

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.3225/92

New Delhi, this the 4th day of August, 1995

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Shri J.L. Narayan,
Deputy Adviser,
Department of Programme Implementation,
Sardar Patel Bhavan,
New Delhi.

... Applicant

By Advocate: Shri M.R. Bhardwaj,

Vs.

Union of India,
through

1. Secretary,
Department of Programme Implementation,
Sardar Patel Bhavan,
New Delhi.

2. Union Public Service Commission,
Shahjahan Road,
New Delhi.

... Respondents

By Advocate: Shri M.M. Sudan

ORDER (ORAL)

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

The applicant in this application has the grievance that he is not being considered for the post of Joint Adviser in the Department of Programme Implementation inspite of the fact that he has attained the eligibility for the said post by virtue of having been appointed by a letter dated 9.11.84 to the post of Deputy Adviser (Construction Planning) from the then post of Management Analyst which he was

...2.

holding after ~~selection~~ with the UPSC w.e.f. 30.10.84. The Department of Programme Implementation has notified separate rules by G.S.R. 255 dated 27.3.91. These rules are the Ministry of Programme Implementation (Department of Programme Implementation) (Joint Adviser) Recruitment Rules, 1991. The post of Joint Adviser is to be filled up by promotion/transfer on deputation (including short-term contract)/re-employment failing which by direct recruitment. For the departmental Deputy Adviser 5 years of regular service in the post is required for eligibility and he has to be considered alongwith others. In case of selection to the post, the post shall be deemed to have been filled by promotion. It appears that the applicant as per the notified rules also applied for the post and he was also recommended for appointment by the UPSC and on that recommendation he has been termed as regular appointee to the post of Deputy Adviser w.e.f. 16.9.91. The Department of Programme Implementation has recommended his name to the UPSC but the UPSC did not agree because the applicant has been deemed to have been regularly appointed to the post of Deputy Adviser w.e.f. 16.9.91 and 5 years period of regular service in the grade as Deputy Adviser

for a departmental candidate shall be sometimes in September, 1996. This post was circulated sometimes in 1992 but at that time the applicant was under training in U.K. The learned counsel for the respondents Shri M.M. Sudan on instructions from the Departmental Representative Shri S.S. Kumar, Assistant, stated that the post has not yet been filled up.

The relief prayed for by the applicant in this application is that a direction be issued to the respondents including the UPSC, Respondent No.2 that after counting the service rendered by the applicant from 30.10.1984 to 15.9.1991 as regular service, he may be considered as eligible for consideration for appointment, on promotion, to the post of Joint Adviser in accordance with the Recruitment Rules. While filing this application, a prayer for interim relief was also made but that was not favourably considered. The matter has now come for final hearing as the pleadings are complete. The respondents have also filed the reply to which the applicant has also submitted the rejoinder.

Le

92

The case of the respondents is that the applicant is not eligible for consideration to the post of Joint Adviser basically because his initial appointment as Deputy Adviser by the letter dated 9.11.84 w.e.f. 30.10.84 was dehors the then Recruitment Rules of the Planning Commission for the post of Deputy Adviser. The applicant was holding the post of Management Analyst which was not the feeder post as per the rules of 1979 of promotional post of Deputy Adviser. This order was issued in 1984 and immediately thereafter the applicant alongwith 2 others were sent to the Department of Programme Implementation as the work assigned to the Ministry of Planning has been transferred to this newly created Ministry of Programme Implementation w.e.f. 6.11.85. There was no such rules at that time and the rules came into being 7 years after as said above in March, 1991. The Planning Commission have issued a letter dated 30.11.88 superseding the letter of 9.11.84 aforesaid and the appointment of the applicant from the post of Management Analyst was treated as Deputy Adviser (Construction Planning) in the Planning Commission on transfer on deputation post w.e.f. the afternoon of 30.10.84 for a period of 4 years. However, the applicant appears to be continuing even thereafter though there is no specific order placed by the

L

respondents on the file. Here it may be pointed out that the rules for the post of Deputy Adviser in the Department of Programme Implementation were also notified by the GSR of even date and for that post the mode of recruitment has been only by promotion and transfer on deputation including short-term contract/re-employment and the departmental Management Analyst with 5 years regular service in the post will also be considered alongwith the outsiders. In case such departmental Management Analyst is selected then he shall be considered to have been promoted to the post itself in accordance with the rules that the applicant has been selected and appointed on regular basis in the Department of Programme Implementation w.e.f. 16.9.91. The applicant joined as Management Analyst in July, 1979 in the Ministry of Planning.

The other contention of the respondents is that since the order of promotion of 9th November, 1994 was superseded, the order dated 30.11.88 the service rendered by the applicant on deputation shall not be treated as regular service to be counted for eligibility for promotion to the post of Joint Adviser. It is stated that the applicant

94
2

was wrongly promoted dehors the rules of 1979 and he cannot get the benefit of wrong promotion though he may be working in the grade of Deputy Adviser from the date of his initial appointment i.e. 30.10.84.

We have heard the learned counsel for the parties at length today as well as on earlier sittings of this Bench and the learned counsel for the applicant has referred to the authority of K. Madhavan V. Union of India reported in (1987) 4 SCC 566, in which has also been referred to another latest authority of the case of Devdutta and others V. State of M.P. and others reported in (1992) 19 ATC 154. The learned counsel for the applicant has highlighted the fact that the regular service for eligibility is service other than adhoc or an arrangement made on stopgap basis. Since the applicant neither was on adhoc nor he was appointed in a stopgap arrangement on the post of Deputy Adviser by the order dated 9.11.84, the service he rendered in the grade of Deputy Adviser in the replacement scale Rs.3700-5000 shall be treated as regular service. He has referred to the case of K. Madhavan(supra) and highlighted para 10 of the reports at page 733 (1987(5) SLR 733) where the Hon'ble Supreme Court

l



observed " there can be no doubt that when a person is appointed to the post against a permanent vacancy on probation, his appointment is on/regular basis but when a person is appointed to a post a purely temporary or on adhoc basis, the appointment is not on regular basis..... the general principle is that in the absence of any specific provision to the contrary the length of service from the date of appointment to the post should be taken into consideration for the purpose of either seniority in that post or eligibility for the higher post." Further he has again highlighted para 21 of the reports at page 738 pointing out the observation of the Hon'ble Supreme Court "it would be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. Similarly, in the case of Devdutta and others(supra), the learned counsel for the applicant has highlighted the para 8 of the reports at page 160 where it is



...8.

26

✓ observed by the Hon'ble Supreme Court " now coming to the question of seniority, the term "absorbed" in Service Jurisprudence with reference to a post in the very nature of things implies that an employee who has not been holding a particular post in his own right by virtue of either recruitment or promotion to that post but is holding a different post in a different department is brought to that post either on deputation or by transfer and is subsequently absorbed in that post whereafter he becomes a holder of that post in his own right and loses his lien on his parent post."

The learned counsel for the applicant has further referred to para 13 of the reports at page 162 where the Hon'ble Supreme Court has quoted a passage from the case of Wing Commander J. Kumar Vs. UOI (1982) 2 SCC 116) at page 132.

The Hon'ble Supreme Court in this reported case has also relied on the case of K. Madhavan Vs. UOI and the relevant para has already been referred to above.

Taking all these facts into account, we can easily infer the position of law that a person who has been regularly given appointment to a post in a particular grade and subsequently transferred either on deputation or for all purposes for posting to another department then the service he rendered cannot be ignored and will

L

97

be treated as regular service in the particular grade. If we accept the contention raised by the respondent's counsel then 4 years after the status of the applicant from a regular promotee to the post of Deputy Adviser has been changed to that of deputationst to the Department of Programme Implementation. This order was issued in November, 1988 and that provide a deputation for 4 years. The applicant was promoted by the order dated 9.11.84 and this order came superseding that order on 30.11.88 and the deputation period was only 4 years which mean that it ended with that order itself. What would be the status of the applicant after November, 1988 is not disclosed either in the counter filed by the respondents or by any order or any document. Again the appointment of the applicant on regular basis by the UPSC to the post of Deputy Adviser u.e.f. 16.9.91 has been as if he is continuing on that post and does not show that he was refixed in the pay scale of the post of Deputy Adviser by giving notional increment for the earlier service he has rendered on the post of Deputy Adviser. It goes to show that the UPSC has treated his earlier service as a service rendered on the post of Deputy Adviser, UPSC- Respondent No.2 in this case. UPSC cannot now again take the stand that the service rendered by the applicant before being transferred to the Department of Programme Implementation as Deputy

J

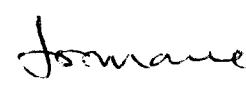
Adviser and continuing there uninterruptedly without break till 16.9.91 is fortious service and cannot be treated as though regular service. The applicant is getting due increments and at no point of time he has been treated as adhoc or fulfilling the post on stopgap basis. When there are no Recruitment Rules, an appointment given to a person may be under some otherwise mistake of facts cannot be treated as regular appointment though it may not be so legal. This irregular appointment of the applicant by the order dated 9.11.84 cannot deprive of the benefits and the service he rendered continuously in the grade of R.3700-5000. If that benefit is taken away from the applicant then his eligibility for promotion will be to the post of Joint Adviser in his case/much more than 5 years if he is treated on regular basis u.e.f. 16.9.91. This will be most unjust, inequitable and unfair. It is because of this the Secretary of the Department(Respondent No.1) has written a letter to the UPSC that the case of the applicant is very hard one and that because of the silence on the part of the applicant not making representation at the proper time and delaying and framing and enforcing the Recruitment Rules in 1991 should not come in his way and he has been an efficient officer. It was

cc

recommended that in his case the relaxation may be given, if otherwise required. UPSC appears to have not agreed to this. No reference to the various points written in that letter has been given. We find in the present case the applicant was given promotion to the post of Deputy Adviser and this promotion should not have been withdrawn (given in the year 1984) without giving a show cause notice. He has continued to work on the post of Deputy Adviser, may be on transfer or on deputation basis and applying the ratio of the above referred cases of K. Madhavan (supra) and that of Devdutta and others (supra), we have no hesitation to hold that the applicant is entitled to count his service from 1988 onwards, ^{when} his deputation period expired if not from 30.10.84 when he initially came and joined as Deputy Adviser in the Department of Programme and Implementation.

The application is allowed with direction to Respondent No.2 particularly UPSC to consider the case of the applicant for promotion to the post of Joint Adviser having completed more than 5 years service in the grade. Cost on parties.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

'rk'