

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

O.A. No. 62/590/2021

This the 07th day of April, 2021

**HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. TARUN SHRIDHAR, MEMBER (A)**



Bilqis Hassan, Age: 40 years, D/o Ghulam Hassan Sheikh, R/o Arampora, Nawakadal, Srinagar (J&K)-190002.

.....Applicant

(Advocate:- Mr. Showkat Ahmad Makroo, Sr. Advocate assisted by Mr. Danish Yousuf)

Versus

1. Union Territory of Jammu & Kashmir, through Commissioner cum Secretary to Government Social Welfare Department, Civil Secretariat, Srinagar/Jammu-190009.
2. Union of India through Secretary, Ministry of Women and Child Development, Government of India, Shastri Bhawan, New Delhi.
3. Director, Social Welfare Kashmir, Block-A, Directorate of Social Welfare, Old Secretariat Srinagar-190001.
4. Child Development Project Officer, Integrated Child Development Scheme Project Eidgah, Srinagar-191101.

.....Respondents

(Advocate: Mr. Rajesh Thappa, learned D.A.G.)

**ORDER
[ORAL]**

(Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member-J)

The applicant was engaged as Anganwadi Worker vide order dated 22.10.2005. In the year 2012, when the applicant completed seven years of continuous service as Graduate Anganwadi Worker, the applicant was assigned the charge to the post of Supervisor for the Anganwadi Centre Ali Masjid in addition to her routine duties and her assignment continued till the year 2018. It is the case of the applicant that as she had held charge of Supervisor for a substantial period of time, she became entitled to charge



allowance in terms of Article 85 read with Article 87 and 87 A of the Civil Services Regulations (CSR) and (ii) in view of her seniority and 15 years of continuous unblemished service career she is entitled to be absorbed against the post of Supervisor as four posts of Supervisors are presently available in the office of Respondent No. 4. (iii) since she is the senior most Graduate Anganwadi Worker, hence, until promotion is made she has the right to be considered as In-Charge Supervisor instead giving it to some junior most Anganwadi Worker, which is against the mandate of law.

2. We have heard Mr. Showkat Ahmad Makroo, Sr. Advocate assisted by Mr. Danish Yousuf and Mr. Rajesh Thappa, learned D.A.G. for the respondents and perused the records.

3. The prayer of the applicant is three fold:-

- (a) Release the charge allowance for the period from 2012 onwards till 2018 strictly for working on in-charge basis on the post of Supervisor.
- (b) Since she is the senior most Graduate Anganwadi Worker, hence, until regular promotion is made, she be considered as In-Charge supervisor.
- (c) Consider her for promotion to the post of Supervisor on substantive basis

4. It is well settled in law that even while making temporary/adhoc promotion or while officiating persons in promotional posts the same would be based on seniority unless the promotions are to be made by selection on merit. The said position is made clear by Hon'ble the Supreme Court in the decision reported in **2013 (5) LNN 413 (SC)**

(State of Uttranchal and anr v. Shiv Charan Singh Bhandari and ors). In paragraph 12 it is held thus:-



" 12. It can be stated with certitude that when a junior in the cadre is conferred with the benefit of promotion ignoring the seniority of an employee without any rational basis the person aggrieved can always challenge the same in an appropriate forum, for he has a right to be considered even for ad hoc promotion and a junior cannot be allowed to march over him solely on the ground that the promotion granted is ad hoc in nature. Needless to emphasise that if the senior is found unfit for some reason or other, the matter would be quite different. But, if senior incumbents are eligible as per the rules and there is no legal justification to ignore them, the employer cannot extend the promotional benefit to a junior on ad hoc basis at his whim or caprice. That is not permissible."

5. So, it is well settled by the Hon'ble Apex Court that even while making ad hoc or Incharge appointments to a higher post, the concerned authority shall be under an obligation to take into account the seniority in the lower category. It is only when the regular promotions are made, that the DPC can select the candidates and in the process, the senior can also be overlooked. Once, there is no selection process involved, the seniority deserves to be respected. Of course, it is also a settled law that an adjustment on ad hoc or Incharge basis against such post by an officer who did not possess requisite qualification for holding the post would be illegal and is to be taken into consideration while ordering such temporary adjustments.

6. Looking to the facts and circumstances of the case, we are of the view that the O.A. can be disposed of by directing the respondents to take a decision with regard to grievance of the applicant. Accordingly, the O.A. is disposed of with the following directions:-

- (a) Consider releasing charge allowance to the applicant, if due as per rules.

(b) Consider the applicant for promotion to the post of Supervisor as and when the D.P.C. takes place taking into consideration the applicant's seniority, merit and experience as in-charge Supervisor and further subject to the condition that the applicant do not suffer from any impediment or disqualification and is eligible to be considered for the posts in question.

(c) Consider the applicant for the post of In-charge Supervisor until regular promotion is made.

7. It is made clear that we have not entered into the merits of the case.

8. There shall be no order as to cost.

(TARUN SHRIDHAR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun

