a regularly constituted DPC only w.e.f. 30.12.85.

9. We have therefore no doubt in our mind that applicant's promotion as Supdt. B/R Gr.I w.e.f. 19.1.83 was a purely stop gap, and adhoc arrangement, and he is squarely hit by the corollary to Principle 'A' of the Hon'ble Supreme Court's judgment in the case of Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra JT 1990 (2)SC 264, and hence this period of officiation cannot count towards applicant's seniority.

10.

The OA is therefore dismissed. No costs.

Dhananjay

(P.C.KANNAN)
MEMBER(J)

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(S.R.ADIGE)
VICE CHAIRMAN(A).

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