

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 101/90
T. A. No. 189

DATE OF DECISION 22.3.91

V.V.Abdul Rasheed _____ Applicant (s)

M/s.C.T.Ravikumar & P.K.Vijayamohanan _____ Advocate for the Applicant (s)

Versus

The Administrator,Union Territory of _____ Respondent (s)
Lakshadweep,Kavarathi and another

Mr.N.N.Sugunapalan,SCGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji,Vice Chairman

The Hon'ble Mr. N.Dharmadan,Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji,Vice Chairman)

In this application dated 27.1.1990 the applicant who has been working as Assistant Manager(Technical) at the Govt.Press, Kavarathi under the Administrator of the Union Territory of Lakshadweep has challenged the order dated 17th March 1989(Annexure-VIII) refusing to forward his application dated 15.2.89 for regularisation of his adhoc appointment to the Government of India. He has prayed that the respondents be directed that he should be given promotion at least notionally from 19.6.81 for purposes of counting the period for qualifying service and to regularise his services as Assistant Manager(Technical) from 5.12.1984 with all consequential benefits. The brief facts of the case are as follows.

2. The applicant had entered the Government Printing Press as and an Operator in 1973./was promoted as an Overseer in 1976. He was promoted as Assistant Manager(Technical) on an adhoc basis on 5.12.84 and regularised

with effect from 12.11.87. He holds a Diploma in Printing Technology and was working as Computer under the Government of Kerala and was sent by the Government of India to Germany for training. He was the sole Indian representative in the 4th Inter Regional Training Course and was awarded 'Good Service entry' during 1977, 1978, 1980 and 1985. According to him in 1981 sanction for creation of the post of Assistant Manager(Tech.) was given vide Annexure-I. According to him he was the only competent and qualified candidate to hold the post and when he represented for promotion to the post a proposal was sent on 8.7.1981. According to him his representation was unheeded due to the non-approval of the Recruitment Rules. His contention is that he should have been promoted at least on an adhoc basis pending finalisation of the Recruitment Rules as was done in filling up the post of Supply and Transport Officer pending finalisation of the Recruitment Rules. His allegation is that the finalisation of the Recruitment Rules was delayed ^{purposely} by the then Office Superintendent and the post of Assistant Manager(Technical) was proposed to be redesignated as Assistant Manager (Admn.) so as to make the Office Superintendent with six years of service eligible. This proposal was dropped later but in the meantime the draft Recruitment Rules which were sent in 1981 could not be finalised. Subsequently he was promoted as Assistant Manager(Technical) on an adhoc basis vide the order dated 5.12.84(Annexure-III) which order, according to him, could have as well been issued in 1981 itself. The Recruitment Rules were finalised only in 1986 and the applicant fulfilled all the qualifications prescribed therein. He was interviewed by the U.P.S.C and promoted as Assistant Manager(Technical) on a regular basis with effect from 12.11.1987. Even though he was actually holding the post from 5.12.84 his services were regularised only from 12.11.87. He represented on 30.5.1988(Annexure-VI) and another representation on 15.2.1989(Annexure-VII). In response to the latter representation he was informed by the impugned order dated 17th March, 1989(Annexure-VIII) that since the Ministry had already turned down his request there was no need to forward the representation again to them. The applicant's plea is that his previous representation had never been considered by the Ministry as he was never informed about the rejection of his representation. Though he had received a communication dated

14.9.88(Annexure-X) from the Secretary to the Administrator indicating that "promotions will have only prospective effect even in case where the vacancy relate to an earlier year" and his request cannot be acceded to, since there was no reference to his representation at Annexure-VI dated 30.5.88, it cannot be said that his representation was properly considered earlier by the Ministry. The applicant has indicated that it is now well settled that adhoc service followed by regularisation would count for seniority. He has also claimed notional promotion with effect from the date of creation of the post by referring to the practice followed in cases of the posts of Supply and Transport Officer and Secretary to the Administrator. His apprehension is that for promotion to the next higher post of Manager, the Recruitment Rules would provide for a qualifying service of 8 years and unless his adhoc service and notional promotion as Assistant Manager from 1981 is reckoned as qualifying service, he would not be qualified to be considered for promotion as Manager.

3. According to the respondents the applicant was appointed as Assistant Manager on an adhoc basis on 5.12.84 and on a regular basis with effect from 12.11.87. A clarification was sought from the U.P.S.C whether the applicant could be promoted as Assistant Manager on a regular basis with effect from 5.12.84, but the U.P.S.C allowed his regular promotion only from 12.11.1987(Annexure-R1).The Recruitment Rules for the post of Assistant Manager were finalised on 20.2.86 and without such Recruitment Rules no regular appointment could be made. The respondents concede that the draft Recruitment Rules were sent to the Ministry of Works and Housing, New Delhi on 29.7.81 and on the suggestion of that Ministry revised proposal was sent on 24.3.1982. In the meantime the Administrator suggested redesignation of the post of Assistant Manager(Tech.) as Assistant Manager (Admn.) and the same was approved by the Ministry on 29.9.83, but the Ministry cancelled the redesignation on 2.4.85. Thus due to departmental correspondence the Recruitment Rules could be finalised only in 1986. The applicant was given adhoc promotion in the exigency of public service in 1984. The respondents have denied that the delay in the finalisation of the Recruitment Rules caused by the proposal of redesignation which was later dropped was due to the manoeuvres of the Office Supdt. The

respondents have conceded that the representation of the applicant dated 30.5.88 being similar to that of two other officials, the case of the applicant was not referred to the Ministry and the contents of the clarification received from the Ministry on ^{the} ^{two} other cases were communicated to the applicant. The respondents have also stated that the applicant was promoted as an Overseer on a regular basis with effect from 8.8.80 and three years of regular service in that grade being necessary for promotion to the post of Assistant Manager(Technical) he was not eligible for promotion in 1981. They have conceded that adhoc promotions were made in cases of Supply and Transport Officer and Secretary to the Administrator pending finalisation of the Recruitment Rules, but the applicant could not be given similar adhoc promotion because of the aforesaid reasons. It has also been indicated that there is no rule to regularise the adhoc promotion with retrospective effect. Along with the rejoinder the applicant has produced at Annexure-XII a list of employees of Lakshadweep Administration who were regularised with retrospective effect from the date of their initial adhoc appointment and has stated that he has been discriminated against. He has also made out a grievance of the fact that his representation at Annexure-VII was not considered by the first respondent and was returned by the Secretary(Admn.) . In the additional counter affidavit the respondents have stated that the applicant's representation at Annexure-VII was not sent to higher authorities as the Administration had/got the ^{already} ^h clarification on the same issue. They have also argued that regular appointment can be considered only after the rules of appointment come into effect. In the additional rejoinder the applicant has produced at Annexure-XVII a copy of the order by which the adhoc appointment of a Statistical Assistant was regularised with effect from the date he joined the post.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant's case for giving notional promotion as Assistant Manager with effect from 1981 when for the first time he was appointed to that post on an adhoc basis with effect from 5.12.84 cannot be accepted as he had completed hardly one year in the post of Overseer in 1981. The Recruitment Rules

which were finalised in 1986 provided for 3 years of service as an Overseer In any case unless it is shown that a person junior to him had been promoted in 1981 as Assistant Manager by overlooking the applicant's claim , the applicant cannot claim notional promotion with effect from 1981. As regards regularisation of the applicant's adhoc appointment as Assistant Manager with effect from 5.12.84, since the U.P.S.C did not agree to postpone the applicant's regular appointment from 12.11.87 to 5.12.84, we see no reason to intervene in the matter. Since the Recruitment Rules came into being in 1986 and were not given retrospective effect, the question of regular promotion with effect from 5.12.84 in case of the applicant does not arise.

5. The only question that remains to be considered is whether the adhoc service rendered by the applicant between 5.12.84 and 12.11.87 would count for seniority and as qualifying service for next promotion. A similar question came up before the same Bench in P.Venugopalan Nair and another vs. Union of India and others, (1991)15 ATC 432. Relying upon the decisions of the Madras and Calcutta Benches of the Tribunal we held in that case that the adhoc service rendered before the coming into effect of the Recruitment Rules but followed by regular appointment would count for seniority. The following extracts from our judgment in the aforesaid case would be relevant:-

" It is pertinent to note in this connection that the Madras Bench of the Tribunal also followed the above judgment at Annexure 14 in O.A No.K-319 of 1987 in a more or less similar circumstance which is produced as Annexure A-18 along with the rejoinder. Paragraph 4 of the judgment reads as follows:

4.In support of the first relief that is claimed by the applicant, reliance is placed by his counsel on a judgment of the Calcutta Bench of the Tribunal delivered on 12.6.1987 by which four Assistant Engineers promoted to that cadre along with the applicant by the order dated 8.7.1974 and whose services were regularised by the order dated 20.3.1978 were directed to be placed in the seniority list taking into account their services from 8.7.1974 itself. The reckoning of their services only from the date of regularisation was held to be bad. It is to be pointed out in this context that the applicants in that case as well as the present applicant were promoted after they were found fit according to the procedure that was in existence then, and they continued in the cadre of Assistant Engineer for several years before the regularisation. As such, though the recruitment rules came into force only to the year 1976, service rendered by the applicant in the post cannot be treated as fortuitous or on a mere stopgap basis. We are in respectful agreement with the decision of the Calcutta Bench on this point.'

"We are in respectful agreement of the above view. The respondents have not placed before us any materials to take a different view in this case. In the result, we direct the respondents to revise the seniority list referred to in the application and that the seniority of the applicants should be considered from the dates of their promotion to the rank of Assistant Engineers and not from the dates of their regularisation after the coming into effect of the Recruitment Rules in 1976, as contended by the respondents. The seniority list of the Assistant Engineers including the applicants should be revised accordingly and given effect to the same without any further delay. "

The above decision is supported by the ruling of the Supreme Court in the 'Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others, AIR 1990 SC 1607, in which one of the findings was as follows:-

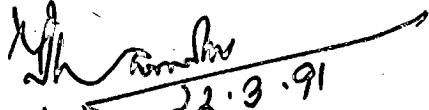
"(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

Since in the instant case before us the initial appointment was made before the rules were framed and the applicant was regularised without any interruption in accordance with the Recruitment Rules from a later date it stands even on a firmer footing than the cases contemplated in the aforesaid ruling of the Supreme Court where the initial appointment was made without following the procedure/ laid down by the rules. The applicant's initial adhoc appointment with effect from 1984 when he was fully qualified under the Recruitment Rules later promulgated, cannot be considered to be fortuitous or a stopgap arrangement in the background of the case as discussed above. Accordingly we have no hesitation in declaring that the adhoc service of the applicant from 5.12.84 to 12.11.87 when he was regularly appointed will count for seniority in the grade of Assistant Manager(Technical) and accordingly ^{also} as qualifying service for purposes of promotion to the next higher grade considering also the fact that during this period he was drawing the regular pay scale of the Assistant Manager, discharging the duties of the Assistant Manager and drawing increments also in the scale of Assistant Manager.

6. In the facts and circumstances we allow the application in part to the extent of declaring that the adhoc service rendered by the

.7.

applicant as Assistant Manager(Technical) between 5.12.84 and 12.11.87⁶ will count for seniority in the grade of Assistant Manager(Technical) and as qualifying service in the same manner as the service rendered by him after 12.11.87. There will be no order as to costs.


(N.Dharmadan)
Judicial Member

22.3.91


22.3.91
(S.P.Mukerji)
Vice Chairman

n.j.j