

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH
CALCUTTA.

Calcutta this the 19th day of October 2001

Original Application no. 1255 of 1996

Hon'ble Mr. Rafiq Uddin, Judicial Member
Hon'ble Maj Gen KK Srivastava, Administrative Member

Shri Dilip Kumar Nag, S/o Late J.K. Nag,
working as Lower Division Clerk in the office of the
Executive Engineer, Tripura central Division, C.P.W.D.,
Agartala Airfield and residing at C/o Kalyani Nag, Kalibari,
Agartala Aerodrum, Agartala.

... Applicant

By Advocate : Shri R.K. De

Versus

1. Union of India service through the Secretary to
the Government of India, Ministry of Urban Affairs
& Employment, Nirman Bhawan, New Delhi.
2. The Chief Engineer, Eastern Zone, C.P.W.D., Nizam Palace,
234/4, A.J. Boas Road, Calcutta.
3. The Superintending Engineer (Coordination), Calcutta
Central Circle I, Nizam Palace, Calcutta.
4. Superintending Engineer, Coordination Circle, Eastern
Zone, Nizam Palace,
Calcutta.

... Respondents

By Advocate : Shri S.K. Dutta



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O R D E R

Hon'ble Maj Gen KK Srivastava, AM

The applicant in this OA has prayed for quashing respondent no. 4 letter dated 25.1.1995 (Ann. A-12), letter dated, 27.6.1996 (Ann A-13) & also the seniority list dated 21.3.1991 (Ann A-10). He has also prayed for regularisation as LDC w.e.f. 8.7.1981 with all consequential benefits.

2. Briefly the facts of the case are that the applicant joined Agartala Aviation Sub Division, Agartala, under CPWD Calcutta Central Circle I as Group 'D' on 3.9.1971. As per Department of Personnel & AR (in short DP & AR) OM dated 13.2.1979 (Ann A-1) Educationally qualified Group 'D' employees were to be preferred to the nominees to employment exchange on short term basis for adhoc appointments for LDC post. Following DP & AR instructions for promotion of such educationally qualified Group 'D' employees to post of LDC, the applicant was screened and was promoted as LDC on adhoc basis with familiar terms and conditions for adhoc appointment vide order dated 29.6.1981 (Ann A-3). The applicant joined as LDC on 8.7.1981. The applicant continued as LDC from July 1981 to June 1991 without any interruption. During this period the applicant ^{earned} annual increments and also crossed the EB. He was allowed to appear in departmental competitive - Cum - qualifying examination for promotion to UDC post on the basis of three years continuous service in LDC grade. On 18.6.1991 DPC was held and the DPC found him suitable under subsequently created recruitment rules for the post of LDC effective from the date of his assumption of charge. The applicant was given the date of seniority as LDC w.e.f. 20.6.1991. The applicant represented that his seniority should

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be given w.e.f. 8.7.1981 the date on which he assumed charge as LDC and continued to work as LDC without any interruption. The applicant's appeal/representation to higher authorities in this regard remained undisposed and hence the applicant filed this OA. The claim of the applicant has been contested by the respondents by filing counter reply.

3. Sri RK De, learned counsel for the applicant :
has submitted that the selection of the applicant has been done after proper screening and he has continuously worked from 1981 to 1991. He deserves to be regularised from 8.7.1981 treating his continuous adhoc service as regular service. Since it has been a proper selection and the applicant has been allowed to continue as LDC for so many years the appointment is not in the nature of adhoc. and cannot be termed as fortuitous. The learned counsel has placed reliance on Full Bench Judgment in CVK Naidu & others Vs. Union of India & others, Full Bench Judgment CAT Vol II pg 189 where the reference of DP & AR instructions dated 29.4.1977 has been made that only in exceptional circumstances under exigencies of public service, and an adhoc appointments should be made. Such appointments may be made to fill up purely short term vacancies caused by leave, short term deputation, training etc. The instructions clearly stipulate that regular vacancies for period exceeding one years, should not be filled by adhoc appointments. In the instant case, the applicant continuously worked for 10 years and was not never reverted. It has also been argued that the applicant's name appears at sl no. 6 in the list of eligible candidates examination (Ann. A-6) for promotion to UDC cadre held on 17.1.1990.

4. Learned counsel for the applicant also submitted


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that pursuant to DFC findings in the meeting held on 18.6.1991 order was issued on 20.6.1991 (Ann A-8), that the applicant is appointed ^{as LDC} on promotion on purely temporary basis from the date of assuming charge. Therefore, the applicant's date as LDC should be taken as 8.7.1981. The learned counsel for the applicant ^{has placed} ~~has~~ reliance on the judgment of Hon'ble Supreme Court in Rudra Kumar Sain ^{and} others Vs. Union of India & Others 2000 SCC (L&S) 1055 in which it has been held that appointment of an employee possessing statutory qualification to the promotional post after due consultation with or approval of the competent authority and ^{has} continuing for a fairly long period is not adhoc, fortuitous or stop gap and cannot be ignored in computing the length of service for determining inter-se-seniority between such promotees and direct recruits. Similarly the learned counsel ~~has~~ ~~also~~ in support of his contention also cited the decision of the constitution bench ^{of Hon} in ^{Supreme Court} Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra & others ^{[1990] 3 ATE 348} in which their lordships of the Apex Court while summing up have held "if the initial appointment is not made by following the procedure laid down by the rules but the appointee continued in the post ^{has} ~~on~~ uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted".

5. The learned counsel for the applicant further submitted that officiating period cannot be ignored unless prohibited by rules for the purpose of seniority as has been held by the Hon'ble Supreme Court in GP Doval Vs. Chief Secretary, Govt. of UP ^{has} AIR 1984 SC 1527.

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6. Sri MS Banerjee, learned counsel for the respondents while contesting submitted that the appointment of the applicant has not been done as per the recruitment rules of 1969. The promotion of the applicant as LDC has been done in pursuance to the DP & AR OM dated 23.2.1979 and dated 31.10.1979 purely on adhoc and short term basis. Any promotion granted under OM cannot be treated as a regular promotion because the OM cannot take place of the recruitment rules.

7. The learned counsel for the respondents further submitted that as per recruitment rules 1969 100% posts of LDCs had to be filled in by direct recruitment and there was no provision for promotion to the post of LDC. Therefore, the promotion of the applicant was purely adhoc as is ^{clearly} ~~already~~ mentioned in his appointment letter. Sri Banerjee argued that amendment to recruitment rule 1969 were made by notification dated 31.10.1981 and, therefore, the appointment of the applicant in June 1981 cannot be covered by this amendment rule which provides for 10% by promotion and 90% by direct recruitment.

8. The learned counsel for respondents further submitted that the applicant was given regular appointment as LDC w.e.f. 20.6.1991 and, therefore, he has been given correct seniority.

9. Learned counsel for the respondents finally submitted that the DP & AR OM dated 13.2.1979 cannot take place of statutory rules and it is meant only for adhoc appointments ^{only}. The period of adhoc service cannot be counted towards the seniority. He has placed reliance on the judgment of Hon'ble Supreme Court in MK Shanmugam & others Vs. Union of India & others (2000) 4 SCC 476 in which criteria for

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seniority has been laid down holding that adhoc service does not count for seniority in all cases. It counts only in those cases where initial appointment to adhoc is made by the same process as is applicable to regular appointment and is not a stop gap arrangement. In support of his contention the learned counsel for the respondents also cited the judgment of Hon'ble Supreme Court in State of Haryana Vs. Haryana Veterinary and AHTS Association and others (2000) 8 SCC 4, in which it has been held that service rendered on the basis of adhoc appointment made dehors the recruitment rules, although without interruption followed by regular appointment, is not includible.

10. We have heard learned counsel for the parties and perused the record.

11. It is not disputed in the present case that promotion from Group 'D' to Group 'C' post as LDC has been made in terms of DA & AR OM dated 13.2.1979 (Ann. A-1) which interalia provides that "educationally qualified Group 'D' employee may be preferred to the nominees of the employment exchange and promoted on adhoc basis on the basis of seniority subject to the rejection of the unfit. The applicant's case was screened and only then he was promoted, after observing the procedure of taking vigilance clearance etc., by the competent authority.

12. It is also relevant to mention that at the material time there was no provision for promotion of the Group 'D' staff to Group 'C' post under recruitment Rules 1969 (in short rules 69) It was only on 31.10.1981 by amended rule 1981, that a provision

was made in the rule 69 for providing promotion to the extent of 10%.

13. It has been contended by the learned counsel for the applicant that in the absence of any provision of promotion of Group 'D' staff to Group 'C' in the rules 69 when the promotion of the applicant was made, the instructions^h contained in the OM dated 13.2.1979 mentioned above should be treated as statutory rules^h being administrative instructions. The promotion of the applicant, therefore, cannot be termed dehors the rules as claimed by the respondents. We also agree with this contention of the learned counsel for the applicant and do not find any^h force in the contentions of the respondents counsel that at the relevant time rule 69 were holding the field and any appointment made in contravention of these rules should be treated as dehors the rules.

14. We also noticed that in the amended rule 1981 which provides the promotion of Group 'C' post to the extent of 10%, it is mentioned that promotion will be made from amongst^h educationally qualified Group D employees (borne on the^h regular establishment) who have put in a minimum of 5 years service in that Group, in the following manner, namely:-

a. 5% of the vacancies shall be filled on the basis of a qualifying departmental examination. The maximum age limit for this examination shall be 45 years (50 Years for candidates belonging to the Scheduled Castes/ Scheduled Tribes).

b. 5% of the vacancies shall be filled on the basis of seniority subject to the rejection of the unfit.

It is not disputed that the promotion of the applicant was made

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on his putting in a minimum of 5 years service in Group 'D' and his promotion was made on the basis of seniority subject to screening by competent authority. In other words it can be said that the promotion of the applicant ^{hr}through on adhoc basis was made by the same process as is applicable to regular promotion. The applicant having worked on his promotion post continuously for considerable length of time is about 10 years before his regularisation, his promotion cannot be termed as a stop gap arrangement, as has been observed by the Apex Court in MK Shanmugam and other Vs Union of India & others (supra) at page 483 that the adhoc service should be reckoned for the purpose of seniority in those cases where initially recruited and appointed adhoc but the recruitment was subject to the same process as it had been done in the case of regular appointment and the same was not stop gap arrangement.

15. The legal position has been laid down by the Constitutional Bench of Hon'ble Supreme Court in Direct Recruitment Class II Engineering Officers Association Vs. State of Maharashtra & others (supra). Relevant ^{hr}preposition laid down by their lordships in para 47 is reproduced for convenience sake :

"47. To Sum up, we hold that :

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B. If the initial appointment is not made by following the procedure laid down by the rules but the appointee continued in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

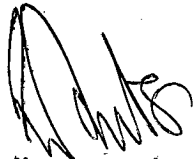
The present case is fully covered by the decision of the Hon'ble Supreme Court and, therefore, the applicant is entitled for counting of his adhoc service for the purpose of seniority from the date of his promotion from Group 'D' to

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Group 'C' w.e.f. 8.7.1981.

16. In view of our observation made above we quash letter dated 25.1.1995 (Annexure A-12), letter dated 27.7.1996 (Annexure A-13) and seniority list dated 21.3.1991 (Annexure A-10) and direct the respondents that seniority list be revised in the light of our observations in this order within a period of four months from the date of communication of this order.

17. The OA is allowed and is finally disposed of with the above direction. No cost.


Member-A


Member-J

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