

Central Administrative Tribunal  
Calcutta Bench

No.OA 870/96

dt. 08.3.01

Present : Hon'ble Mr.D.Purkayastha, Member(J)  
Hon'ble Mr.S. Biswas, Member(A)

1) Shri Raghav Ram Bhattacharjee  
3B, Sasi Shekar Bose Road  
Calcutta-700 025  
2) Shri Kamakhya Charan Banerjee  
93/D, N.C. Ghose Sarani  
Zaminder Road, Sheoraphuli  
Dist. Hooghly

.....Applicants

-Vs-

1)The Union of India, service through the  
Secretary, Ministry of Environment, Forests  
and Wildlife, New Delhi  
2) The Director, Zoological Survey of India  
M-Block, New Alipore, Calcutta-700 053  
3) Senior Administrative Officer,  
Zoological Survey of India,  
M-Block, New Alipore, Calcutta-700 053

.....Respondents

Present for the applicants : Mr.S.M.Dutta  
Mr.S.K. Chatterjee  
Present for the respondent : Mr. ~~M.S.~~ Banerjee

Heard on 1-2-2001

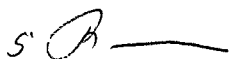
ORDER

Mr.S.Biswas, Member(A)

By this application under Section 19 of the Administrative Tribunal Act 1985, Applicants No.1 and 2 sought the following relief;

- 1) Circular No.14/Estt dated 15-6-94 issued by Scientist-SE and Head of Office has been sought to be set-aside.
- 2) The seniority list for Laboratory Assistant in the scale of Rs975-1540 as published by the respondent has also <sup>been</sup> sought to be recast restoring their due position above those who had superseded.
- 3) The position in the seniority list for the post of Laboratory Assistant is also to be determined from the date of selection in Group 'B' post and consequential benefits.

2. The applicants were respectively appointed as Insert. Setters (Group-D) on 9-10-74 and 3-1-79. They were appointed as Laboratory Assistant (Group-C) in the scale of Rs260-430/- vide order No.175/85 dated 2-12-85 on adhoc basis. Both the applicants joined as Laboratory Assistant

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on 3-12-85 in the office of the respondents in Calcutta. Vide order No.260/93 dated 18/22-11-93 the first applicant was appointed on promotion on regular basis to the post of Laboratory Assistant in the scale of Rs975-1540/- at the Headquarter Office of Zoological Survey of India with effect from 9-9-1992. Similarly, the second <sup>applicant</sup> ~~respondent~~ was also appointed on promotion on regular basis to the said post of Laboratory Assistant in the scale of Rs 975-1540 in the Headquarters Office, Zoological Survey of India on 26-11-93 until further orders. By another order dated 13-1-94 issued by Head of Office, the first applicant was ordered to be promoted on regular basis from Group-D to Group-C with effect from 9-9-92. However, no such order in respect of the second applicant has been annexed.

3. Both the applicants have challenged the publication of the circular No.14/Estt dated 15-6-94 containing the seniority list (annexed) on the ground that the applicants who were selected on an earlier date are <sup>made</sup> ~~are~~ senior to those who <sup>was</sup> ~~are~~ selected on later date. This principle has been seriously by-passed at the time of promotion to the post of Laboratory Assistant on a regular basis and subsequent fixation of the seniority. The applicants made representations on 25-7-95 to respondent No.2 inter alia stating that as per Recruitment Rules persons belonging to the Central Service Group-D post of Insect.Setter under Zoological Survey of India 1986 ~~has~~ been deprived from appearing in Departmental Competitive Examination along with other Group-D staff placed in similar position. This has deprived them from getting their due promotion to the grade of Laboratory Assistant and they have to wait for long years for their due promotion to the post of Laboratory Assistant. If the seniority position of the Insect.Setters would have been properly maintained or the recruitment rules would have been suitably amended they would not have to suffer seriously.

4. The applicants <sup>represented to</sup> ~~reminded~~ the respondent No.2 on 19-9-94 and 21-3-95 and on 4th April 1996. The Scientist SE HQ replied to the Applicant No.1 stating that as their appointment, to the post of Laboratory Assistant were purely on adhoc as per government rules, they are eligible for seniority only after promotion and regularisation <sup>on</sup> ~~and~~ on regular promotion <sup>are</sup> ~~they were~~ put to their respective position of seniority. It has also been ~~clearly~~ <sup>one</sup> ~~made~~

S. B.

that the seniority was fixed by the respondent on the basis of feeder grade as per recommendation of the DPC. The said representation was disposed of as per recruitment rules.

5. More or less the same position was maintained by the respondent in the written counter as well as at the time of hearing by the learned counsel for the respondent.

6. We have gone through the case records and heard the learned counsel, for the opposite parties on points of law and facts. The applicants have made their case on the limited points that the impugned seniority list circulated by the respondent does not reflect their correct position. They ought to have been given seniority from the date of their appointment on adhoc basis as per office order dated 2-12-85 and No.175/85 both Annexures A and B to the OA.

7. We have carefully gone through the submissions including the recruitment rules and the reply of the respondent to the representations of the applicant. The applicants have disputed the seniority list circulated by the respondent on 15-6-95 on <sup>the</sup> tenuous ground that he was appointed as Laboratory Assistant in the scale of Rs260-430 on adhoc basis on 2-12-85. This was followed up by his regularisation on 18/22-11-93 vide order 260/93 and therefore, his seniority should be recast with effect from 2-12-85 when he was appointed as Laboratory Assistant on adhoc basis as the said appointment was ultimately regularised later on 22-11-93. It is averred in the application that vide the respondents order dated 2-5-85, four such Insect.Setters, one marksman, one collection tender, 2 adhoc LD Clerk and 1 peon were appointed as Laboratory Attendant whereas in the seniority list his position is 37. Many juniors like B.R. Mitra, P.K.Naskar, Sujoy Raha, Deb Kumar Das, A.K. Seth etc. have gone ~~again~~ above him.

8. The learned counsel for the respondents has brought to our notice that in similar case No.OA 650 of 1987 in Sanjib Roy Choudhury V. Union of

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India, Calcutta Bench of Central Administrative Tribunal held that the applicants holding the post of Junior Time Scale on adhoc basis were not eligible to continuation and were liable to reversion. Referring the Apex Court's decision in direct recruitment in Class II Officers Association V. State of .....AIR 1990 Supreme Court, Page No.1607 it is pointed out by the learned counsel for the applicant that it was held "if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted". The learned counsel for the applicant omitted to see that the prescribed rules clearly outlines the method of recruitment in feeder grade in respect of Insect Setters and how their promotion cases are to be dealt. The said rules 11 and 12 are reproduced below.

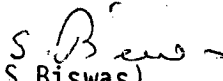
11. Method of recruitment : whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods. i)50% by Direct Recruitment. ii)25% by promotion from the grade of Insect Setter (Rs800-1150). iii)25% by promotion from Group 'D' staff excepting Insect Setter borne on the regular establishment subject to the following conditions.  
Condition : Selection would be made through a departmental competitive examination from amongst Group 'D' staff excluding Insect Setter of this Survey possessing minimum educational qualifications of Matriculation with Science or its equivalent with at least 5 years regular service.

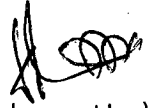
12. In case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made Promotion i)25% by promotion from the grade of Insect Setter(Rs800-1150) with at least 5 years service in grade rendered after appointment thereto on regular basis. ii)25% by promotion through departmental competitive examination from Group D staff including Insect Setter borne on the regular establishment with at least 5 years service in the grade/grades rendered after appointment thereto on regular basis."

9. The respondent in their impugned order dated 2-12-85 (175 of 85) had clearly indicated that "this adhoc appointment will not confer any right on the incumbent in respect of the post as and when the said post is filled...." Accordingly, the respondent held regular DPC for promotion including regularisation when the case of the applicants were considered and both of them were promoted as per the <sup>DPC</sup> recommendation of the DPC dated 9-9-92. *This ad hoc promotion was not as per the Rules.*

10. After going through the records, therefore, we are convinced that  
*S. [Signature]*

the persons who are shown as senior to him were promoted on the basis of the DPC findings as per rule vis-a-vis the adhoc appointment of the applicant. Therefore, their position in the seniority list are different than the dates when they were appointed on adhoc basis. We find no reason to hold the findings of the DPC as illegal. The promotions for regularisation in this case were as per rules. The applicants were not appointed on regular basis following the DPC rules. We find the OA as devoid of merits, therefore dismissed without costs. However, considering the facts that as per the order of promotion and regularisation the applicant No.1(one) was regularised with effect from 9-9-92 vide order dated 22-11-93 (260/93). We observe that in the order of promotion, the date of regularisation has been shown with effect from 9-9-92. We are of the view that his seniority should be fixed as on 9-9-92 when he was regularised and his position should be accordingly recast. The OA is disposed of without cost.

  
(S. Biswas)  
Member (A)

  
(D. Purkayastha)  
Member (J)