

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH AT NAINITAL

THIS THE 17TH DAY OF APRIL, 2001

Original Application No.464 of 1995

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN:K.K.SRIVASTAVA, MEMBER(A)

D.N.Thapliyal, son of Shri Mani ram  
Thapliyal, R/o R.M.L.C, Dehradun.  
At present working as Master in Mathematics  
in Rashtriya Indian Military College  
(RIMC, in brief,) Dehradun.

... Applicant

(By Adv: Shri K.C.Sinha)

Versus

1. The Union of India represented  
Through the Secretary to the Govt.  
of India, Ministry of Defence,  
South Block, New Delhi.
2. The Deputy Chief of Army Staff,  
Directorate General of Military  
Training General Staff Branch,  
DHQ, P.O. New Delhi.

... Respondents

(By Adv: Ms.Sadhna Srivastava)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

This OA has been filed challenging order dated 31.1.1995 by  
which prayer of the applicant treating him on regular basis from  
the date of initial appointment for the purpose of seniority and  
increment has been rejected.

The facts giving rise to this application are that applicant  
was appointed as Master in Mathematics on temporary basis by order  
dated 18.8.1984. This appointment was for a period of six months  
which was extended from time to time till 1991. When requisition  
was sent to the Public Service Commission to select and recommend  
the suitable candidates for appointment, <sup>and</sup> Master in Mathematics  
against the post which was held by the applicant. By that time

applicant had already served for 7½ years. Aggrieved by the move of the respondents applicant filed OA No.642/89 before this Tribunal which was decided by order dated 19.2.1992 with the following directions.

"..... Accordingly this application deserves to be allowed in part. The respondents are directed to consider the case of the applicant for regularisation and till the same is not considered and decided, no fresh appointment on the said post is to be made till then, if he is not regularised, he is to be given atleast two chances to appear before Public Service Commission and till then his services may not be terminated. No order as to costs."

It is not disputed that the applicant's appointment in pursuance of the order dated 17.8.1984 was on the pay scale of Rs620-30-740-35-180-EB-40-960. Thus he was being given the yearly increments and also the enhanced increments after clearing the Efficiency Bar. In pursuance of the order of the Tribunal applicant was considered by Union Public Service Commission and he <sup>was</sup> ~~as~~ recommended suitable for the post. Consequently appointment on regular basis was done w.e.f. 16.4.1994 under the order dated 18.4.1994(Annexure 11). The pay scale given by this order is 2000-32000. After getting the regular appointment applicant claimed that he may be given seniority and increments etc w.e.f. his initial appointment which has been rejected by the impugned order.

The learned counsel for the applicant has submitted that applicant <sup>was</sup> ~~was~~ discharged the same duties as he was discharging after regular appointment and thus he cannot be denied the benefit of past services for the purposes of seniority and increment. It is submitted that the request of the applicant has been wrongly

rejected by the impugned order. Learned counsel has placed reliance in a division bench judgement of this Tribunal in a case of 'Dr.Sangeeta Narang & Ors.Vs.Delhi Administration & Ors(Delhi),A.T.R 1988(1) C.A.T 556.

Ms.Sadhna Srivastava on the other hand submitted that applicant is not entitled for the relief claimed as in the earlier OA filed by him he did not raise any grievance against his salary. He only claimed for regularisation.

The second submission of Ms.Sadhna Srivastava is that post was within the perview of Union Public Service Commission hence the appointment on 18.4.1984 cannot be termed on regular basis and the applicant can get the benefit of regular scale of seniority etc only after his name was cleared by the Public Service Commission. The order does not suffer from any error of law.

We have carefully considered the submissions of the learned counsel for the parties. In our opinion the submission made by the learned counsel for the respondents has force. The applicant was appointed initially on temporary basis without holding any test and without obtaining the opinion of the Public Service Commission. Such appointment could only be made as a stop gap arrangement to meet the need of the hours. The applicant was given the pay scale of the temporary employee with increments and revised increments after crossing the EB. when he filed OA 642/89 he had no grievance against his salary. He only prayed for issue of direction to the respondents to grant annual increment to the applicant w.e.f. Aug.1985, August 1986, August 1987 and August 1988 and grant further initial increment w.e.f. August 1989. <sup>on to</sup> ~~have been made~~. As clear from the relief granted, this OA was allowed only in part by order dated

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19.2.1992. It shows that the relief claimed with regard to the increment etc was refused specifically. The applicant cannot raise the same grievance now after he was regularised on recommendation of the Public Service Commission. As the appointment of the applicant was not in accordance with the rules and after obtaining the recommendation of the Public Service Commission, the benefit of past services for seniority etc also cannot be granted. This Tribunal only granted relief for consideration <sup>of</sup> ~~of~~ regularisation which is binding on the applicant. The judgement in Dr(Mrs) Sangeeta Naran's case(Supra) was clearly in different set of facts. In that case the appointments were made on fixed salary. The relief was claimed for regular pay scale on the basis of the principle of 'Equal pay for equal work' which was accepted.

Hon'ble Supreme Court in number of cases stated this legal position, which may also be referred to strengthen the view which we have expressed above. In case of 'Dr.M.A.Haque and others Vs.Union of India and Others 1993 SCC(L&S) 412. Para 8 of the judgement reads as under:-

8. Since the petitioner-applicants are admittedly not regularly appointed through the UPSC according to the rules, but have been directed to be regularised by following the procedure laid down by this Court. It is obvious that they are not appointed to their posts according to the rules. Under no circumstances, therefore, they fall within the scope of guideline (A) laid down in Direct Recruit Class II Engineering Officer's Association case.

In fact, they do not fall under guideline

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(B) given therein either, since their regularisation is not in accordance with the rules but as a consequence of special procedure laid down by this Court. The expression "in accordance with the rules" or "according to rules" used in the said guidelines(A) and (B) means the rules of recruitment and not the special procedure laid by this Court. The petitioner applicants thus fall in an altogether different category not covered under any of the guidelines given in Direct Recruit Class II Engineering Officers Association case. We have, therefore to evolve a procedure for fixing their seniority. That procedure cannot be in violation of the guidelines laid down in Direct Recruit Class II Engineering Officer's Association case. Secondly, the seniority given to the petitioner applicants will have to be below the seniority of the outsiders directly recruited through the UPSC as well as below that of the directly recruited erstwhile ad hoc Medical Officers. This is not and cannot be disputed on behalf of the petitioner-applicants."

2) 'E.Rama Krishnan and Others Vs.State of Kerala and Others (1996) 10 Supreme Court Cases 565. Para 2 of the judgement reads as under:-

2."It is sought to be contended by Mr.M.M Paikeday, the learned Senior counsel for the petitioners that in the light of the law laid down by this Court in Piara Singh case and in view of the fact that the petitioners have been continuing for more than 14 years, they

are required to be regularised. We find no force in the contention. Admittedly, the posts are to be filled up through selection by PSC recruitment norms. Necessarily, therefore, the requisition was sent for selection through the PSC and candidates came to be selected. Under those circumstances, the candidates who were found eligible and selected and recommended for appointment by the PSC, were required to be appointed. The Court rightly had exercised the power in declining to regularise the services of the petitioners."

3) Union of India and Others Vs. M. Dharani and Others (1997) 6 Supreme Court Cases 148. Para 4 of the judgement reads as under:-

"The respondents have thus been regularised in accordance with the existing policy of regularisation and on terms and conditions set out in that policy. In view of the clear terms of this policy, the Tribunal was not justified in granting to the respondents the benefit of seniority from the date of their initial employment as casual workers nor was the Tribunal justified in granting to the respondents all consequential benefits.

The Tribunal has relied upon an earlier decision of the Full bench of the Tribunal in 'A Ramakrishnan Nair Vs. Union of India, which, however, was concerned with regularisation of casual employees in accordance with the letter of the Ministry of Defence dated

24.11.1967. The Tribunal, however, has failed to note that the present regularisation are not under the Defence Ministry's letter of 24.11.1967. The scheme of regularisation applicable to the respondents is an laid down in the letter of Ministry of Defence of 31.1.1991 which contains terms and conditions somewhat different from those earlier provided. In view of the express scheme of regularisation as contained in letter of 31.1.1991, the Tribunal was not justified in giving the above directions."

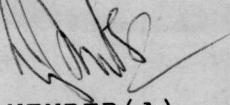
4) Davinder Bhatia and Others Vs. Union of India Others, 1998 SCC (L&S) 1331. Para 6 of the judgement is being reproduced below:-

"6..... The appellants, no doubt have been brought to the reservation side prior to 1978 but admittedly there had been no process of selection in their case and they were posted as Enquiry-cum-Reservation Clerks merely on ad hoc basis as a stopgap arrangement. The post of Enquiry-cum-Reservation Clerk being a selection post, the persons like the appellants who were posted against those posts without going through the process of selection on ad hoc basis do not have a right to be in the cadre until and unless they are duly regularised after going through a process of selection. In the case in hand, this process of selection was made only in the year 1982 and the appellants have been absorbed in the cadre of Enquiry-cum-Reservation Clerks after being duly selected in this view of the matter, their continuance on ad hoc basis from

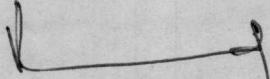
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1978 to 1982 cannot be counted for the purpose of their seniority in the cadre of Enquiry-cum-Reservation Clerk nor can they be held senior to the women candidates who were directly recruited as Enquiry-cum-Reservation clerks under the changed policy by undergoing a process of selection....."

For the reasons stated above we do not find any merit in this case. The OA is accordingly dismissed. No order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated: 17.4.2001

Uv/