

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

M.A. No.174 of 1999
O.A. No.504 of 1997

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

Biman Guha Thakurta, S/o Late N.G. Guha Thakurta, residing at 90, Wireless Para, P.O. Nonachandanpukur, Barrackpore Dist.24 Parganas (N), working as Sports Inspector, W.B. Circle, O/O the Chief Postmaster General, West Bengal Circle, Calcutta -700 012

... Applicant

VS

1. Union of India, service through the Secretary, Ministry of Communication, Dak Tar Bhavan, New Delhi
2. The Chief Postmaster General, West Bengal Circle, Yogayog Bhavan, Calcutta-12
3. The Asstt. Postmaster General (Staff) West Bengal Circle, Yogayog Bhavan, Calcutta-12
4. Smt. Ava Biswas, W/o A.N. Biswas, Office of the C.P.M.G./W.B. Circle, Calcutta, Yogayog Bhavan, Calcutta-12

... Respondents

For the Applicant(s): Mr. K. K. Moitra, counsel
Mr. B. Mukherjee, counsel

For the Respondents : Ms. K. Banerjee, counsel
Mr. B. C. Sinha, counsel for intervenor

Heard on 03.04.2000

: : Date of order: 13-04-2000

O R D E R

D. Purkayastha, JM

Applicant, Shri Biman Guha Thakurta filed this application under Section 19 of the Administrative Tribunals Act, 1985 for a direction upon the respondents to treat the applicant as regular and permanent Sports Inspector from the date of appointment as Sports Inspector or from a suitable date thereafter with all consequential benefits thereon as admissible to him. The case of the applicant, in short, is that the applicant was appointed as a Lower Division Clerk (LDC) in the

scale of Rs.260-400/- in the year of 1977 vide order dated 14.3.77, Annexure 'A/1' to the application. Thereafter he was regularised as LDC and he was promoted to the post of Upper Division Clerk (UDC) with effect from 16.6.1982 vide order dated 9.8.1983, Annexure 'A/2' to the application. The applicant also crossed the efficiency bar in the scale of Rs.330-560/- with effect from 1.3.1986 by an order dated 14.2.1986. The respondents by a notification dated 27.3.91, Annexure 'A/6' to the application wanted to recruit Sports Inspector in West Bengal by way of direct recruitment on regular basis. The applicant applied for the said post, since he has requisite qualification and experience for holding the post of Sports Inspector under notice of recruitment. According to the applicant, he was duly selected by the DPC and appointment letter has been issued on 6.12.1991, Annexure 'A/7' appointing the applicant as Sports Inspector, Postal Sports Control Board, West Bengal Circle attached to Circle Office in the scale of Rs.1400-2300/- purely on temporary and ad hoc basis with immediate effect. It is alleged by the applicant that 16 posts along with the post against which he was selected for appointment were filled by way of direct recruitment and not by way of promotion from the lower posts and recruitment was done for filling up the said posts. It is also alleged by the applicant that he was selected on regular basis, but the respondents had illegally given the posting order as purely on temporary and adhoc basis with immediate effect terminating the order of appointment of Shri Shibdas Sandilya. It is stated by the applicant that he was appointed against the post of Sports Inspector offered to Shri Shibdas Sandilya consequent to his refusal to accept the said post permanently. According to rule, the applicant is also entitled to get permanent regular posting along with those other inspectors who were regularly confirmed and posted in different places in India as Sports Inspector and the respondents acted discriminately by

not confirming him in the post of Sports Inspector to which he is still working for more than six years in view of the judgment dated 4.4.1990 passed in OA 1/89, reported in ATC(14) (Ram Bilash Pandey vs. U.O.I. and Ors.). It is alleged by the applicant that there are 16 posts of Sports Inspector which are regular post in the Posts and Telegraph Department throughout the country and these 16 posts are filled up by way of direct recruitment and not by promotion from any lower post and the said post of Sports Inspector has got its unitary and separate wing and not connected with other wings. Thereby the applicant was wrongly appointed on temporary and ad hoc basis against permanent and existing vacancy. Therefore, the applicant is entitled to be confirmed in the post on the date of appointment.

2. The respondents filed written reply to the OA denying the claim of the applicant. The case of the respondents is that the applicant was appointed purely on temporary and ad hoc basis by office order dated 6.12.91 and he assumed the office of the Sports Inspector on 9.12.91. It is stated by the respondents that as per Postal Directorate order No.8-15/88-WL-Sports dated 21.5.1990 officials of department of posts who were holding the posts of Sports Inspector/ Sports Coach on 21.12.89, they would be allowed to continue in the post of one tenure on deputation i.e., maximum of four years deputation to the post provided that they were found competent and the tenure of 4 years would be deemed to have commenced from 21.12.89 and in no case the deputation would be extended beyond 4 years (a copy whereof is annexed and marked as Annexure 'M-I' to the reply). Accordingly the tenure term as Sports Inspector in respect of the applicant stands completed on 8.12.95, and a notice inviting fresh applications from the intending official in order to fill up the post of Sports Inspector on purely temporary and ad hoc basis in West Bengal Circle was issued vide C.O. letter dated 27.2.96 which ultimately stands cancelled vide C.O. letter dated

12.3.96. Subsequently as per orders of the Chief PMG/OPS(HQ) the applicant has been allowed to continue in the post as Sports Inspector until further orders and no formal Memo has been issued. The applicant submitted a representation dated 12.8.96 to the Chief PMG, W.B. Circle, Calcutta praying for confirmation in the post of Sports Inspector, W. B. Circle, Calcutta, (Annexure M/II). In the Directorate Commn. No.B-15/88-WL & Sports dated 2.5.90 it has been envisaged that the Sports Inspectors who were appointed on or before 21.12.1989 i.e., the date of issue of recruitment rules for Sports Inspector, they would be allowed to continue in the post for one tenure on deputation i.e., maximum of 4 years deputation to the posts provided that they were not found incompetent and that no case is pending at CAT. The tenure of 4 years would be deemed to have commenced from 21.12.89 in their cases. The officials should be clearly informed in writing that in no case deputation would be extended beyond 4 years. In this case the applicant was appointed as Sports Inspector purely on temporary and ad hoc basis vide orders dated 6.12.91 and he is continuing in the post with effect from 9.12.91. In the said appointment order it was not, however, stipulated that the criteria of tenure was for 4 years. The applicant submitted a representation on 23.8.95 to the Secretary, Department of Posts, Dak Bhawan, New Delhi-1 through this office praying his confirmation in the post of Sports Inspector when he was holding the post. His representation was sent to the Postal Directorate on 9.1.97 duly recommending his case for permanent absorption as Sports Inspector. As no reply has been received, a reminder was issued on 23.5.97. In the meanwhile the applicant has filed this instant application for his permanent/regular appointment as Sports Inspector with effect from the date of his temporary appointment and this Tribunal passed an interim order dated 5.5.97. to maintain the status-quo of the applicant till the next date of hearing i.e., upto 4.8.97 and the applicant is still

working as Sports Inspector which was extended from time to time.

It is also stated by the respondents that in the appointment order of the applicant dated 6.12.91 the applicant was given to understand that his appointment was purely temporary and ad hoc and will not confer any right to claim for regular absorption in the grade or service and the appointment is liable to be terminated at any time without assigning any reason whatsoever. So, on the strength of the said order the applicant cannot claim confirmation on the basis of the ad hoc appointment which was not made in accordance with the rules and since the applicant was ~~not~~ appointed in accordance with the rules, the application is liable to be dismissed.

3. Mr. Sinha, learned advocate appears on behalf of the private respondents as intervenors and they did not file any written objection to the OA. Mr. Maitra, learned advocate appearing on behalf of the applicant has drawn our attention to the recruitment rules dated 21.12.89 issued by the respondents for publication in the official Gazette and he submits that the said recruitment rules has not yet been published in the official gazette. Therefore, the said recruitment rules of 1989 where it is stated that they shall come into force from the date of publication in the official Gazette, would not be applicable to the present applicant in the matter of recruitment which took place in the year of 1991 before publication of the said rules in the official gazette. So, the respondents cannot take the shelter of the recruitment rules for the purpose of repatriation of the applicant from the post of Sports Inspector alleging that he was ~~sent~~ ^{appointed} on deputation. Referring to the recruitment notice dated 27.3.91, Annexure 'A/6' to the application, Mr. Moitra contended that the recruitment to the post of Sports Inspector in West Bengal Circle was made on regular basis and the applicant was selected by regular DPC for the purpose of appointment on regular basis and therefore, mere insertion of the words that he

has been appointed on temporary and ad hoc basis in the letter of appointment does not disentitle the applicant to get confirmation in the post of Sports Inspector in West Bengal Circle on the basis of the selection on regular basis and the respondents are estopped to go beyond the recruitment notice stating that the applicant has been appointed on ad hoc basis and he has no right to continue in the post. Regarding promulgation of the recruitment rules through the gazette notification, Mr. Moitra has referred to judgments reported in AIR 1951 SC 467 (Harla vs. the State of Rajasthan) (para 8 of the judgment) and AIR 1979 SC 1628 (Ramana Dayaram Shetty vs. The International Airport Authority of India and others) (Para 10 of the judgment). Learned advocate, Mr. Moitra further contended that even if for arguments' sake it is accepted though not admitted the applicant was appointed on deputation, he cannot be sent back from the post of deputation to the parent Department, unless the post is abolished or applicant is unsuitable or parent Department desires to get back him in view of the judgment reported in 1971 SLR 566 (Nau Nihal Singh vs. Union of India through Secretary to the Govt. of India, Ministry of Defence, New Delhi and others). The respondents after filing objection to this OA has come with a new story to deprive the applicant from regularisation stating inter alia that the post is a tenure post and it was filled up for 4 years and the applicant has no right to continue in that post in view of the letter of ~~the~~ letter dated 21.5.90, Annexure 'M1' to MA 174/99. During the hearing learned advocate, Mr. Moitra also produced one copy of the letter dated 8.1.1997 written by Shri S.S.Das, Asstt. Postmaster General (Staff), office of the CPMG, WB Circle, Calcutta-12 to Asstt. Director General (SPN), Department of Post, New Delhi regarding representation of Shri Biman Guha Thakurta, Sports Inspector, W.B. Circle about his confirmation in the post of Sports Inspector with reference to the letters dated 4.11.1996 and 32.12.1996 of the Department.

Referring to the aforesaid facts and law, learned advocate Mr. Moitra submits that the applicant's appointment should be regularised by way of confirmation in the post since he was selected by the DPC and he has got the eligibility and requisite qualification under the notice for recruitment dated 27.3.91, Annexure 'A/6' to the application and the respondents cannot act contrary to the submission made in the recruitment notice dated 27.3.91, Annexure 'A/6'.

4. Mrs. Banerjee, learned advocate appearing on behalf of the official respondents submits that the post of Sports Inspector in West Bengal Circle is a tenure post under the recruitment rules which will be apparent from the letter dated 21.5.90, Annexure 'M-1' to the miscellaneous application No.17/89 and the applicant was appointed purely on temporary and ad hoc basis by a letter of appointment dated 6.12.91 to the post of Sports Inspector. So, as per the terms and conditions of the letter of appointment, such appointment cannot confer any right to continue in the said post after expiry of the tenure. Since the appointment was made on deputation, therefore, he has no right to hold the post after expiry of the four years as per letter dated 21.5.90, Annexure 'M-1' to the miscellaneous application. Mrs. Banerjee, learned advocate submits that due to interim order passed by this Tribunal to maintain status quo, the applicant cannot be reverted to his parent post and he is still continuing in the post of Sports Inspector in West Bengal. Therefore, the applicant is not entitled to get confirmation in the post as claimed in the application as per terms and conditions of the letter of appointment.

5. Mr. Sinha, learned advocate appearing on behalf of the intervenor in this case contends that though he did not file any written reply to the OA, yet as per records available in the Court the applicant is not entitled to get any relief in this case since the applicant was appointed on temporary basis and

without having any selection by the selection board or by the DPC and it is a stopgap arrangement made by the Department by appointing the applicant on ad hoc basis without having any recommendation from the DPC which would be evident from the letter of appointment itself. So, the main contention of the official respondents and the intervenor of this case is that since the applicant as Sport Inspector was appointed on ad hoc and temporary basis he has not acquired any right to the post and he cannot claim confirmation in the post of Sports Inspector which is a tenure post under the recruitment rules.

6. We have considered the submissions of the learned advocates of all the parties. Regarding promulgation of the recruitment rules in the gazette as alleged by the learned advocate of the applicant, we have directed the official respondents by an order dated 22.4.99 to ascertain as to whether recruitment rules dated 21.12.89 (Annexure 'R-II') had been published in the gazette notification or not, since the respondents did not state categorically anything in this regard in the reply. The official respondents were further directed to file affidavit in respect of the publication of the Recruitment Rule in Gazette as alleged. The learned advocate, Mr. Moitra submits that the recruitment rule was not published in the gazette. But the respondents did not file any affidavit to this effect, nor could produce any document to show that the alleged recruitment rules dated 21.12.89 (Annexure 'R-II') was published in the gazette. The ~~applicant~~ produced the recruitment rules (Annexure 'R-II') along with the reply to the miscellaneous application, marked Annexure /R-II, where it is found that the said recruitment rule was signed on 21.12.89 and that rule had been sent to the General Manager, Govt. of India Press, New Delhi vide office order No.8-10/88-WL/Sports dated 21.12.89 for publication in Gazette. But in the draft rule dated 21.12.89 (Annexure 'R-II') it is stated that the said Recruitment Rule

shall come into force on the date of their publication in the official gazette. So, the date of publication in official Gazette is the crucial point for decision in this case in respect of giving effect of the recruitment rules dated 21.12.89 (Annexure 'R-II'). As per stipulation contained in the recruitment rules itself, the said recruitment rules cannot be made effective until and unless the said Rule is published in the official gazette. It can be said that when the applicant challenged that the said recruitment rule has not been published in the official gazette, therefore, onus lies with the respondents to prove that the recruitment rule had been duly published in the official gazette. It is noted from the draft rule dated 21.12.89 (Annexure 'R-II') that said Rule was sent to the General Manager, Govt.of India Press, New Delhi vide official letter No.8-10/88-WL/Sports dated 21.12.89, for publication in the Gazette. So, we fail to understand as to why the respondents failed to ascertain from the records of the office to show that the recruitment rule was actually published in Gazette. In absence of any evidence of publication in Official Gazette, we are to hold that the recruitment rule has not been finalized till date. Therefore, the said recruitment rules cannot be made effective and applicable to the applicant on the date, when he was selected to the post of Sports Inspector in West Bengal Circle. However, we find that the recruitment notice for selection (Annexure 'A/6') was issued on 27.3.91. Accordingly, in the said notification (Annexure 'A/6') the respondents prescribed the qualification for the purpose ^{eligibility} for appointment to the post of Sports Inspector. From the recruitment notification dated 27.3.1991, Annexure 'A/6' it is clear that the Sports Inspector in the said scale in West Bengal Circle was to be filled up on regular basis and the applicant had applied to the post in pursuance of the recruitment notice for appointment on regular basis. On 6.12.91 he was appointed purely

on adhoc basis with effect from the date of terminating the order of appointment of Shri Shibdas Sandilya. According to the applicant, though he was appointed on ad hoc basis, it was continuous and according to the regular procedure after due recommendation of the DPC, he is entitled to regularization of his service from the date of appointment. The respondents also could not produce any paper or minutes in respect of selection of the applicant for that post, but from the letter produced by the respondents at Annexure R/1 to the reply which was written by Shri S.S. Das, Asstt. Postmaster General (Staff) it is found that the applicant was appointed as Sports Inspector in West Bengal Circle under the provision of the recruitment rules of Sports Inspector communicated vide letter dated 21.12.89 through a DPC. It is also found from this letter that the applicant is a trained coach in cricket and has also obtained training in coaching from U.K. and he is an outstanding sportsman and at present he is also the official coach of All India Postal Cricket team. So, he possessed all requisite qualifications for appointment as per recruitment notice (Annexure 'A/6'). Even if we accept that the recruitment rule is valid for argument's sake yet that recruitment rule does not help the respondents because the recruitment rule does not indicate that 16 posts of Sports Inspector including the post held by the applicant were created as tenure post, as claimed by the respondents. So, the respondents also failed to produce any document to show that 16 posts of Sports Inspector including the post of W.B. Circle were created as tenure post. So, we have to reject the contention of the learned advocate of the respondents that the post is a tenure post. From the letter dated 8.1.97 issued by Shri S.S. Das, Asstt. Postmaster General (Staff) it is found that the applicant was recruited through DPC on the basis of the recruitment rules notified on 21.12.89, though it was not notified in the official gazette in accordance with the rules. In view of the facts

stated above, we find that though the recruitment rule was not finalised or published, the applicant was appointed on ad hoc basis, though that appointment of the applicant has all the trappings of a regular appointment. Merely insertion of the words in the appointment letter stating that he was appointed on ad hoc basis ignoring the stipulation made in the recruitment notice the applicant cannot be put under mercy of the administration. We find that the ratio of the Hon'ble Supreme Court's decision in Direct Recruits case [JT 1990(2) SCC 264] is squarely applicable to the claim of the applicant. Besides this, from the recruitment Notice (Annexure 'A/6') we cannot get any impression that the post was filled up by way of deputation. We are satisfied from the records that applicant was recruited as direct recruit, since all eligible persons were considered by the DPC and applicant was selected. We also find that the applicant continued for long period, he was eligible for appointment, his case was considered by the authority for regularization, but respondents did not do the same on the plea that he was not regularly appointed.

7. With this observation we allow the application and direct the respondents to confirm the applicant in the post of Sports Inspector treating his appointment as on regular basis with effect from the date of appointment and to grant him all consequential reliefs as admissible under the rules, if he was otherwise found suitable. Accordingly the application is disposed of awarding cost of Rs.500/- to be paid by the respondents to the applicant.

G. S. Maingi
13.4.2000

(G. S. Maingi)

MEMBER (A)

D. Purkayastha
13.4.2000

(D. Purkayastha)

MEMBER (J)