

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 477/1992
MP 624/92

Date of decision: 04.08.1992.

Shri S. P. Gupta ... Applicant

Versus

Union of India & Another ... Respondents
For the Applicant ... Sh. A.K. Behra, Counsel
For the Respondents ... Shri M.L. Verma, Counsel

Coram:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dboudiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *No*

Judgment (Oral)
(of the Bench delivered by Hon'ble Shri P.K. Kartha,
Vice Chairman(J))

We have heard the learned counsel of both parties and have gone through the records of the case carefully. The applicant who is presently working as Senior Administrative Officer in the Office of the Director General, Indo Tibetan Border Police (hereinafter referred to as ITBP), has prayed for his regularisation and for continuing him in the same post till he is regularised.

The applicant has worked as Section Officer in a substantive capacity since 28.10.1978. He was promoted on ad hoc basis as Administrative Officer with effect from 29.06.1990. Subsequently, the post was redesignated as Senior Administrative Officer and he has worked in the redesignated

(Signature)

post also on ad hoc basis. On 28.02.1992, the Tribunal passed an interim order directing the respondents to allow the applicant to continue in the post of Senior Administrative Officer. The interim order has been continued thereafter during the pendency of the present application.

The learned counsel for the respondents contested the claims made by the applicant on the preliminary objections as well as on the merits. It was argued that the Tribunal has no jurisdiction to adjudicate upon the service matters of persons working in the ITBP. He has relied upon the decisions of this Tribunal in *Kunju Krishnan Pillai vs. Union of India*, reported in 1986(1) ATC 453 and in *Jai Singh vs. Union of India*, reported in 1986 AIR 161. On the merits, he has relied upon numerous judgments, the purport of which is that the ad hoc employee has no right to continue in the post (Vide AIR 1991 SC 73 at page 75; 1991(1) SCJ 167; 1990 (12) ATC 625; 1991(1) CSJ 444; and 1990(13) ATC(SC) 348).

As against the above, the learned counsel for the applicant argued that the applicant belongs to the Ministerial Cadre and that the post held by him is classified as General Central Service Group 'A' Gazetted (Ministerial). He also contended that the applicant is not a member of the Armed Forces within the meaning of the CRPF Act, 1949. On the merits he has argued that in accordance with the administrative instructions issued by the Government, no ad

hoc appointment/promotion may be made on the grounds that the recruitment rules of the post are being revised/amended and that regular appointments/promotions should be made in accordance with the recruitment rules in force at the time when the vacancy arises (Vide Swamy's Compilation on Seniority and Promotion in Central Government Service 1Ind Edition, page 122).

In the instant case, the recruitment rules for the post of Senior Administrative Officer were notified on 16.09.1985. Under the said recruitment rules, Section Officers in the ITBP with 10 years of service in the grade rendered after appointment thereto on a regular basis ~~are~~ eligible for promotion. The recruitment rules were amended in 1992 by Notification dated 30.04.1992, according to which, the Section Officers of the ITBP with 8 years of regular service in the grade are eligible for promotion. The amendment was made after the present application had been filed in the Tribunal. The learned counsel for the applicant argues that the applicant is eligible for promotion under the old recruitment rules as well as new recruitment rules.

In our opinion, as the applicant has not become a member of the ITBP in the sense of becoming a member of the Force after combatisation, the Tribunal has jurisdiction to adjudicate upon the service matters of the Ministerial staff of the ITBP. We, therefore, overrule the preliminary objections raised by the respondents.



(W)

.4.

On the merits, the applicant who is eligible for promotion under the recruitment rules has only a right to be considered for regular appointment. The applicant was appointed on ad hoc basis at the time when the recruitment rules were not amended. It was not the case of the respondents that any regular appointment or promotion to the post of Senior Administrative Officer had been made either under the old recruitment rules or under the new recruitment rules. The fact that the applicant was promoted on an ad hoc basis and that such promotion had been extended from time to time, also indicates that the respondents felt the need for filling up the post pending regular appointment. The learned counsel for the respondents has drawn our attention to the conditions incorporated in the order of appointment dated 29.06.1990 at Annexure-A to the application, according to which, the ad hoc promotion will not confer any right to the continuance in the post or to seniority. The appointment order, however, states that the appointment is for a specific period or till the post is filled on a regular basis which ever is earlier.

After hearing both sides, we dispose of the present application with the direction to the respondents to take steps to fill up the post of Senior Administrative Officer in accordance with the recruitment rules notified on 30.04.92 as expeditiously as possible but preferably within a period of 6 months from the date of receipt of this order.

2

(12)

-5-

Till the regular appointment is made, the applicant should be allowed to continue in the post of Senior Administrative Officer on ad hoc basis. The interim order passed on 28.02.92 is hereby made absolute with the aforesaid observations.

There will be no order as to costs.

B.N. Dholiyal
(B.N. DHOUDIYAL)

MEMBER(A)
04.08.1992

RKS
040892

encl
(P.K. KARTHA)
VICE CHAIRMAN(J)
04.08.1992

Replies to OA-
filed
(43 to 55)

2/9 80