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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 500 of 1987 198
~~T.A. No.~~

DATE OF DECISION 27-7-1988

Smt. D.R. Shah & Ors. Petitioner

Shri N.J. Mehta Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri J.D. Ajmera. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi : Vice Chairman.

The Hon'ble Mr. P.M. Joshi : Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

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OA/500/87

27-7-1988

Per : Hon'ble Mr. P.H. Trivedi : Vice Chairman.

The petitioner in this case have challenged the order of 8th October, 1987 of the General Manager Telecommunication, Gujarat Circle for reverting them from the post of selection Grade U.D.C. (Senior Accountant) to the cadre of U.D.C. now Junior Accountant. Earlier by the order dated 11-7-86 at Annexure A3 the petitioners were promoted from the post of U.D.C. to Special Grade U.D.C. In these promotion orders the promotion was described as being purely on temporary and ad hoc basis until further orders and carried the following explicit stipulation.

"These promotions are on ad hoc basis and on purely temporary basis and likely to be terminated at any time irrespective of their seniority.

It is further certified that they are not entitled to any seniority in the grade concerned and these ad hoc promotions do not confer any right upon them for seniority, confirmation, or regular promotion etc. in the grade concerned."

The petitioners have joined the service of the respondents in Telecommunication Accounts Unit as T.A. Clerks in the years 1972, 1973 and 1974 in the pay scale of Rs.260-480 (pre-revised) as new staffing pattern was introduced in 1981 by which T.A. Clerks were converted as U.D.Cs and were placed in the pay scale of Rs.330-560 (Pre-revised). After completion of 10 years of service as T.A. Clerks and

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later on as U.D.Cs the applicants were promoted as Grade U.D.Cs. and placed in the pay scale of Rs.425-640 and Rs.425-700. The service put in by the petitioners is stated at Annexure A2. Respondent No.1 by his letter dated 7th July, 1987 changed the designation of U.D.Cs (T.A. Clerks) and Selection Grade U.D.Cs (T.A.) as Junior Accountant and Senior Accountants respectively. The applicants are called Senior Accountants. Director General by the letter dated 11th December, 1975 at Annexure A5 empowered the circles to create 20% selection grade posts in the cadre of Telecommunication Accounts Clerical that such cadre in which the petitioners were initially appointed by the letter dated 28th August, 1982 he clarified that for the purpose of appointing T.A. Clerks in selection grade 10 years of service as T.A. Clerks and ad hoc U.D.C. should be reckoned. Most of the applicants were promoted as selection grade U.D.Cs. after their completion of 10 years of service as T.A. Clerks and U.D.Cs. In the case of a few applicants who had not completed 10 years of service, the respondent authorities relaxed the requirement of 10 years service and had appointed them as selection grade U.D.Cs. All the applicants, therefore, are working for more than 3 years as selection grade U.D.Cs., now called Senior Accountants. According to the applicants no recruitment rules either for Junior Accountant (previously U.D.C.) or for the post of Senior Accountant (previously the selection grade U.D.C.) have been promoted. When the applicants were promoted as Senior Accountant, there were no recruitment rules, they are required, therefore, to be regularised as Senior Accountants when the posts of Senior Accountants has to be done by way of upgradation by the letter dated 17th November, 1986. Instructions were issued that

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it was neither desirable nor permissible to postpone the policy of the D.P.C. meeting solely on the grounds are not revised or amended and that the D.P.C. and the panel of officers for promotion should be finalised in accordance with the existing recruitment rules instead of following these instructions. According to the respondents have sought to revert them from the post of Senior Accountant to those of Junior Accountant by the impugned orders. According to the petitioners the respondents have not so far implemented the impugned order of reversion nor have the applicants hitherto handed over the charge nor the respondents have appointed any one as Senior Accountant in place of applicants. For these reasons the petitioners claim that after completion of 10 years' service as T.A. Clerks and U.D.Cs their services should have been regularised for appointment as Senior Accountant by holding the D.P.C. meeting in time and there is violation of the instructions dated 17th November, 1986 at Annexure A7. The petitioners also rely upon the judgment of the Delhi High Court in 1978(2) SLR 379, Kuldip Chand Vs. Delhi Administration and a Division Bench of the Gujarat High Court in Special Civil Application 1522 of 1973. The petitioners have also stated that two persons namely Balolkar and B.B. Shah were similarly promoted.

2. In reply the respondent's stand is that the petitioners were admittedly promoted on ad hoc basis and have no right to the promotion post when the U.D.C. and L.D.C. pattern was introduced in place of Telecommunication Accounts Clerks, it was ordered that the existing posts which were not filled were down graded to the cadre of U.D.Cs and L.D.Cs by Government orders dated 25-6-81. It was ordered that the recruitment rules of U.D.C and L.D.C. of circle office would be made applicable for the U.D.Cs. and L.D.Cs. of



the Telecommunication Accounts Wing until the recruitment rules for U.D.Cs. and L.D.Cs for Telecommunication Accounts Wing are received. There are no separate orders or rules for promotion of special grade U.D.Cs and on a reference being made to Director General his reply dated 28-8-82 intimated that since ad hoc promotion is no promotion, the T.A. Clerks promoted to the U.D.Cs. have to be considered for the promotion to the cadre of special grade on completion of 10 years' service as T.A. Clerks and ad hoc U.D.Cs. On making another reference dated 19-11-82 regarding counting of both the services of T.A. Clerks and ad hoc U.D.Cs the words eligibility of 10 years' service for the purpose of promotion to Senior Grade U.D.Cs, Director General Telecommunication rejected the suggestion by his letter dated 4-4-83. This causes reversion to all ad hoc S.G. U.D.Cs to the cadre of U.D.Cs. In the mean time the pattern of U.D.C/L.D.C. has been changed by letter dated 7-7-87 and the designation U.D.C. are Selection Grade U.D.Cs and has been changed to Junior and Senior Accountants respectively. As no recruitment rules for Junior and Senior Accountants have been framed, the question of regularisation of the petitioners does not arise and therefore, the petitioners have no right to continue in the posts.

3. During the hearing the suggestion was made whether the petitioners can be allowed to continue on ad hoc basis in the special grade of T.A. scale "Rs.425-640" but the respondents came up with the reply that the suggestion cannot be accepted at the local level. They have also stated that 80% of the posts of Junior Accountants have been allowed to be placed in the higher functional grade and in the light of this the petitioners should now have no case. The

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respondents have filed a copy of their letter dated 20-7-88 in which they state that the applicants were working as ad hoc senior grade U.D.Cs. as on 1-4-87 and being sufficiently senior will come within the purview of consideration for promotion for D.P.C. in placing them in the grade of Rs.1400-2600 w.e.f. 1-4-1988 and accordingly the petition does not survive in the above circumstances.

4. We must first dispose of the question of the petitioners being entertainable or not on the ground of non-exhaustion of remedy which the respondents have pleaded. Reversion is not a penalty especially when it is a reversion from ad hoc promotion and therefore there is no appeal or remedy provided as a matter of right. No state order can be obtained from the appellate authority. The tribunal, therefore, cannot shut its doors on the petitioners for this reasons.

5. From the convoluted reply of the respondents we must observe that much of the problem has been created by changing the designation frequently without sufficient thought of the proper pattern for staffing the Telecommunication Accounts Wing. The petitioners were appointed as T.A. Clerks in the early 70s. On the interruption of being a clerical cadre their posts were converted to those of U.D.Cs in which they had a selection grade. Their designations were changed to Junior and Senior Accountants in 1987. The conditions for eligibility were also changed. In August, 1982 the Director General stated for appointing T.A. Clerks and Selection Grade, 10 years of service as T.A. Clerks and ad hoc U.D.Cs could be reckoned but later he took the line that ad hoc promotion was no promotion and the services as U.D.C. in ad hoc capacity will not count for the purpose. There is no dispute that the



petitioners have served in the promotion posts for considerable period and have enjoyed the selection grades and U.D.C. pay scales in term of the seniority on promotions given by the respondent authorities. Recruitment rules for Junior and Senior Accountants have admittedly not been made and the D.P.Cs have not made selections on the basis of such recruitment rules as governed, the selection of either U.D.Cs or Junior or Senior Accountants. The petitioners have pleaded that holding of D.P.C. is a serious irregularity. From the reply it appears that in the name of restructuring posts have been down-graded and suddenly a number of posts which should have been filled up on regular basis have been shown disappeared and came under a new name. This cannot be a reason for not filling up the posts on regular basis. The respondent authorities have the competence to decide not to fill up the promotion posts as this is an administrative matter but they have no right to cause reversion if the incumbents are appointed on ad hoc basis and who are awaiting regularisation but the respondents are unable to cause regularisation because they have not framed rules and for that reason selection by D.P.C. is not possible. This vicious circle of regularisation chasing selection and selection chasing D.P.C. and D.P.C. chasing rules and rules chasing respondents' decision is entirely of the respondents' making. It seems that confusion has been worse confounded by conflicting instructions regarding the period of eligibility including ad hoc service as U.D.Cs.

6. The petitioners are on strong ground in urging that the service of that of ad hoc nature cannot be regarded as a nullity and they have cited 1978(2) SLR 379

Kuldip Chand Vs. Delhi Administration in which it was observed as follows.

"True, an ad hoc appointment is in the nature of stop gap arrangement, made for a variety of reasons, on account of which it is not possible to make a regular appointment. It may be that the Rule under which a regular appointment has to be made have yet to be framed because regular incumbent is not available for the process for regular selection involves time and the exigencies of service are such that the posts cannot be allowed to remain unmanned meanwhile. Such an appointment however, does not affect the rights of those who were not considered for such appointment, though within the range of eligibility. In that sense ad hoc appointment does not by itself confer any right on the said appointee for regular appointment to such a post. But it is equally true that once an ad hoc appointee is eventually selected for the post in a regular selection, the regular appointment would relate back to the date of ad hoc appointment. To that extent, therefore, the period during which an ad hoc appointee has served as such in the appointment contributes to his service career and, therefore, legitimately forms basis of a certain rights that accrues by subsequent appointment. It is also beyond doubt that even though an ad hoc appointee has no right to hold that post to which he is so appointed, he can nevertheless be reverted to his lower substantive position only for valid reasons such as his unfitness to hold the post, the availability of the person holding a lien on the post,

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selection of a regular incumbent or other exigencies of public service. An ad hoc appointee can not, therefore, be reverted, without any rhyme or reason (1). An ad hoc appointment, though by its nature a precarious tenure, nevertheless carries a limited right to that extent and if such an ~~an~~ appointee is reverted without a valid reason, he would be entitled to challenge it and seek an enforcement of the right."

7. The respondents' plea that 80% of the posts of Junior Accountants are placed in terms of the circular dated 17-5-1988 has been resisted by the petitioners as valid and adequate redressal of their grievance. We do not go into the merits of this measure being adequate or not because the plea raises entirely new circumstance.

8. The petitioners are entitled to be protected against reversion until the post of Junior and Senior Accountants can be filled whether after recruitment rules are framed or otherwise. The petitioners are also entitled to count their period of ad hoc services as U.D.Cs, covers the eligibility for promotion to the selection grade or equivalent designation. While impressing upon the respondents the urgent need to fill up the posts of Junior and Senior Accountants on a regular basis and to decide whether the recruitment rules should be framed for doing so, we must allow the respondents to decide the suitability of the petitioners for such regularisation in terms of selection by D.P.C. in accordance with the rules which govern their cases. Their service as ad hoc U.D.C., however, must be counted in deciding their eligibility or selection.

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9. As earlier stated the petition has now been over-taken by the stand of the respondents shown in their letter dated 20-7-1988. Admittedly the petitioners have been given the pay scale of senior grade U.D.Cs as on 1-4-1987 and are under consideration for promotion. It is, therefore, appropriate that they be not reverted and be declared to be entitled to be continued in the ad hoc promotion until selection for regular promotion after considering their claim is made. The impugned order dated 8th October, 1987 is quashed and set aside. The respondents are free to fill up on a regular basis the promotion posts of Junior and Senior Accountants and in determining the eligibility for the purpose they are directed to reckon the period of service of the petitioners in their ad hoc promotions. No order as to costs.

P.H. Trivedi

(P.H. Trivedi)
Vice Chairman.

P.M. Joshi

(P.M. Joshi)
Judicial Member.