IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Date of Decision: 30.7.93.

OA.2622/92- Shri Baldev Raj and others Vs. Union of India
with
OA.2620/92- Shri S.K. Malhotra Vs. Union of India
OA.2770/92- Shri S.C. Saraswat Vs. Union of India
OA.2831/92- Shri B.P. Singh Vs. Union of India
OA.2952/92- Shri R.K. Gangrade Vs. Union of India
OA.3033/92- Shri H.N. Yadav Vs. Union of India
OA.3170/92- Shri N.G. Valecha Vs. Union of India

Shri K.L. Bhandula - Counsel for the applicants
Shri M.L. Verma - Counsel for the respondents

CORAM: The Hon. Mr. J.P. SHARMA, Member(J).
The Hon. Mr. N.K. VERMA, Member(A).

JUDGEMENT

(delivered by Hon. Member(J) Shri J.P.SHARMA)

In all these applications, common facts are involved as also the same issue has been assailed by the applicants separately in the aforesaid OAs. The grievance of the applicants is non-regularisation in the post of Assistant Director/Assistant Executive Engineer, to which the applicants were promoted in 1986 on adhoc basis and it is alleged that they are continuing. The relevant claim by all the applicants in the aforesaid OAs is almost the same and is as follows:-

(i) The applicants be considered for regularisation by convening a DPC immediately.

(ii) Declaring the reversion/threatened reversion of the applicants as illegal.

2. Since the common question of facts and of law are involved, all the aforesaid OAs are disposed of by a common judgement.

3. S/Shri Baldev Raj and Surinder Kumar, applicants in OA 2622 of 1992 were promoted on adhoc basis in 1986; Shri S.K.Malhotra in OA 2620 of 1992, Shri S.C. Saraswat in OA 2952/92; Shri H.N. Yadav in OA 3033/92; Shri N.G. Valecha in OA 3170/92 were promoted in March/May 1986. Shri R.K.Gangarade in OA 2952/92 was promoted in March 1986, but he joined in July 1987. All these

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applications were filed in October/November/December 1992. An interim relief was granted in favour of the applicants in all the original applications directing the respondents not to revert the applicants from the post of Assistant Director and that the interim order continued upto the date of hearing.

4. We have heard the counsel of the parties at length and perused the record. All these applicants joined the Central Water Commission as Junior Engineer. They were promoted as Extra Assistant Directors on regular basis sometimes in 1982. The next promotion is to the post of Assistant Director. These posts are included in the Central Water Engineering (Group-A) Services in the pay scale of Rs.2200-4000. The Central Water Engineering (Group-A) Services, Rules 1982 as amended from time to time hereinafter called the rules, lays down that the post of Assistant Director is required to be filled 40% by promotion and 60% by direct recruitment. As far as direct recruitment is concerned, candidates are selected on the basis of Combined Engineering Services Examination conducted by the UPSC every year. Promotion to the grade of Assistant Director/Assistant Executive Engineer to the extent of 40% is made on selection from Extra Assistant Directors/Assistant Engineers(Group-B) in the pay scale ofRs.2000-3500. Extra Assistant Directors with 3 years regular service in the grade are eligible for promotion. Bench mark for promotion to the post of Assistant Director/AEE is very good. The contention of the applicants counsel is that since the applicants are working on adhoc basis since 1986 or so, then they should not be reverted and should be regularised in the vacancies existing or likely to occur within their quota and for that DPC be convened for selection. The case of the respondents is that as on 31.10.89, there were 97 EAD/AE who were officiating as AD/AEE on adhoc basis. The number of regular promotion quota vacancies were only 67. On the basis of recommendation of the DPC held in August 1989, 61 such adhoc promotees were regularised. 4 officers in the panel were

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on deputation and were therefore, given in absentia promotion. 2 officers were not holding the post of AD/AEE on adhoc basis could not be regularised. In view of these facts the 20 officers were got superceded as their juniors had better records of service and were not empanelled on the basis of the recommendation of the DPC. As regards the remaining 16 adhoc appointees, though none of them got superceded yet, they could not get the grade to be empanelled. The adhoc appointees were allowed to continue for longer time in spite of the fact that the Government instructions which do not permit continuance of adhoc appointments beyond one year. Thus, according to the respondents, the applicants have no case and there are no vacancies available in their quota in the relevant years for regularisation. Those 20 officers who were superceded have to be reverted as also those 16 who could not make the grade. Thus the applicants have no claim for regularisation.

5. If is further argued by the learned counsel that the DPC meeting was convened on 28.9.91 which considered the vacancies for the year 1989-90 and drew a penal of 21 officers. This panel included the names of 10 applicants and 9 of the remaining 22 adhoc appointees. Thus 3 applicants and the remaining 13 adhoc appointees including Shri Baldev Raj, Sureinder Kumar and S.K.Malhotra could not find place in the panel.

6. In a case filed before the Principal Bench, OA 1670/90 decided on 25.9.92, observed on the MP 184/92 filed by the respondents that the persons who have been empannelled be considered for regular appointment in accordance with the recommendations of the DPC. In case, the name of any of the applicants does not figure in the panel, he should be continued on adhoc basis as long as vacancy exists and till regular appointee in accordance with the rules, join.

7. We have gone through the rules, and these rules provide for direct recruitment 60% and promotees 40% of the substantive vacancies. The learned counsel for the respondents argued that the post of Assistant Director is a selection post and the

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Bench mark for promotion is very good. He has also argued that no vacancies are available in the promotion quota for 1991-92. He argued that in the paenl prepared on the recommendation of the DPC held in August 1989, the applicants could not make a mark and some of them were superceded. Some of the applicants have already been considered, thereafter, in the DPC held in 1989, 1990 and 1991. The applicants have only the right to be considered and if they are not found fit then no right to continue on adhoc basis, when the regular appointees are waiting in queue on the basis of direct recruitment. The reply of the learned counsel for the respondents is that the DPC was held in September 1991 and thereafter no DPC was held. The DPC considered the vacancies upto March 1991. It is the case of the applicant that some of the juniors to the applicants have been allowed to be considered under order of the Tribunal dated 18.11.92 decided on 25.9.92. However, when it is admitted that they have been duly considered in the DPC then they have no right to continue on the post. In fact, the decision in the aforesaid OA by the Judgement dated October 1992 only to the effect that the applicant of that OA may be retained so long as the vacancies are available, and unless they are replaced by duly selected candidates. The case of the respondents is the duly selected candidates are awaiting appointment and in fact the applicants are occupying the berths of direct recruits. In the case of State of Haryana Vs. Piara Singh, reported in JT 1992 (SC)5, page 179, the Hon. Supreme Court held that only those who havebeen appointed according to the rules, if have worked on adhoc basis for number of years, can be regularised when duly selected candidates are not available to replace them. It shall be inequitable and unjust if the duly selected candidates are not allowed to join and the applicants who have not passed the selection test are allowed to continue dehors the rules. When appointment is made from two sources, in that case, one souce cannot claim the vacancies ear-marked for other sources

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In the present case, there is no vacancies available in the promotion quota till March 1991 and all the vacancies which were available has been considered by the legally constituted DPC and those who have been selected have been regularised. Those who have not been selected have no right to continue even in spite of the fact that they did not qualify the selection and by virtue of this cannot be allowed to work on adhoc post in the vacancies to be filled by direct recruits.

8. In State of Haryana Vs. Piara Singh (supra), in para 45-47 of the said judgement, their Lordships further observed that:-

> "45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employees as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected well and good, but if he does not, he must give way to the regularly selected candidates. The appointment of the regularly selected candidates cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.
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> 46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must bereplaced by a regularly selected employee. This is necessry to avoid arbitrary action on the part of the appointing authority.
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> 47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay....."

9. In view of the above facts and circumstances of the case the applicants of the above OAs are not entitled to any relief as prayed for. The applications are devoid of merit and dismissed leaving the parties to bear their own costs. Interim order is vacated. Let a copy of the order be placed on each file.

(R.K. Verma) 30.7.93
MEMBER(A)
~~29.7.93~~

(J.P. Sharma) 30.7.93
MEMBER(J)
29.7.93

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