

Central Administrative Tribunal
Principal Bench
New Delhi

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O.A. No. 3292/92

Decided on 19.11.98

C.K. Jain Applicant

(By Advocate: Shri M.K. Gupta)

Versus

Union of India Respondents

(By Advocate: N.S.Mehta)

CORAM

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

HON'BLE DR.A. VEDAVALLI, MEMBER(J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not ? No.


(S.R. Adige)
Vice Chairman (A)

Central Administrative Tribunal
Principal Bench

O.A. No. 3292 of 1992

New Delhi, dated this the 19th NOVEMBER 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri C.K. Jain,
S/o Shri M.K. Jain,
R/o 242-C, Pkt-I, Mayur Vihar Ph-I,
Delhi-110091. Applicant
(By Advocate: Shri M.K. Gupta)

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Central Bureau of Investigation,
through its Director,
Block-3, CGO Complex,
Lodhi Road, New Delhi.
3. Central Forensic Science Laboratory,
through its Director,
Block-4, CGO Complex,
Lodhi Road, New Delhi.
4. Union Public Service Commission
through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110011. ... Respondents
(By Advocate: Shri N.S.Mehta)

ORDER

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

Applicant seeks counting of his ad hoc service as SSO Gr.II from 4.6.86 to 17.11.88 towards seniority with consequential benefits including promotions to higher grades.

2. Admittedly applicant ~~who~~ joined service as Lab. Assistant on 1.5.68, and was promoted as Scientific Asst. in January, 1969, and as Sr. Scientific Asst. on 12.4.77. He was further promoted as SSO II on ad hoc basis in Physios Div.

on 4.6.86 which was extended from time to time. Recruitment and promotion to the post of SSO Gr. II in different disciplines was initially governed by the CBI (CFSL Class I & II Posts) Gazetted Recruitment Rules, 1970 which were later amended vide GSR No. 2290 dated 13.8.75 and were subsequently repealed by the CBI, CFSL, New Delhi (Group 'A' Posts) Recruitment Rules, 1982 (Ann. A-4). As per these new Recruitment Rules notified on 31.7.83 an SSA with five years regular service in the grade was eligible for promotion as SSO Gr. II as against 6 regular service provided in the earlier Rule. However, unlike in the 1975 Rules which required Sr. SAs to possess 6 years regular service in the grade in their Divisions (Chemistry, Physics, Documents, Ballistics, Finger Print, Footprint), the words "in their respective Divisions" was not incorporated in the relevant column of the 1982 Rules.

3. Respondents in their reply concede that the removal of the provision for discipline-wise experience was an omission and would have created adverse problems in as much as an SSA with experience in one discipline would have become eligible for promotion to a vacancy in a totally different discipline on the basis of general seniority. Accordingly they initiated steps for amending the Recruitment Rules to reincorporate the provision of discipline-wise seniority, and pending amendment, applicant was appointed as SSO Gr. II on ad hoc basis for 6 months w.e.f. 4.6.86 or till

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a regular appointment was made, whichever was earlier, which was extended upto 3.6.87. Respondents contend that no order appointing applicant as SSO Gr. II on ad hoc basis beyond 3.6.87 was issued by them and applicant was deemed to have been reverted as SSA w.e.f. 4.6.87, but in order to formalise the termination of his ad hoc appointment which had been made upto 3.6.87, an order was issued on 10.6.87 which could not be served upon him, against which he filed O.A. No. 802/87, in which the CAT passed an interim order on 16.6.87 restraining respondents from reverting him pending further orders and disposal of the O.A.

4. Meanwhile the RRs were further amended w.e.f. 31.7.86 by reincorporating the provisions of discipline [^]with seniority. Respondents state that immediately upon amendment, DPC for promoting applicant on regular basis could not be held since vacancies relating to the period from 1982 to 1985 had to be filled up according to the 1982 Rules and during that period, no SSA was eligible for promotion as SSO II (Physics) according to the RRs then applicable. Respondents state that after protracted [^]correspondence with MHA and UPSC, relaxation was sought to fill up, the vacancy arising before 31.7.86 in accordance with the RRs notified on 31.7.86, and on the basis of the DPC constituted by UPSC, applicant was appointed as SSO Gr. II on regular basis w.e.f. 18.11.88, ^{but} ~~and~~ had not put in the required five years regular service

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to become eligible for insitu promotion as SSO I
till the time this O.A. was filed in December,
1992.

5. Upon applicant being regularly appointed as
SSO Gr. II w.e.f. 18.11.88, O.A. No. 802/87 was
dismissed as withdrawn on 13.10.92.

6. We have heard applicant's counsel Shri M.K.
Gupta and respondents' counsel Shri N.S.Mehta.

7. Shri Mehta has invited our attention to the
judgment dated 10.3.94 in O.A. No.748/88 Dr.
S.K.Lahiri Vs. UOI & Ors. Where a similar prayer
for counting of ad hoc period as SSO Gr. II from
19.2.82 to 28.1.87 towards seniority was considered
and dismissed. He has emphasised that the
aforesaid judgment in Lahiris case (Supra), which
discussed the law on the subject as it has
developed through a large number of Supreme Court's
rulings, is fully applicable to the facts of this
present case, and the relief sought for in the
present case is therefore likewise liable to be
rejected.

8. Shri Gupta's argument is however a little
different. He has emphasised that pursuant to the
amendment of the RRs w.e.f. 31.7.86, and the
existence of a regular vacancy of SSO Gr. II
w.e.f. that date, and applicant being the senior
most SSA in Physics Div., there is no reason why

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the DPC regularised him w.e.f. 17.11.88 and not 31.7.86. He states that even if it may be difficult for the Tribunal to direct respondents to treat applicant's ad hoc service as SSO Gr. II from 4.6.86 to 17.11.88 ^{as regular service} for the purpose of determining his seniority, respondents can very well be directed to consider applicant's promotion as SSO Gr. II w.e.f. 31.7.86 in accordance with the new RRs which were notified that day, and in the background of the fact that a regular vacancy of SSO Gr. II in Physics Div. was available on that date. In this connection he has emphasised that applicant should not be made to suffer on account of delayed holding of DPC by respondents, and when the new RRs were notified on 31.7.86, respondents should have proceeded to make promotions in accordance with those rules without delay. Various rulings have been cited by Shri Gupta in support of these arguments, including 1998 (38) ATC 24 V.R. Guda Vs. UOI; 1997 (9) SCC 287 UOI Vs. N.R. Banerjee; 1976 (4) SCC 825 S. Krishnamurthy Vs. G.M. Southern Railway; 1980 (1) SLR 291; 1989 (Suppl. 1) SCC 393 and 1984 (1) SLR 126. Shri Gupta has also emphasised that is open to the Tribunal to mould the relief which may be deemed just and equitable in the facts and circumstances of the case, and in fact such a prayer has specifically been made in Para 8(vi) of the relief clause. 2

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9. No satisfactory reasons have been advanced by Shri Mehta to rebut the aforesaid arguments advanced by Shri Gupta.

10. Accordingly this O.A. is disposed of with a direction to respondents that subject to the availability of a regular vacancy of Sr. S.O. Gr. II ^{on or after,} ~~from~~ 31.7.86, they should consider applicant's case for promotion as SSO Gr. II against that vacancy w.e.f. that date, in accordance with the Rules and instructions on the subject, and in case applicant is found fit for promotion as Sr. S.O. Gr. II w.e.f. ^{such date,} ~~31.7.86~~, he will be entitled to all consequential benefits, including consideration for promotion to higher posts. These directions should be implemented within six months from the date of receipt of a copy of this order. No costs.

A. Veda Valli

(DR. A. VEDAVALLI)
Member (J)

/GK/

S.R. Adige

(S.R. ADIGE)
Vice Chairman (A)