

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.**

Original Application No.525 of 1998.

ALLAHABAD THIS THE 15 DAY OF September, 2005.

HON'BLE MR. D.R. TIWARI, MEMBER-A
Hon'ble Mr.K. B.S. Rajan, Member-J.

Aditya Prakash Sharma, Presently working as Technical Asstt. Metal, Office of Development Commissioner (Handicrafts), Art Metal Craft Training Centre, Rampur.

.....Applicant.

(By Advocate : Nemo)

Versus.

1. Union of India through Secretary, Ministry of Textiles, New Delhi.
2. Vikas Ayukta, Bharat Sarkar, Vastra mantralaya, West Block no. 7, Delhi.
3. Director/Dy. Director, Central Region, O/o Development Commissioner, (Handicrafts), B-46 Mahanagar Extension, Lucknow.

.....Respondents.

(By Advocate : Sri Amit Sthalekar)

O R D E R

BY K.B.S. RAJAN, MEMBER-J

As the applicant was not present either in person, or through representative, invoking the provisions of Rule 15(1) of the C.A.T(Procedure) Rules, 1987, this order is passed.

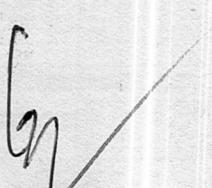
2. The brief facts of the case as succinctly brought out in an earlier order dated 18th June, 1998 is extracted below:

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"1. In this O.A., the applicant has prayed to direct the respondents to regularize the services of the applicant on the post of Technical Asstt. (Metal) and to pay the salary of the applicant of the post of Technical Asstt. (Metal) w.e.f. February, 1998.

3. In brief the facts of the case which led to this Misc. application are that the applicant was initially appointed as Storekeeper-cum-Clerk in the year 1978 in the pay scale of Rs. 260-400 (950-1500). Thereafter, the applicant was given promotion as Senior Storekeeper in the pay scale of Rs. 1200-2040. Thereafter the applicant was given appointment on the post of Technical Asstt. In the pay scale of Rs. 1400-2300/- It is submitted that from the year 1978 to 1998 the control of all Metal Training Centre were being looked after by the Metal Section of Headquarters Office, New Delhi, but thereafter the control of these Centres was assigned to Central Regional office, Lucknow. It is submitted that no opportunity has been given to the applicant before issuance of the order dated 22.5.98, as such the order in question is in complete violation of principle of natural justice. It is also submitted that services of the applicant for all practical purposes are being treated by the respondents at par with the regular employees as the applicant is being given regular increments bonus etc. and the applicant was always treated as Technical Asstt, by the Headquarters office. It is also submitted that it is well settled law that long continuance on adhoc basis is capricious and arbitrary. Therefore, the action of the respondents by reverting the applicant to the post below is illegal and cannot be sustained in law. Therefore, the operation of the impugned order dated 22.5.98 may be kept in abeyance and respondents may be further directed not to interfere in the working of the applicant as Technical Asstt."

3. The contention of the respondents is equally succinctly brought out vide their version in the counter:-


The factual position is that perhaps due to over sight the department could not

review the adhoc appointment cases well on time and it was only receipt of orders from the CP&AO which emanated on the instructions from the DOP&T which interalia stated that "Ministry of Personnel Public Grievances & Pension (Department of Personnel & Training) vide their order no. 28036/3/97-Estt.(D) dated 29.9.97 has pointed out that certain appointments/promotion are taking place on adhoc basis without the approval of the Ministry. Tech. Controller General of Accounts vide their D.O. dated 17.1.98 have instructed that pay and allowances of such officials are released only after promotion beyond one year have been approved by the Department of Personnel" This department had to immediately review all the cases of adhoc appointees including these 2 cases and simultaneously as stated earlier, to mitigate the hardship of the employees promoted on adhoc basis took up the cases with CCA and sought their permission to continue paying them salary against the post they were holding on substantive basis as the first step.

Thereafter, the process of review of each individual cases was taken up and while reviewing the case, in question, i.e. of Sri A.P. Sharma and Sri Sunil Kumar, it was found that :-

- (i) Their promotion as Technical Asstt. On adhoc basis was in contravention to the RRs since the RRs did not provide for promotion of any departmental candidate to the post.
 - (ii) It was found that the two posts against which these two incumbents were promoted on adhoc basis, thought in contravention of the RRs perhaps because of the oversight, fall under reserve category. Immediate corrective steps by way of reversion of these two incumbents had to be taken because two other employees namely Sri Phool Singh and Sri Ramakant who belong to the reserved category had been representing against adhoc appointment from general category. After due scrutiny and deliberate at the highest level in the office of the respondents
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a conscious though hard decision had to be taken by the respondents to set right a wrong decision taken earlier. Accordingly, an order dated 26.5.98 was issued reverting the applicants Sri A.P. Sharma alongwith Sri Sunil Kumar, Technical Asstt. (Metal) to the post of Store Keeper-cum-Clerk which they had been holding on substantive basis. It would thus be seen that correct position has not been projected before the Hon'ble Court by the applicant and that the action of the respondents in making payments to the adhoc employees on the post they hold on substantive post was simply in compliance of the orders of the Government to mitigate the hardship of the petitioner."

4. The Recruitment Rules for the post of Technical Assistant clearly show that the post is filled up to the extent of 50% by Deputation/transfer on deputation, failing which by Direct Recruitment and 50% by Direct Recruitment. There is no element of promotion.

5. The applicant was admittedly working as Senior Store Keeper and was appointed on ad hoc basis to the post of Technical Assistant. (Metal) vide order dated 13-06-1988. This arrangement continued for a substantial period till the review of all ad hoc promotion took place and the applicant reverted vide order dated 22-05-1998. The reason given by the authorities for reversion is that the Recruitment Rules do not provide for any promotion and that the vacancies also belonged to reserved category.

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6. Since the recruitment Rules do not provide for promotion, there is no question of the applicant's regularization whatever be the length of ad hoc service in the post of Technical Assistant. When Rules do not provide for promotion, appointment by way of so called promotion de-hors rules is illegal and not irregular. It is only an irregular appointment that could be regularized but not an illegal appointment. In the case of ***Mahendra L. Jain v. Indore Development Authority, (2005) 1 SCC 639***, the Apex Court has held,

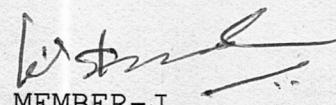
Regularisation cannot be claimed as a matter of right. An illegal appointment cannot be legalised by taking recourse to regularization. What can be regularised is an irregularity and not an illegality.

7. Where there is full justification for filling up a post by a method not contemplated in the Rules, then a conscious decision in advance should be taken to exercise the power to relax the Rules and such a power to relax should be exercised in respect of a group or category of person and not with reference to a single individual, unless the single individual becomes by himself a separate category. In the instant case, just because the applicant had been working as Technical Assistant for eight years, regularization in the post on the basis of length of service cannot be made.

8. In view of the above, the O.A. fails and is therefore, ~~dismissed~~ removed. It is however made clear that



the applicant is entitled to the pay as Technical Assistant till he actually stood reverted in terms of the order dated 22-05-1998.


MEMBER-J
MEMBER-A

GIRISH/-