

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. OA 1238 of 1997

Present: Hon'ble Mr.B.V.Rao, Judicial Member  
Hon'ble Dr.A.R.Basu, Administrative Member

R.N.SHARMA & ORS.

VS

UNION OF INDIA & ORS.

For the applicants : Mr.T.K.Biswas, counsel

For the respondents : Ms.U.Sanyal, counsel

Case Laws referred :

1. K.C.Joshi & Ors. [AIR 1991 SC 284]
2. Direct Recruit Class II Engineering Officers' Association -vs- State of Maharashtra & Ors. [1990 (13) ATC 348]
3. Ashish Kr. Srivastava -vs- State of U.P. [2001 (7) SLR 615]

Heard on : 8.8.06

Order on : 1.12.2006

O R D E R

Dr.A.R.Basu, A.M.

The applicants have filed this OA challenging the seniority list of the Sr. Zoological Assistant/ Zoological Assistant without considering the ad-hoc promotion of the applicants as Zoological Assistant for the purpose of determination of seniority and seniority list of Sr. Zoological Assistant and Zoological Assistant circulated vide circular No.5/96-Estt. dated 15.4.96 and acts or omissions on the part of the respondents in fixing the seniority position of the applicants in the seniority list circulated vide circular No. 5/96-Estt. dated 15.4.96 against Sl.No. 71, 72, 74 & 73 respectively without considering the ad-hoc service of the applicants as Zoological Assistant.

2. The fact of the case in brief is that the applicants initially joined the Zoological Survey of India as Junior Zoological Assistants on different dates between December, 1978 and September, 1980. On the basis of a regular process of selection made by the



appropriate authority as required under the relevant recruitment rules, the applicants were given ad-hoc appointment to the posts of Zoological Assistant on the following dates :

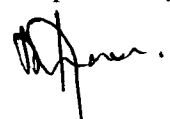
Applicant No.1 – 15.11.85  
 Applicant No.2 – 17.11.85  
 Applicant No.3 – 15.11.85  
 Applicant No.4 – 26.11.85

However, after working for 26 months on ad-hoc promotion without breaks, the applicants were reverted to their posts of Junior Zoological Assistant by an order dated 12.1.88. The applicants moved this Tribunal in OA 877/89 challenging the order of reversion dated 12.1.88. By an order dated 12.12.90 the Tribunal held the reversion order as illegal and bad in law and the respondents were directed to restore the applicants to their promoted post of Zoological Assistant within 90 days from the date of passing of the order. The applicants were also entitled to get their full salary and allowance for the intervening period as admissible under the rules. In the said order the respondents were also directed that regularization of their services in the post of Zoological Assistant and granting of increments were to be considered by the respondents according to the rules. The respondents thereafter passed an officer order designating the applicants as Sr. Zoological Assistant in the grade of Rs.1640-2900/- which is designated as Level-I Scientific Assistant. However, the respondents subsequently inspite of the decision in OA 601/87 redesignated the applicants as Zoological Assistant and they were regularized by declaring the appointment of the applicant on regular basis w.e.f. 11.8.94 (Annexure A/4). The contention of the applicant is that they should be given seniority w.e.f. the date on which they were promoted as Zoological Assistant by counting their ad-hoc services as regular service. The applicants have made several representations to the respondents. Despite that, their request has not been acceded to and as such the applicants have filed this OA.

3. The respondents have filed a written reply disputing and denying the claim of the applicants. In para 5(a) of the reply they have stated that the applicants No. 1, 2, 3 & 4 were appointed as Junior Zoological Assistants on different dates between December, 1978 and September, 1980 in Zoological Survey of India. Among these applicants,

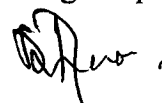


applicants No.1 & 2 were promoted to the post of Junior Zoological Assistant and 3 & 4 were direct recruits in the same grade. Later they were promoted on ad-hoc basis to the next promotional post of Zoological Assistant in Zoological Survey of India on different dates in November, 1985 in the scale of Rs.425-700/-. On 12.1.88, the ad-hoc appointments of the applicants were terminated and they were reverted to the post of Junior Zoological Assistants which were substantive posts in respect of the applicants. However, as per the decision of the Tribunal in OA 877/89 dated 12.12.90, the applicants were restored to the post of Zoological Assistant to which they had been officiating earlier by setting aside the reversion order. They were allowed to officiate in the post of Zoological Assistant and subsequently regularized in the grade w.e.f. 11.8.94. In para 9 of the reply it is stated that the applicants No.1 & 2 initially joined as Laboratory Assistant and later promoted to the post of Junior Zoological Assistant and applicants No. 3 & 4 were direct recruits to the grade of Junior Zoological Assistant. In para 10 of the reply it is stated that the applicants fulfilled the eligibility conditions for direct recruitment to the post of Zoological Assistants and were eligible for consideration for promotion to the grade of Zoological Assistant in Z.S.I. In the reply it has been denied that the applicants were appointed on ad-hoc basis not through proper procedure to the post of Zoological Assistant through DPC. The applicants continued in the promotional post on ad-hoc basis without break till 12.1.88. In para 14 it is stated that though the applicants had been initially designated as Sr. Zoological Assistant, at a later date they were again designated as Zoological Assistant by a Govt. decision. In para 16 of the reply they have stated that the 3<sup>rd</sup> Pay Commission recommended the scale of pay of Rs.550-900/- to the post filled by direct recruitment and requiring qualification of M.Sc. or 1<sup>st</sup> Class B.Sc.(Hons) or at least a 2<sup>nd</sup> Class B.Sc. with three years' experience and accordingly the applicants were allocated to the posts in the scale of Rs.425-700/-. However, keeping in view the decision of the Tribunal dated 7.10.88 in OA 601/87 which was upheld by the Hon'ble Supreme Court vide its order dated 23.8.89 in S.L.P. No.1031/89, the pay of the applicants in OA 601/87 were fixed with the concurrence of Ministry of Finance in the scale of pay of Rs.550-900/- which was later replaced by



Rs.1640-2900/-. The applicants though were designated as Zoological Assistant were placed in the scale of pay of Rs.1640-2900/- vide office order No. 4/94 dated 14.2.94. The applicants were never appointed as Sr. Zoological Assistant in accordance with the selection procedure. In para 17 & 19 of the reply it is stated that the applicants were promoted on ad-hoc basis and not through proper procedure as required under relevant recruitment rules. The procedure for making ad-hoc appointment was not followed and as such the applicants are not entitled to seniority as Zoological Assistants for the period of their ad-hoc appointment. Keeping in view the above facts, the respondents have stated that the application being devoid of merit is liable to be dismissed.

4. The private respondent Smt. Shipra Bhadra has filed a written reply in which she has stated that she joined Z.S.I. as Laboratory Assistant in June 1974 and was promoted to the post of Junior Zoological Assistant on ad-hoc basis in the month of September, 1979 and was regularized as a Junior Zoological Assistant in April, 1982. The private respondent along with the applicants were holding the post of Zoological Assistant on ad-hoc basis and was offered promotion to the said post of Zoological Assistant vide memorandum dated 11.7.94. In offering the said promotion it was indicated therein that the persons so offered the promotion should intimate whether they were willing to accept the promotion with choice of posting where vacancies were available in order of preference. It was clarified that in case of refusal to accept the offer of promotion, persons so offered would be debarred from further promotion for a period of one year from the date of refusal. It has been indicated that only two vacancies were available at that point of time in Headquarters office at Calcutta and other vacant posts were available outside Calcutta. As her seniors did not give consent and on her accepting the offer, she was promoted with posting at Sunderban Field Research Station, Canning and she was given promotion on regular basis as Zoological Assistant vide order dated 5.8.94 w.e.f.23.8.94 after working 15 years (3 years in ad-hoc and 12 years in regular post) as Junior Zoological Assistant she was transferred to Headquarters at Calcutta in 1997. She further states that applicants No. 1 & 2 were promoted to the said post with posting at Calcutta. The remaining two persons namely applicants No. 3 & 4 were holding the post

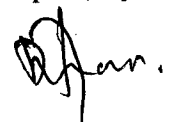


of Zoological Assistant since 1985 on ad-hoc basis were not however, promoted to the post on regular basis and were retained in the said post on ad-hoc basis. The private respondent has also submitted that if the above persons are given the seniority position, particularly, applicants No. 3 & 4 in the above OA, who are junior to her, she would be greatly prejudiced. As such she has filed this application bearing No. OA 314/2000 and MA 237/01 praying to be added as Private Respondent No.5 in OA and subsequently her prayer was accepted.

5. Ld.counsel for the applicant Mr.T.K.Biswas has argued that the Tribunal had earlier granted relief to the applicant by passing order in OA 877/89 dated 12.12.90 whereby the reversion order was quashed and the respondents were directed to regularize the service of the applicants and grant increments as per rules. Ld.counsel has argued that the action of the respondents is in violation of the principles laid down by the Apex Court in the case of K.C.Joshi [AIR1991 SC 284]. Ld.counsel also cited the decision of the Apex court in the case of Direct Recruit Class II Engineering Officers' Association – vs- State of Maharashtra & Ors. [1990 (13) ATC 348].

6. Ld.counsel for the respondents Ms.U.Sanyal has argued that the applicants are not entitled to the benefits of the ad-hoc service for the purpose of fixation of seniority as per the decision in Direct Recruit Class II Engineering Officers' Association -vs- State of Maharashtra & Ors. Ld.counsel for the respondents has also argued that the applicants were not promoted on regular basis and they cannot claim seniority from the date of ad-hoc promotion.

7. We have heard the ld.counsel for the parties and have gone through the records. There is no dispute that the applicants who were Junior Zoological Assistant had been promoted as Zoological Assistant on ad-hoc basis. Subsequently they were reverted back to the original post. This Tribunal by this earlier order had set aside the order of reversion and the applicants were reverted back to the original promoted post. The question that is to be decided is the regularization and seniority which the Tribunal had ordered to be decided by the respondents as per rules. The applicants have also admitted that they were promoted on ad-hoc basis and once they were reverted back to the original post, by the



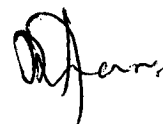
order of the Tribunal, they were restored to their promoted post. The question now involved is whether the ad-hoc posting is to be counted for the purpose of seniority and regularization. The respondents in their reply have clarified that the applicants were appointed on ad-hoc basis to the post of Zoological Assistant without following the regular process of selection through DPC. In the OA nowhere it has been mentioned as to whether the applicants were promoted by regular DPC or not. It has only been indicated that they were promoted by the order of the appropriate authority. After the order of the Tribunal the reversion order was set aside and the respondents were restored the position of officiation of the applicant on ad-hoc capacity and have also been issued the scale of Rs.1640-2900/- corresponding to the original scale of Rs.550-900/-. The applicants in their OA has mentioned that the Tribunal had ordered for their promotion to Sr. Zoological Assistant but in the operative part of the judgment it has been indicated that,

“the respondents are directed to restore the applicants to their promoted posts of Zoological Assistant within 90 days from this date. The applicants are also entitled to get their full salary and allowances for the intervening period as admissible under the rules. Regularisation of their services in the posts of Zoological Assistant and granting of increments will be considered by the respondents according to rules.”

Thus the contention of the applicants that they were promoted to the post of Junior Zoological Assistant is unfounded. The respondents however, released the scale to the applicants as personal to them. There is no dispute that ad-hoc promotion is not a regular promotion. The person appointed through back door cannot claim preference only because he has been working for sometime. In Ramakrishna Kamat -vs- State of Karnataka [2003(2) SLR 470] it has been held that –

Regularization – Temporary appointee – Persons appointed in 1988-89 and continuing in service – In 1991 seeking regularization of service – Single Judge declining to prayer for regularization – Division Bench also affirmed the order of Single Judge – Held, that claim for regularization not based or founded on any law nor the appointment of petitioners made under any Rules so as to govern their service conditions – Mere fact that they continued in service for number of years would not entitle them for regularization.

In Ashish Kr. Srivastava -vs- State of U.P. [2001 (7) SLR 615] it has been held that the petitioners working as Research Assistants since 1993 till services regularized in 1997 – in determining their seniority earlier services could not be ignored – therefore, entitled to



seniority w.e.f. the date from which the petitioners are working on post of Research Assistants. In the instant case the applicants, however, have been regularized. The only point left is the seniority aspect. Both the ld.counsel for the applicants and the respondents have referred to K.C.Joshi & Ors. [(1990) 13 ATC 348]. In the instant case the applicants had not been promoted by holding a regular DPC. Their contention that they were eligible to opt for direct recruitment and for promotion quota on the ground that they were all M.Sc. in Zoology is not tenable. In any direct recruitment the applicant should fulfill the requisite qualifications to be eligible and the eligible individuals are then called for test by an open advertisement and are selected on the basis of merit, etc. Mere holding of the particular degree does not grant them any license for promotion either as direct recruits or as promoted recruits unless they fulfill the qualification and are selected. In the instant case the applicants were promoted on an ad-hoc capacity for a particular period and by the order of the Court their reversion was set aside and they have been given the scale. But this does not confer them the right to claim the seniority from that date as the applicants were not selected by regular selection process on the date from which they have been claiming.

In the case of Direct Recruit Class II Engineering Officers' Association -vs- State of Maharashtra & Ors. [1990 (13) ATC 348] it has been held that where appointment made in accordance with rules, seniority is to be counted from date of such appointment and not from the date of confirmation – where initial appointment not made by following procedure laid down by the rules but appointee continued in the post uninterruptedly till regularization of his service in accordance with the rules period of officiating service will be counted – but where initial appointment is only ad hoc, made as a stop gap appointment and not according to the rules, officiation in such post cannot be taken into account for considering seniority.

8. Similarly in the case of K.C.Joshi & Ors. [AIR 1991 SC 284] cited by the ld.counsel for the applicants it has been held that seniority be counted from the date of substantive appointment – ad-hoc appointment not according to rules and was made as

