

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 592 OF 2009

Wednesday, this the 20th day of January, 2010.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

Regi K. George,
Stenographer Grade 'C',
Debts Recovery Tribunal
(Kerala & Lakshadweep),
Ernakulam, K.S.H.B. Building,
Panampilly Nagar, Kochi – 682 036.

... Applicant

(By Advocate Mr. K.R.B. Kaimal, Sr. with
Mr. B. Unnikrishna Kaimal &
Mr. V. Madhusudhanan)

versus

1. Union of India, rep. by the Secretary,
Ministry of Finance, (Department of
Financial Services), Banking Division,
Jeevan Deep Building, Parliament Street,
New Delhi – 110 001.

2. The Debt Recovery Tribunal,
(Kerala & Lakshadweep),
Ernakulam, rep. by its Registrar,
Kerala State Housing Board Building,
Panampilly Nagar, Kochi – 682 036.

... Respondents

(By Advocate Mr. S. Abhilash, ACGSC)

The application having been heard on 20.01.2010, the Tribunal on the same day delivered the following:

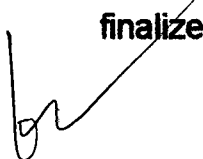
ORDER

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

The short question involved in this case is whether the period of deputation followed by absorption would qualify for experience for the purpose of further higher promotion.



2. Briefly stated, the applicant, a graduate, commenced his service as a Lower Division clerk on 25-06-1990 in the Office of Ministry of Finance, New Delhi and was later on, appointed as Stenographer Grade 'D' on 31-03-1993 on deputation to the Ministry of Petroleum, New Delhi. Consequent on his regular selection as Grade 'D' Stenographer, Ministry of Finance, Banking Division, he joined the post on 28-02-1994. In response to a notification from the respondent's organization for deputation to the post of Stenographer Grade 'C', the applicant presented his application and was accordingly appointed on deputation basis in the Debt Recovery Tribunal where he had joined on 17-12-1999. On the promulgation of Recruitment Rules by the the Respondents, the applicant was absorbed as Stenographer Gr. 'C' w.e.f. 26-06-2003. The post higher to the said Stenographer Gr. 'C' is Private Secretary, and the same is filled up by promotion/deputation and qualification required for the same includes Stenographer Grade 'C' with eight years regular service in the scale of Rs.9,300 – 34800 plus Grade Pay Rs.4,200/- or equivalent and having a degree from a recognized university. Preference will be given to persons having experience in legal or judicial work. The applicant applied for the same for consideration on promotion basis, vide Annexure A-4 but the respondents have rejected his candidature on the ground that the applicant does not possess the requisite eight years regular service, as service on deputation cannot be reckoned. And thus, the respondents had issued a notification for deputation, vide Annexure A-8. The applicant has challenged the same, as appointment on deputation basis could be resorted to only when the other mode i.e., promotion method failed. As an interim order, the Tribunal directed that pending final decision of the O.A. the second respondent shall not finalize the selection in pursuance of notification issued at Annexure A-8.



3. Respondents have contested the O.A. They have relied upon the decision of the Apex Court in the case of M. Ramachandran vs. Govind Ballabh and others (1999) 8 SCC 592 and of the CAT in Raghubir Singh vs. Union of India & Ors (2009) 3 CAT AISLJ 10.

4. The applicant relied upon the decision of this Tribunal in the case of K.V. Peter vs. Union of India and others in O.A. No. 45 of 2008 dated 11th July 2008 which pertains to the very same respondents' organization. This order was upheld by the High Court vide judgment dated 09-11-2009 in W.P.(C). No.36683/08.

5. Arguments were heard and documents perused. The question posed in para 1 above, is no longer *res integra* as this Tribunal in Original Application No. 45 of 2008 has held as under :-

"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 candidate is selected, the post will be treated to have been filled up by promotion. "

(c) 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.

(d) 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 from 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. Rajaria, (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 decision 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."

6. The above decision of the Tribunal was taken up with the High Court by the Respondent in W.P.(C). No.36683 of 2008 and the High Court had, vide judgment dated 9th November, 2009 upheld the same. The High Court has held as under:-

"6. As noticed hereinbefore, the relevant service particulars are not under dispute. It was based on the applications invited for appointment on deputation to the post of Assistant in the Debts Recovery Tribunal at Ernakulam that the respondent herein had applied and got appointed as Assistant in the Debts Recovery Tribunal, Ernakulam. He commenced such service on 10.01.2000. Of course, at that point of time, there were no Recruitment Rules regulating the appointment of the staff of Debts Recovery Tribunal. Admittedly, the respondent was in the service of Debts Recovery Tribunal at Ernakulam as an Assistant on the date of commencement of the Recruitment Rules. Therefore, going by the provisions under Rule 5, there is no reason to deny the benefit arising out of

Rule 5 to the respondent for deciding his eligibility for promotion etc to the next higher grade. If his service rendered as an Assistant in the Debts Recovery Tribunal at Ernakulam from 10.1.2000 is taken into account by virtue of Rule 5, the reason assigned for rejecting his application for appointment to the post of Section Officer, as per Annexure A7 in Ext.P1 cannot be sustained. The facts obtained in this case have been duly taken into consideration by the Tribunal while passing Ext.P3. In fact, Ext. P3 was passed taking into account the said facts and also relying on the decision of the Hon'ble Apex Court in *K. Madhavan v. Union of India* (1987 (4) SCC 566) and *Union of India v. K.B. Rajoria* (2000 (3) SCC 562). In the light of the decisions in *K. Madhavan's case* (supra) and *Union of India v. K.B. Rajoria* (supra), ascribing meaning to the expression 'regular service' as appointment to a post on regular basis i.e., in a manner not contrary to any principle of law, in contradistinction to appointment on ad hoc or stop gap or purely temporary basis, the Tribunal found that the service of the respondent rendered prior to his absorption would be qualified to be held as regular service for the purpose of consideration for promotion to the post of Section Officer. The decision of the Tribunal, therefore, cannot be said to be illegal or perverse warranting interference by this Court. In fact that is the only plausible view that can be taken in the facts obtained in this case in the light of the decisions of the Hon'ble Apex Court. The declaration and direction issued in Ext. P3 is based on the said conclusion and finding based on the decisions of the Apex Court.

In view of the discussions above, we are of the opinion that the order of the Tribunal calls for no interference by this Court under Articles 226 & 227 of the constitution of India. The Writ petition is devoid of any merit and accordingly it is dismissed."




7. In view of the above, the O.A. is allowed. It is declared that the applicant fulfills the requisite experience of 8 years as stipulated in the Recruitment Rules, for being considered for promotion to the post of Private Secretary. Respondents are, therefore, directed to consider the case of the applicant for promotion to the post of Private Secretary and communicate the decision to the applicant. Annexure A-8 notification is quashed and set aside.

(Dated, the 20th January, 2010.)


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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Dr.K.B.S.RAJAN
JUDICIAL MEMBER