

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

15
D.A. No. 215 of 1993 decided on 21.12.1998.

Name of Applicant : Sh.Chandrapal Singh Shambeer

By Advocate : Shri K.L.Bhandula

Versus

Name of respondent/s Union of India through Secy...
Min.of Health & Family Welfare & others

By Advocate : Shri N.S.Mehta

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A.Vedavalli, Member(J)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No


(N. Sahu)
Member (Admnv)
21.12.98

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

16

O.A. No. 215/93
M.A. No. 1710/97

New Delhi, this the 21st day of December, 1998.

Hon'ble Shri N. Sahu, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Shri Chandrapal Singh Shambeer,
S/o Shri Bidha Ram,
Librarian Grade-I,
National Medical Library,
Dte. General of Health Services,
Nirman Bhawan,
New Delhi-110011.

Resident of:

7/302, Lalita Park, Laxmi Nagar,Applicant
Delhi.

(By Advocate Shri K.L. Bhandula)

Versus

1. Union of India through Secretary to the
Govt. of India,
Ministry of Health and Family Welfare,
(Department of Health),
Nirman Bhawan, New Delhi-110011.

2. The Director General,
Directorate of Health Services,
Nirman Bhawan, New Delhi-110011.

3. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi. Respondents

(By Advocate Shri N.S. Mehta)

O R D E R

BY HON'BLE SHRI N. SAHU, MEMBER(A)

The prayer in this O.A. is for a direction to the respondents to consider the applicant for the post of Assistant Director (Training), treating this post as falling under promotion quota. There is also a prayer that this post may not be filled up by direct recruitment or by transfer on deputation. The prayer finally is to direct the respondents to treat the ad-hoc service of the applicant from 30.8.83 which was followed

by regularisation from 14.11.86, as qualifying him for eligibility to the post. His final claim is for withdrawing the requisition from the U.P.S.C. for filling up the post by direct recruitment.

2. The only interim order passed in this case on 2.2.93 was to the effect that any appointment to the post of Assistant Director will be subject to the outcome of the O.A.

3. An M.A. was filed on 17.7.97 for counting ad-hoc service followed by regularisation, as regular service and for considering him for promotion as Deputy Director on ad-hoc basis.

The brief facts of the dispute are as under:-

4. The applicant joined the Central Govt. in May, 1969 as a Librarian. He was promoted to the post of Librarian Grade.I with effect from 30.8.83 on the recommendation of a duly constituted Departmental Promotion Committee and was subsequently regularised without break w.e.f. 14.11.86 in the said post. These facts are not disputed.

5. The Recruitment Rules were notified in December, 1987. The said rules provide that the period required for promotion from Librarian Gr.I to Assistant Director is 8 years of regular service in the grade. According to the applicant, he completed this period of 8 years in the year 1991. The respondents thought that his regular service commenced only from 14.11.86. They

found that no S.C. candidate in the feeder category was eligible for promotion as Assistant Director. It is admitted by the respondents that this post of Assistant Director(Training) falls under the promotion quota and also the roster point falls for a S.C. candidate. As, according to the respondents, no candidate was available, they sent a proposal for filling up the post of Asstt. Director(Trg.) by direct recruitment to the U.P.S.C. on 6.5.91. This direct recruitment would be only for S.C. candidate. This was done on the advice of D.O.P.T. The vacancy had been advertised by the U.P.S.C. on 12.9.92.

6. The applicant also applied for the post of Asstt. Director in response to the advertisement. He has been provisionally selected by the U.P.S.C. alongwith few other S.C. candidates for the post of Asstt. Director(Trg.) on 4.2.93. There were two representations dated 27.11.91 and 22.9.92 from the applicant wherein the applicant had requested that his ad-hoc service period in the post of Librarian Gr.I be counted as experience for the purpose of promotional eligibility for the post of Assistant Director. These representations were rejected.

7. At the time of filing the O.A., the applicant was on deputation to the National Security Guard (in short 'N.S.G.') for the period from 22.7.88 upto 31.7.93. Meanwhile, on the recommendation of the U.P.S.C., he was appointed to the post of Documentation

an

19
Officer on 30.10.92. He did not join the post till he filed the O.A. and requested for proforma promotion in the post of Documentation Officer.

8. The claim of the respondents is that by direct recruitment also, the post is to be filled only by a Schedule Caste candidate and the applicant having applied for the said post, was eventually selected. No further grievance subsists for redressal.

9. The contention of the applicant is that in terms of O.M. dated 10.07.90 issued by the Ministry of Personnel, Public Grievances and Pensions (para 6), diversion of vacancies may be effected after careful consideration of all aspects. "If, for instance, a candidate belonging to S/C or S/T is likely to become eligible in near future, it may be preferable to keep the reserved vacancy unfilled till that time, rather than diverting the vacancy for direct recruitment, if the candidate is from outside." The O.M. is careful to say that the power may be exercised judiciously to ensure that the interests of persons belonging to S.C. and S.T. category are not adversely affected. According to the applicant, he completed total 8 years of service in August, 1991. He wants that respondents should count his ad-hoc service for considering his eligibility for promotion. The post of Assistant Director had fallen vacant on account of the voluntary retirement of Shri M.K.Bhatt, the then incumbent, on 30.9.93 and it is to this post that the applicant

aspired because by that time, if ad-hoc service were also counted, he would definitely have had 8 years of service to his credit.

10. We have carefully considered the submissions. The applicant has been selected as an Assistant Director by the U.P.S.C. on 4.2.93. This cannot be undone at this stage. The respondents have rightly or wrongly considered the ad-hoc service to be not regular service and diverted the post from promotion quota to direct recruitment quota. They have taken the step after consulting the D.O.P.T. After the approval of the D.O.P.T., they have approached the U.P.S.C. for filling up this post by direct recruitment. The process was initiated. The applicant took part in the same. He was eventually selected in the year 1993. If the applicant's ad-hoc service were counted, he would have become eligible on 30.8.91. He has been appointed to the post of Documentation Officer on 30.10.92. In this perspective, at this belated stage, we cannot undo and put the clock back even if we assume that the applicant's ad-hoc service could have been counted for eligibility purposes for promotion quota. Therefore, the relief claimed for withdrawing the requisition from U.P.S.C. is misleading and even mischievous and cannot be allowed.

11. The only question that remains to be seen is whether the service from 30.8.83 to 14.11.86 should be treated as regular service or not. Since he was promoted by a regular D.P.C. on 30.8.83 and was regularised in 1986 without break, we cannot lightly

✓

dismiss his claim. The Supreme Court in the Direct Recruits' case (1990 (2) SCC 715) held that "Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of appointment and not according to the date of confirmation". The corollary of the above rule is that where the initial appointment is only ad-hoc and not according to rules and made as a stop gap arrangement, the officiation in such a post cannot be taken into account for considering the seniority.

12. Porposition 'B' in the Direct Recruits' case

reads as follows:-

"If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted." The scope of corollary 'B' has been considered by a Full Bench of this Tribunal in the case of Shri Ashok Mehta and others. The Full Bench observed as under:-

"Promotion by way of ad-hoc or stop gap arrangement made due to administrative exigencies and not in accordance with rules cannot count for seniority.

Principle 'B' laid down by the Supreme Court in the Direct Recruit Class II Engineering Officers Association and others v. State of Maharashtra and others will apply as explained by the Supreme Court in Keshav Chandra Joshi and others v. Union of India and others only to cases where the initial appointment is made deliberately in disregard of the rules and the incumbent allowed to continue in the post for long periods of about 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the authority to relax the rules."

13. In the present case, where no Recruitment Rules were there in 1983, when the applicant was first promoted, he was admittedly promoted by a D.P.C. on the basis of selection. Therefore, the promotion cannot be said to be de hors the rules. He was subsequently regularised in 1986. Therefore, the period from 1983 to 1986 shall count as regular service. At this distance of time, while we do not want to undo the recruitment done by the U.P.S.C., we do not want to place the applicant at a disadvantage. The proposal for filling up the post of Assistant Director(Training) by direct recruitment for S.C. candidate only has been sent to the UPSC on 6.5.91. This vacancy had been advertised by the UPSC only on 12.9.92. The applicant becomes eligible for consideration after completing 8 years of service by counting ad-hoc service as regular service on 30.8.91.

14. The applicant was not a Documentation Officer at the time when the concerned vacancy of Assistant Director (Trg.) arose in 1990-91 and the said post was temporarily diverted for direct recruitment (reserved for SC) by the respondents as no departmental candidate (SC) was eligible for promotion, after taking a decision in that regard with the approval of the competent authority on 27.3.91. The requisition for filling the said post in the prescribed form was sent to U.P.S.C. by letter dated 6.5.91 (Annexure to counter page 41 of the paperbook). The said post was advertised in the Newspapers by the UPSC on 12.2.92. The applicant applied for the said post. He filed the present O.A. on 27.1.93. He was selected as a direct recruit on the

recommendations of the UPSC against the said post and was appointed on 30.12.94. He has been working in the said post since then. He was appointed as a Documentation Officer on 30.10.92, i.e., after the post of Assistant Director (Trg.) was diverted for direct recruitment and was advertised by the UPSC. But it appears that the applicant never joined the post of Documentation Officer and sought only proforma promotion to the said post.

15. As mentioned above, the applicant was appointed to the post of Librarian Grade I on regular basis with effect from 14.11.86. He was on deputation in National Security Guard w.e.f. 22.7.88 to 31.7.93. On the recommendations of the UPSC, he was appointed to the post of Documentation Officer by an order dated 30.10.92. Without joining the post, he requested for giving him proforma promotion which was under consideration of the respondents. The applicant was appointed to the post of Assistant Director with effect from 30.12.94 on the recommendations of the UPSC. In the M.A. filed, the applicant seeks consideration for promotion as Deputy Director on ad-hoc basis if his plea of counting ad-hoc service from 1983 to 1986 is allowed.

16. We notice that the post of Assistant Director was already advertised and the applicant exercised his option and applied for that post. It is true that the service from 30.8.83 to 14.11.86 should be treated as regular service and we have no hesitation in giving a direction to that effect although we do not know as to in what manner and how far, such a direction would

assist the applicant at this stage. We are quite clear in our mind that it would not be in the fitness of things considering the administrative exigencies involved to give any direction to undo what had happened. We do not want to interfere with the decision of the respondents to convert the post into a direct recruit post. The U.P.S.C. has acted on this suggestion and advertised for the vacancy. The applicant has exercised an option and applied for this vacancy. Having participated in the selection process and having accepted eventually the selection, it is not open to the applicant now to seek a status-quo ante. Even if the respondents were to consider the ad-hoc service from 1983 to 1986 as regular service, there is no post in the promotion quota to consider the applicant's case because the said post has already been diverted.

17. Under the circumstances, we do not think any useful purpose will be served by disturbing what has been done by filling up the post in direct recruitment quota. The only ground raised by the applicant to treat his ad-hoc service as regular service, is allowed and the other reliefs claimed, are rejected.

18. The O.A. is disposed of as above. M.A.1710/97 is also disposed of. No order as to costs.

A. Vedavalli
(DR.A. VEDAVALLI)
MEMBER(J)

N. Sahu
(N. SAHU)
MEMBER (A)