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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1115/92

DECIDED ON : 12.11.1992

Kanshi Ram Sharma ... Applicant
-Versus-
Union of India & Another ... Respondents

CORAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)
THE HON'BLE MR. S. R. SAGAR, MEMBER (J)

Applicant through Shri S. C. Rana, Counsel
Respondents through Mrs. Avnish Ahlawat, Counsel

J U D G M E N T (ORAL)

Hon'ble Shri P. C. Jain, Member (A) -

The applicant in this application under Section 19 of the Administrative Tribunals Act, 1985 is working as Junior Translator (Hindi) in the pay scale of Rs.1400-2300 in the Delhi Milk Scheme. Before appointment to the above post he was a permanent Upper Division Clerk (UDC) in the same organisation. By circular dated 15.6.1979 (Annexure P-4) two posts of Junior Hindi Translators in the Delhi Milk Scheme in the then pay scale of Rs.425-700 were circulated and such of the Class-III employees who possessed the required qualifications, experience etc. mentioned in the circular itself and were desirous for being considered for the above two posts, were required to submit their applications. It is the admitted case that the applicant in pursuance of the aforesaid circular applied for the post of Junior Translator and after selection he was initially appointed to officiate on that post purely on an ad-hoc basis for a period of six months or till the post was filled up by deputation, whichever

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was earlier. The appointment was not to confer on him any right or claim for regular appointment, seniority etc. (Part I office order No. 215 of 1981 dated 5.9.1981) (Annexure P-5). There is no dispute that the applicant continued to work on the post of Junior Translator on an ad-hoc basis. On 28.8.1986, he represented to the Chairman, Delhi Milk Scheme (Annexure R-1) that his ad-hoc appointment be regularised from the date of his initial appointment as had been done in other several categories of posts in D.M.S. It is the case of the case of the respondents that in pursuance of the applicant's own request he was appointed by order dated 3.5.1988 (Annexure P-8) on regular basis to the post of Junior Hindi Translator and he was to be on probation for a period of two years. The applicant's grievance arose when by order dated 17.1.1990 (Annexure P-11) five other UDCs were promoted to the post of Office Superintendent in the pay scale of Rs.1600-2660. His grievance is that he was not considered for the aforesaid promotion even though he was senior to the five other who were promoted to the higher post. It is in this background that the applicant has filed this O.A. impugning the aforesaid promotion order dated 17.1.1990 and has prayed for setting aside the same 'or modify it to the extent it affects the legitimate in line promotion of the petitioner', and that respondent No. 2 may be directed to consider him for in line promotion with effect from 1990 and place him in appropriate place in accordance with the seniority list applicable to him in his master cadre of UDCs. It is further prayed that respondent No. 2 may also be directed that the subsequent promotees working on ad-hoc/temporary basis may not be confirmed on the post till pendency of the present

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application. It may be stated here that none of the persons who were promoted by the impugned order nor any other promotee working on ad-hoc/temporary basis has been made a party to this O.A. As such, in so far as the prayer relates to relief against such persons, it cannot be granted behind their back.

2. The respondents have contested the O.A. by filing a reply to which a rejoinder has also been filed. As the pleadings in this case were complete, it was decided with the consent of the parties to finally dispose of the same at the admission stage itself. We have accordingly perused the material on record and also heard the learned counsel for the parties.

3. The first contention raised by the learned counsel for the applicant is that only two posts of Junior Translators had been circulated vide circular dated 15.6.1979 (Annexure P-4) and two persons had already been appointed on regular basis against the aforesaid two posts and accordingly, it is sought to be argued that the applicant could not be appointed on a regular basis on any post of Junior Hindi Translator. The respondents in para 4.9 of their counter reply have stated that the third post of Junior Hindi Translator was created by downgrading the post of Hindi Translator with the approval of the Government communicated in letter dated 4/6.8.1981 and it was this post against which the applicant was initially appointed on ad-hoc basis and on which he continued to work as such till his appointment on a regular basis in 1988. In his rejoinder, the applicant has denied the above assertion and has sought to make out a case that as the appointment of the applicant on the third post was on ad-hoc basis, he was working on the post without any sanction from Government of India and was holding the post purely on ad-hoc/temporary

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basis. It is further stated that the petitioner reserves his right to raise relevant defence at the time of argument and also interpret the rules referred to in the para under reply. It hardly needs to be stressed that the stand taken by the applicant in this regard is highly ambiguous. If he was appointed to a post initially on an ad-hoc basis and later on on regular basis subsequent to his own request and on which he has continued for the last more than ten years, it does not lie in his mouth now to raise the plea that he has been working and drawing the pay of a post which never existed. He not only drew the pay of the post but also drew the pay in a higher scale of pay of Rs.1400-2300 (as the scale stands revised from 1.1.1986) as compared to the lower scale of pay of Rs.1200-2040 which would have been applicable to him had he continued as UDC. The applicant has not placed any material on record to substantiate that a third post of Junior Hindi Translator was not created by downgrading the post of Hindi Translator as averred to by the respondents in para 4.9 of their counter reply.

4. The other contention of the learned counsel for the applicant is that he had a lien on the post of UDC and ^{as} he has not been confirmed so far on the post of Junior Translator, he would be deemed to have continued to have a lien on the post of UDC and as such he was entitled to be considered for promotion to the post of Office Superintendent which was in the direct line of promotion from the post of UDC. In this connection it was stressed that unless there were orders of confirming him on the post of Junior Translator, his lien on the post of UDC cannot be said to have been terminated. The stand taken by the respondents in their reply on this point is that in accordance with the instructions contained in O.M. dated

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19.5.1983, dated 24.2.1984, dated 5.12.1984 and dated 26.4.1989 as reproduced from para 3 ^{to} ~~and~~ page 188 to page 190 of Swaney's Complete Manual on Establishment and Administration (1993 Edition), the applicant was not required to be placed on probation and that the order of appointment of the applicant on regular basis to the post of Junior Translator does not provide for any extension in the period of probation of two years prescribed therein. Learned counsel for the respondents, therefore, contended that the applicant would be deemed to have been confirmed after expiry of the two years on the post of Junior Translator and on such confirmation, his lien in the cadre of UDCs would automatically stand terminated, and that in that event he has no right to be considered for promotion to the post of Office Superintendent.

5. We have given our careful consideration to the rival contentions of the parties and we find that as per the instructions referred to by the respondents in their counter reply their contention that the applicant was not required to be placed on probation cannot be upheld. Since it was a case of appointment to another service, under these instructions the applicant was required to be placed on probation for a period of two years as in fact it was done while making his appointment on regular basis to the post of Junior Translator. Thus, the only question which remains is what happened after the expiry of the probation period of two years. The Government orders on the subject stipulate that on the expiry of the period of probation, steps should be taken to obtain the assessment reports of the probationer and to either confirm the probationer/issue orders regarding satisfactory completion of the probation, as the case may be, if the probation has been completed to the satisfaction

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of the competent authority; or extend the period of probation or discharge the probation or terminate the services of the probationer, as the case may be, in accordance with the relevant rules and orders, if the period of probation has not been completed satisfactorily. It is further stipulated that the decision to confirm the probationer and to extend the period of probation, as the case may be, should be communicated to the probationer normally within six to eight weeks. It is not in dispute in the case before us that no specific orders either for termination of the period of probation of two years, or for extending the probation period beyond the period of two years, have been issued. In the relevant rules, a copy of which was made available to us for our perusal, the period of probation of two years has been prescribed under column 9 of the schedule to the Delhi Milk Scheme, Junior (Hindi) Translator, Recruitment Rules, 1983. There is no provision in these rules as given to us as aforesaid for extending the period of probation. Order dated 3.5.1988 by which the applicant was appointed, on the recommendations of the DPC (Group 'C'), by transfer on regular basis to the post of Junior Hindi Translator also does not provide for any extension of the probation period of two years. Further, admittedly, no order has been issued by the competent authority to extend the period of probation of the applicant. For all these three reasons, we are inclined to take the view that on the facts and in the circumstances of the case, the applicant will be deemed to have been confirmed on the post of Junior Translator after expiry of the two years of probation on which he was appointed to the above post on a regular basis after a regular selection by the DPC. In view of this matter, his lien in the cadre of UDCs will automatically stand terminated with effect from the date he became confirmed on the post of

Junior Translator and after that^u date he would have no right to be considered for promotion in the line of promotion of his parent cadre of UDCs.

6. We have arrived at the conclusion as above for two other reasons. Firstly, the applicant himself applied for selection and appointment to the post of Junior Hindi Translator about 12 years back. He has continued to work on that post uninterruptedly till date and he never protested in any manner whatsoever for his continued appointment on the said post till some of the juniors in the cadre of UDCs were promoted to the post of Office Superintendent vide order dated 8.11.1990. Secondly, he himself, as already stated above, made a representation dated 28.8.1986 for being made regular on the post of Junior Translator. It is a two-page representation which leaves us in no matter of doubt that the only anxiety of the applicant was to get his appointment on the post of Junior Translator regularised without any further delay; he never showed any inclination to go back to his parent cadre of UDCs, presumably for the obvious reason that he was working on a post which was in a higher scale of pay than the scale of pay of the post of UDC in which he would have otherwise drawn his pay. He is, therefore, really estopped from agitating at this stage that his initial appointment to the post of Junior Translator on ad-hoc basis, his continued appointment thereon and subsequently his regular appointment on that post was without the availability of any sanctioned post and that, therefore, he should be considered for promotion in his parent cadre. Here it also needs to be mentioned that even in this O.A. he has not prayed for reversion to the parent cadre of UDCs; while working

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on the post of Junior Translator on a regular basis he wants the benefit of promotion to the post of Office Superintendent which is in the line of promotion of the UDCs cadre. Needless to state that the applicant cannot be allowed to have the best of both the words.

7. In the light of the foregoing discussion, we are of the considered view that the O.A. is devoid of merit and is accordingly dismissed as such, leaving the parties to bear their own costs.


(S. R. Segar)
Member (J)


(P. C. Jain)
Member (A)