

42
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Central Administrative Tribunal, Allahabad.

Registration T.A.No.259 of 1986 (O.S.No.17 of 1985)

R.K.Mallick Plaintiff

Vs.

Union of India and
3 others Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This original suit has been received by transfer from the Court of IV Addl.Munsif Lucknow under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff had joined the railway service as a Lower Division Clerk w.e.f. 22.9.1959 in the Research Designs and Standards Organization (for short RDSO) and was promoted as Upper Division Clerk on which post he worked upto 5.7.1978. The plaintiff was thereafter promoted as Assistant on ad-hoc basis w.e.f. 6.7.1978 in one of the three existing vacancies pending assessment of his suitability and finalization of the panel for the post. The plaintiff was empanelled for the post of Assistant and placed at sl.no.1 of the panel. The said panel was approved by the competent authority on 30.4.1979. It is alleged that as the plaintiff is a trade union activist, he incurred the displeasure of higher authorities of the RDSO for

2/2

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his espousing the genuine cause of workers on account of which the authorities became vindictive and when the plaintiff wanted to compete in the Limited Departmental Competitive Examination (for short LDC) for class II-Group 'B'- gazetted post, they took the stand that he does not fulfil the requisite qualification of 5 years standing as Assistant. He accordingly filed the suit for permanent injunction to restrain the defendants from holding the LDC examination without giving the plaintiff a chance to appear in the same and for restoring his seniority on the post of Assistant from the date of his officiation on ad-hoc basis. During the pendency of the suit the LDC examination was held and the plaintiff was not allowed to appear in the same. He accordingly got his plaint amended and he now seeks the further declaration that the LDC examination held in January 1985 is in violation of rules on the subject and should not be given effect to.

3. In the two replies filed on behalf of the defendants before this Tribunal, it has been stated that the plaintiff was promoted as Assistant purely in an ad-hoc arrangement and he was empanelled for this post only on 30.4.1979 and as such, he could not be considered to be a regular incumbent of this post from 6.7.1978. For appearing in the LDC examination, the services rendered by the applicant as Assistant before regulari^sation cannot be considered and as the plaintiff had not completed five years regular service as Assistant on the date of

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notification for LDC examination, he was rightly disallowed from appearing in the said examination. During the period from Dec.1977 to June 1978, the suitability of the plaintiff for long term promotion as Assistant was adjudged but he was found suitable for promotion as Assistant only on 30.4.1979 and as such, the services rendered by him as Assistant on ad-hoc basis prior to that could not be considered for determining his eligibility and he has no right to appear in the LDC examination or to get any relief in this connection.

4. In the two rejoinders filed by the plaintiff it has been stated by him that his promotion as Asstt. was not in fortuitous capacity and he continuously served as Assistant on his promotion w.e.f. 6.7.1978 and under the various rules of the Railway Department, which are fully applicable to the RDSO, he was eligible to appear in ~~the~~ LDC examination held in 1985 and his seniority on the post of Assistant has to be considered from the very beginning.

5. The plaintiff himself conducted his case and filed a number of documents. After hearing the plaintiff and the learned counsel for the defendant-respondents, we find ^{that} only a very simple question is involved in this case for determination and it is not necessary to go into the interpretation of various rules cited by the plaintiff in his pleadings.

According to the undisputed facts of this case, the plaintiff is continuously working as Assistant w.e.f. 6.7.1978. He was working on ad-hoc basis on this post till his regularization w.e.f. 10.9.1984. The defendants vide their notice dated 25.8.1984 had invited applications from such candidates, who fulfilled the conditions of eligibility and wished to compete in the LDC examination to fill up the vacancies in the cadre of Section Officer (Ministerial) (Class II-Gr. 'B'-gazetted). The condition no.4 of eligibility as per recruitment and promotion rules for the said post is as follows :-

"4. Eligibility: Assistants/Stenographers of RDSO in scale of Rs.425-800/RS/Rs .650-960(RS), including Senior Personal Assistants in grade Rs.650-1040(RS) presently working on regular basis and who have completed 5 years service in this Organization as on 25.8.1984 in the grades of Assistants/Stenographers will be eligible to sit in the aforesaid Limited Departmental Competitive Examination."

6. The contention of the plaintiff is that after his ad-hoc promotion w.e.f. 6.7.1978, his suitability for this post was adjudged along with 5 other officials by the Dy. Director General of the RDSO and out of the 6 candidates, 4 including the plaintiff were found suitable for the same vide staff notice dated 30.4.1979, annexure 1 to the plaint. It has, therefore, been contended by the plaintiff that he became a regular incumbent of the post of Assistant w.e.f. 30.4.1979 after this notice and though he



continued to be treated as ad-hoc thereafter, he was holding the post regularly within the meaning of condition 4 quoted above. In the seniority list of Assistants, ^{the entry is} "6.7.78 (Adhoc)" appeared in the column of date ^{of} appointment of the plaintiff in annexure 2 to the plaint. This supports the contention of the plaintiff that he was appointed as Assistant on adhoc basis on 6.7.1978 but became regular on this post on 30.4.1979. No doubt his appointment as Assistant was regularised much after ^{on} 10.9.1984, we are unable to accept the contention of the respondents that even after 30.4.1979, the plaintiff was holding the post ^{of Assistant} on ad-hoc basis. Considering the regular appointment of the plaintiff as Assistant from 30.4.1979, he had already completed 5 years' service on this post on 25.8.1984 and as such the plaintiff was eligible to appear in the LDC examination and the view taken by the defendants appears to be too technical and unreasonable.

7. The Hon'ble Supreme Court has repeatedly upheld the principle of giving due weightage to the continuous officiation on a post in considering the seniority and promotion of the Government employees. We may quote in this connection A. Janardhan Vs. Union of India (A.I.R. 1983 SC-769) ; O.P. Singhal Vs. Union of India (AIR 1984 SC-1595); G.S. Lamba Vs. Union of India (AIR 1985 SC-1019); Narendar Chaddha Vs. Union of India (1968) 1 Scale - 154 and A.N. Pathak Vs. Secretary to the Government (AIR 1987 SC-716). We are, therefore, of the view

12/6

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that for the purpose of considering the eligibility of the plaintiff to appear in the LDC examination held in January 1985, he should be treated as a regular incumbent on the post of Assistant w.e.f. 30.4.1979 and he was wrongly deprived of an opportunity to appear in the said examination.

8. As the LDC examination sought to be stalled by the plaintiff could not be stopped and did take place on the due dates (Jan.11 to 13,1985), and its result has also been declared, if not, it should be declared now as it will be too hard for all those who appeared ⁱⁿ the said examination if the relief sought by the plaintiff regarding the said examination is granted. The rights of the plaintiff can be safeguarded otherwise. We accordingly direct the respondents to arrange a special LDC examination for the plaintiff in case no such regular examination is going to be held within the next 6 months and if the plaintiff succeeds in the said examination, he shall be placed at the bottom of the panel prepared on the basis of the examination held in Jan.1985. There will be no order as to costs.

[Signature]
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Member (A)

[Signature]
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Member (J)

Dated 22-6-1987
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