

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION No. 45 of 2008

Dated the...11 July, 2008

CORAM:

HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER

HON'BLE Dr. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

K.V Peter,
Assistant, Debt Recovery Tribunal,
Ernakulam.

Applicant

(By Advocate : Mr. S Radhakrishnan)

-Versus-

1. Union of India, represented by
the Secretary, Department of Economic Affairs,
Banking Division, Jeevan Deep,
Parliament Street, New Delhi.
2. The Debt Recovery Tribunal (Kerala & Lakshadweep),
Ernakulam, represented by the Registrar in charge,
Debt Recovery Tribunal, 5th floor, KSHB Building,
Panampilly Nagar, Cochin-36.
3. The Presiding Officer,
Debt Recovery Tribunal, 5th Floor,
KSHB Building, Panampilly Nagar, Cochin-36.

Respondents

(By Advocate: Mr TPMI Khan, SCGSC and Ms Jisha)

The application having been finally heard on 8th July, 2008, the
Tribunal delivered the following: on 11-07-08.

ORDER

(Hon'ble Dr. KBS Rajan, JM)

The short question for consideration in this case is
whether the period of deputation, preceding absorption has to be
taken as 'regular service' for the purpose of promotion to the
next higher post.

2] Brief facts of the case are as under:-

(a) The applicant was functioning as an Assistant on ad hoc basis (Regular UDC) in the Union Public Service Commission at Delhi in 1999. When applications were invited for appointment on deputation to the post of Assistant in the Debt Recovery Tribunal at Ernakulam, having applied for the same, the applicant on selection, joined the said post 10-01-2000. At that time, there were no recruitment Rules framed in respect of the staff of the Debt Recovery Tribunal.

(b) The applicant had continued to function on deputation and Rules were framed in 2001 for various posts in the Debt Recovery Tribunal. Some of the salient features are as under:-

5. *Initial Constitution:* All persons appointed at the commencement of these rules holding the posts of Secretary /Registrar, Recovery Officer, Private Secretary, Section Officer, Stenographer Grade 'C', Assistant, Recovery Inspector on regular basis shall be deemed to have been appointed as such under these rules, if such persons opt for such posts within thirty days of the commencement of these rules. The service rendered by them before the commencement of these rules shall be taken into account for deciding the eligibility for promotion etc. to the next higher grade.

7. *Regularisation or Absorption -* (1) Notwithstanding anything contained in the provisions of these rules, the persons holding the posts in the Debts Recovery Tribunal, Ernakulam, on the date of commencement of these rules, either on transfer or on deputation basis and who fulfil the qualifications and experience laid down in these rules and who are considered suitable by the Departmental Promotion Committee shall be eligible for regularisation or absorption in the respective grade subject to the condition that such persons exercise their option for the absorption and that their parent Departments do not have any objection to their being absorbed in the Tribunal.

Section Officer:

Col. 11: By promotion/deputation

Col. 12: Deputation:

(i) Officers in Central Government/State Government or in Courts holding analogous posts on regular basis and having a degree from recognised University; or



(ii) With eight years regular service in the scale of Rs.5500-175-9000 or equivalent having a degree from a recognised University.

Desirable:

Preference will be given to persons having experience in legal or judicial work.

Note: 1- Period of deputation including period of deputation in ex-cadre post held immediately preceding the appointment in the same or any other Organisation/Department of Central Government should ordinarily not exceed three years.

(The maximum age limit for deputation shall be 56 years on the last date of receipt of applications).

Note: 2-Departmental Assistants with eight years' regular service shall also be considered along with outsiders and in case the Departmental candidates is selected, the post will be treated to have been filled up by promotion. "

(a) The applicant was considered for absorption and he had been accordingly absorbed as Assistant in the Debt Recovery Tribunal w.e.f. 26-06-2003.

(b) The Respondents have notified a vacancy for the post of Section Officer, to be filled up on deputation basis and the applicant having fulfilled the requisite condition of eight years of service including the period of deputation from 10-01-2000 to 26-06-2003, applied for the same. However, the respondents rejected his application on the ground that while calculating the period of 'regular service' the extent of deputation period has to be excluded and service after absorption alone would be reckoned, in which event, the applicant fulfils the requisite condition of 8 years of service only in 2011.

3] The applicant has filed this OA challenging the decision of the respondents. At the time of admission of the case, by way of interim order, respondents were restrained from proceeding further with the recruitment process, vide order dated 17th January, 2008.



4] Respondents have contested the O.A. According to them, the period of regular service shall be would mean only the period of service rendered after absorption and the period before absorption shall have to be ignored.

5] Counsel for the applicant submitted that by virtue of the provisions of rule 5, the applicant shall be deemed to have been appointed under the very Recruitment Rules, w.e.f. 10-01-2000. He has, in addition, relied upon the decision by the C.A.T.(P.B) in the case of Shri S.R. Gautam and others in O.A. No.2516/2000 decided on 19-04-2001, in which the Tribunal had referred to the decision by the Apex Court in the case of *K. Madhavan v. Union of India, (1987) 4 SCC 566* and held that period of deputation is equally held as 'regular service'.

6] Counsel for the respondents reiterated the stand taken in the counter.

7] Arguments were heard and documents perused. The Apex Court in the case of K. Madhavan (*supra*) *inter alia* held as under:-

10. The 1975 Rules which are relevant for the purpose do not explain what is meant by the expression "on a regular basis". The expression has created some ambiguity in the eligibility clause giving rise to this controversy. There can be no doubt that when a person is appointed to a post against a permanent vacancy on probation, his appointment is on a regular basis, but when a person is appointed to a post on a purely temporary or on an ad hoc basis, the appointment is not on a regular basis. The expression "on a regular basis" in the 1975 Rules cannot, in our opinion, be interpreted to mean as on absorption in the CBI as SP. The general principle is that in the absence of any specific provision to the contrary, the length of service from the date of appointment to a post should be taken into consideration for the purpose of either seniority in that post or eligibility for the higher post. As no explanation has been given in the 1975 Rules of the said expression, we do not think it desirable to deviate from the established principle of computing the length of service for the purpose of seniority or eligibility for the higher post from

the date of appointment. In our view, therefore, the expression "on a regular basis" would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis. Respondent 5, in our opinion, satisfied the eligibility test of the 1975 Rules for consideration for the post of DIG. But, it is not disputed by the parties that the petitioners and Respondent 5 have, by the lapse of time during the pendency of this litigation, become eligible for appointment to the posts of DIG. Indeed, they are holding the posts of DIG, may be on ad hoc basis, under the interim orders of this Court and there is no chance of their being reverted to the next lower post of SP. The question, therefore, boils down to the seniority of the petitioners, vis-à-vis Respondent 5 in the post of DIG. That again will depend upon the decision on the question as to the seniority of the petitioners and Respondent 5 in the post of SP.

8] The Principal Bench in the case of S.R. Gautam (*supra*) dealt with identical question as in this case. The order *inter alia* reads as under:-

"Whether service rendered during the period of deputation till the date of absorption can be counted for considering the eligibility of the applicants for promotion from the post Programme Assistant/ Console Operator, later re-designated as Data Processing Assistant Grade-'A' to that of Programmer, later redesignated as Assistant Director (Systems) is a short question which has been raised in the present OA."

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"The note provides that provision of 'Transfer' will not operate when the departmental Candidates become eligible for promotion. As far as Eligibility for promotion is concerned, the same is provided in column 12 which is in so far as the relevant, provides as follows:

"12. Promotion:

Programme Assistants/Console Operators with five years' Regular service in the grade.

Transfer on deputation : (including short-term contract)/ transfer.

2. As far as the applicants are concerned, they have not completed the aforesaid five years' service from the date of absorption. They, however, claim that they are entitled for considering the periods spent on deputation for considering their eligibility. If this is done, they would be eligible for promotion."

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"5. For the forgoing reasons, the present OA succeeds and is accordingly allowed in terms of following prayer:

Clause 8(ii) (iii):-

- (ii) Declare that the service rendered by the applicants as Programme Assistant/Console Operator form the date of their initial deputation to the date of their absorption as regular service for the purpose of being considered for promotion as Programmer, Group 'A' / Assistant Director System.
- (iii) Direct the respondents to consider the applicants for promotion as Programmer Group 'A' / Assistant Director System from the date, if found fit by the DPC / review DPC with all consequential benefits. "

9] The Apex Court has referred to the decision in the case of Madhavan in the case of *Union of India v. K.B. Rajoria, (2000) 3 SCC 562*, wherein it has been held as under:-

11. The word "regular" therefore does not mean "actual" and the first question the High Court should have considered was whether the appointment of Krishnamoorti was regular and in accordance with the Rules or it was irregular in the sense that it was contrary to any principle of law.

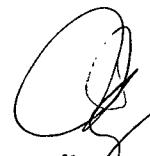
12. The decision which is somewhat apposite is the case of *K. Madhavan v. Union of India* where the eligibility requirement was eight years in the grade "on a regular basis". In that case it was held:

"In our view, therefore, the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis."

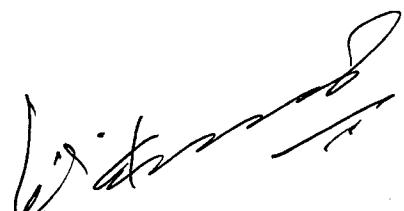
10] The decision⁹ of the Apex Court in Madhavan's case as reaffirmed in the case of K.B. Rajoria, clinches the issue. The applicant's service prior to absorption thus, does qualify to be held as 'regular service' for the purpose of consideration for promotion to the post of Section Officer.

11] In view of the above, the O.A. succeeds. It is declared that the period of service rendered by the applicant as deputationist prior to his absorption in 2003 shall be included to work out the period of regular service for the purpose of consideration for deputation/promotion to the post of Section Officer, for which notification had been issued vide Annexure A-10.

12] Respondents are directed to consider the case of the applicant for the post of Section Officer along with other applications, if any, already received in response to the Annexure A-10 notification and proceed further with the proposed appointment. No costs.



(Dr. K.S. Sugathan)
Administrative Member



(Dr. K.B.S. Rajan)
Judicial Member

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