

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 109 of 1997

Present: Hon'ble Ms. Sadhana Srivastava, Judicial Member
Hon'ble Dr. A.R. Basu, Administrative Member

SWAPAN GUHA

VS

UNION OF INDIA & ORS.

For the applicant : Mr. S.K. Dutta, counsel

For the respondents : Ms. U. Sanyal, counsel

Heard on : 4.12.06

Order on :

8.12.06

O R D E R

Sadhana Srivastava, JM

The applicant seeks a direction upon the respondents to restore his seniority on the post of Lower Division Clerk either from the date of his initial appointment as an ad-hoc LDC i.e. 10.8.78 or w.e.f. 12.4.83 when his juniors were regularised. Further there is a prayer of granting promotion and fix his pay accordingly thereof.

2. The facts in brief are that the applicant was appointed as LDC on ad-hoc basis in the office of respondent No.3 w.e.f. 10.8.78. His services were terminated vide order dated 1.3.82. Being aggrieved by his termination order he filed CR No. 2168(W) of 1982 before Hon'ble High Court of Calcutta. After establishment of Central Administrative Tribunal under the administrative Tribunals Act, 1985 the Writ Petition was transferred and registered as TA No.749/86. The aforesaid TA was disposed of with the following direction :

"After considering the case from all its aspects we are of the view that as the applicant is a physically handicapped person if he were really appointed through Special Employment Exchange on casual basis the Authority shall consider the case of his regular appointment within 3 months strictly in terms of the government circular. If, however, the Authority is satisfied that he was not recruited through the Special Employment Exchange even then we direct the

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Authority to refer the case of the present applicant to the Staff Selection Commission and if he is selected by the SSC he shall be given regular appointment on relaxation of his age because when he was originally appointed he was within the age of recruitment of such service. The application is disposed of accordingly without any order as to costs".

3. Pursuant to the above direction the applicant was allowed to appear in the Special Examination held by the Staff Selection Commission in the year 1995. He came out successful. Hence he was appointed as LDC against Physically Handicapped quota in the office of respondent No.3 vide order dated 31.6.95 as contained in Annexure 'C'. The applicant joined the post. Thereafter he filed a representation and raised a grievance before the respondents for restoration of seniority from the date of ad-hoc appointment and fixation of pay accordingly. Since no order has been passed on the representation filed by the applicant, hence this present OA.

4. The respondents have filed their reply stating therein that as per instruction contained in the Govt. of India, DOP&T Administrative Reforms OM dated 4.11.75 the post of LDC and Stenographer (Grade III) are to be filled up by the candidates nominated by the Staff Selection Commission constituted by the Govt. of India. In case of non-availability of qualified candidates with the Staff Selection Commission the applicant was appointed on ad-hoc basis and his services were terminated on joining of regular incumbent selected by the Staff Selection Commission. It has further been stated in the reply that the applicant was well aware of the fact that he had to pass the examination conducted by the Staff Selection Commission. He had applied for Staff Selection Commission Examination - 1979 but failed. However, the other 3 LDCs appeared in the examination held by the Staff Selection Commission and declared passed. Therefore their services were regularised w.e.f. the date of their passing the Staff Selection Commission. So the respondents claimed that the seniority of the applicant cannot be fixed at par with those LDCs who qualified Staff Selection Commission Examination earlier to the applicant.

5. Heard the ld.counsel for the parties.

6. The only question involved in the present application is whether the applicant's seniority be reckoned from the date of initial ad-hoc appointment or from the date of

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regular appointment. The contention of the applicant is that he should be given seniority from the date of his initial appointment on 10.8.78 and not from 1995 because even his initial appointment was according to the rules. We are not persuaded to accept this contention because his initial appointment was not through Staff Selection Commission. Whereas the Govt. of India OM dated 4.11.75 communicated vide order dated 25/26.2.77 the post of LDC was to be filled up by the candidates nominated by the Staff Selection Commission. We have noticed that the applicant's services were terminated on joining of regular incumbent and the termination order was neither set aside by the Hon'ble Tribunal nor any order was passed by this Tribunal regarding continuity of service from the date of his original appointment. As regards the plea of discrimination taken by the applicant is concerned those 3 LDCs were regularised from the date of their passing Staff Selection Commission Examination. Since the applicant failed in 1979 and passed the examination in 1995, therefore he became junior.

7. Even otherwise according to the office memorandum dated 28.2.85, the service of ad-hoc LDC will be regularised only from the date of their joining services on regular basis of their qualifying the Special Examination. Therefore, looked at from any angle it is clear that the applicant cannot claim continuity of service from the date of his original appointment.

8. The Apex Court in the case of Direct Recruit Class II Engineering Officers Association -vs- State of Maharashtra [1990 SCC (L&S) 339], D.N. Agarwal -vs- State of M.P. [1990 SCC (L&S) 314] and Union of India -vs- Ansusekhar Guin [1989 SCC (L&S) 204] has held that if the initial appointment is not made according to the rules, subsequent regularisation of his service does not entitle an employee to the benefit of intervening service for seniority. The same view was reiterated by the Apex Court in the case of State of Punjab & Ors. -vs- Sarabjeet Kaur [2006 SCC (L&S) 1213].

9. In the case of Union of India & Ors. -vs- M.Dharani & Ors. [1997(6) SCC 148] the Hon'ble Supreme Court has held that seniority of employees appointed to regular establishment will be reckoned with only from the date of regular appointment.

