

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 30.11.89

P R E S E N T

HON'BLE MR.S.P.MUKERJI - VICE CHAIRMAN

AND

HON'BLE MR.N.DHARMADAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO.K.258/88

G.Jayachandran Nair - Applicant

-Versus-

1. Union of India rep. by
Secretary to Govt. of India,
Ministry of Finance,
Deptt. of Economic Affairs,
New Delhi.
2. National Savings Commissioner,
P.B.No.96, Banglow No.12,
Seminary Hills, Nagapur.
3. Shri A Bhattacharya,
Regional Director,
National Savings,
Nizam Palace, J.C.
Acharaya Road, Calcutta-20.
4. Shri AM Jafri, Regional Director,
National Savings, 116-C-Ashok
Nagal, Allahebad-211 001.
5. Shri Sheo Kishore,
C/o National Savings Commissioner,
P.B. 96, Nagpur.
6. Dr.N.K.Dhar, Regional Director,
National Savings, R.G.Barmah Road,
Udaipath, Gauhati-781 024.
7. Shri Mir Azmat Ali,
Regional Director,
National Savings,
3-6-364, Liberty Bldg.,
Himayatnagar, Hyderabad-500 029.
8. Shri VCB Naik, Regional Director,
National Savings(Trg),
C/o National Savings Commissioner,
Nagpur.

9. Shri V Balaraman,
Regional Director,
National Savings,
92, Anna Salai,
Bharat Bldgs.,
Madras - 600 002.

- Respondents

Mr. CS Rajan

- Counsel for applicant

Mr. PA Mohamed, ACGSC

- Counsel for respondents.

O R D E R

(Mr. N. Dharmadan, Judicial Member)

The grievance of the applicant in this case is that even though he was promoted as Regional Director and posted on adhoc basis from 30.4.1983 and the D.P.C. found him fit, he was not given a regular posting on the date of the occurrence the vacancy in 1984.

2. The applicant joined the National Savings Organisation in 1957 as Distt. Organiser. He was promoted as Assistant Regional Director in 1963 and Deputy Regional Director in 1980. In Annexure-I gradation list of Deputy Regional Directors as on 1.1.1980 published by the 2nd respondent the applicant is Serial No. 28. Since respondents 3 to 6, 8 and 9 were not recruited in 1980, they were not included in the said list; but 7th respondent is Sl. No. 39. The 2nd respondent

...3/-

appointed the applicant as Deputy Regional Director on a substantive capacity w.e.f. 18.1.1980 assigning Rank No.9 in the list at Annexure.2. By Annexure-3 order dated 30.4.1983 the applicant along with others was promoted as Regional Director and posted on adhoc basis. According to the applicant this adhoc posting was necessitated because of the delay in convening the Departmental Promotion Committee meeting.

3. The 1st respondent by Annexure-4 notification dated 13.2.1986 appointed the applicant on a regular basis w.e.f. 3rd February, 1986. Since the delay in convening the D.P.C. caused adverse effect on the applicant's regular promotion, he filed Annexure-6 representation before the 1st respondent. In the representation it was pointed that there were eight posts of Regional Directors vacant when he was promoted to the post on adhoc basis. This was not considered promptly, but after more than a year he received Annexure-8 communication by which his representation was rejected by the 1st respondent, stating that his "adhoc service does not count either for the

purpose of seniority or for the purpose of treating as qualifying service for further promotion to higher grade!

This according to the applicant is illegal. Hence he has filed this application challenging Annexure-8 and praying for direction to respondents 1 & 2 to appoint him as Regional Director w.e.f. 30.4.1983 and also declare him as senior to respondents 3 to 9.

4. The learned counsel, Shri CS Rajan, appearing on behalf of the applicant, submitted before us with reference to Annexure-XI list showing the vacancy position that 3 vacancies of Regional Director(Jr.) arose in 7/84, 8/84 & 12/84, but they were not communicated to the Union Public Service Commission. ^{Five} _h more vacancies which arose later were also not communicated to the U.P.S.C. He submitted that in any view of the matter, on the retirement of Shri R Balasubramanyan on 31.12.1984 a vacancy arose and the applicant ought to have been regularly appointed ^{with effect from} _h that date, since he was found fit by the D.P.C.

5. The learned Senior Central Government Standing Counsel submitted that in the year 1983 only 2 vacancies

of Regional Director(Jr.) were available; but 5 regular vacancies were anticipated during that year. The Departmental Promotion Committee met on 2.12.1983. but the applicants' case was not recommended for regular posting. He stated that the officers who were senior to the applicant were recommended and they were appointed. He also stated that two of the vacancies ~~which~~ were reserved for Scheduled Caste candidates without mentioning ~~about~~ the vacancy position in the year 1984. He submitted that in 1985 only one vacancy arose on account of the retirement of Shri R.Balasubramanian. Since only 2 other vacancies of Regional Director(Jr.) were anticipated, no proposal for convening D.P.C. was sent on 29.5.1985. The D.P.C. meeting, which was held on 10.1.1986, recommended the applicant's promotion as Regional Director(Jr.) on a regular basis ^{and} ~~he~~ was promoted w.e.f. 3.2.1986.

6. In the counter affidavit filed by the respondents 1 and 2 on 22nd August, 1988, there was no mention of the vacancy position in 1984. The applicant filed a rejoinder dated 19.12.1988 stating

...6/-

specifically that 3 vacancies of Regional Director(Jr.) arose in 7/84, 8/84 and 12/84. The respondents 1 and 2 filed as additional Counter Affidavit dated 17.3.1989 in which they have stated that according to the Recruitment Rules the post of Regional Director was to be filled up (i) 50% by promotion, (ii) 25% by transfer on deputation and (iii) 25% by direct recruitment. Respondents 3 and 5 are senior to the applicant and they were recruited against the direct recruitment quota. The respondents 6 to 8 were directly recruited as Regional Director(Jr.) against 25% direct recruitment quota in the year 1983 and they xxx joined in 1984. The respondent No.9 Shri Balaraman although junior to the applicant belongs to Scheduled Caste and hence he was promoted and posted in the reserved vacancy of Regional Director(Jr.). But in the Additional Counter Affidavit the respondents 1 and 2 have made the following admission:

"Shri R.Gopalan retired in August, 1984 and as per the recommendations of D.P.C. meeting held on 2.12.1983, Shri R Balasubramanyan was promoted against the vacancy caused by Shri R.Gopalan. Shri R Balasubramanyan retired on 31.12.1984. In 1984, therefore, the 1st retirement

was available only on 31.12.1984 and not three as stated by the applicant. This vacancy of 1984 available with the retirement of Shri R.Balasubramanian, along with two vacancies, that arose in 1985 were reported to U.P.S.C. in November, 1985 and D.P.C. meeting was held in the office of U.P.S.C. on 10.1.1986. The D.P.C. recommended promotion of Shri GJ Nair along with two others as Regional Directors, National Savings(Jr.) on regular basis. All the vacancies available in the Regional Director, National Savings (Jr.) Grade on 31.12.1984 and in the year 1985 were duly reported to U.P.S.C. and Sri Nair was promoted against one of the available vacancies."

7. The respondents 1 and 2 have admitted that on 31.12.1984 there was a retirement vacancy and the applicant was recommended by the D.P.C. held on 10.1.1986 as the senior most eligible person to be appointed on a regular basis. The respondents have no case that this vacancy could not be ^{given to} / the applicant because the seniors of the applicants were waiting for regular posting nor have they any case that the applicant is disqualified to occupy this vacancy. Hence on the facts and circumstances of this case we feel that the applicant is legitimately entitled to be posted on a regular basis in the vacancy which arose on the retirement of Shri R Balasubramanian on 31.12.1984.

8. There is no substance in the statement in Annexure-8 that the ad hoc service does not count either for seniority or for qualifying service. An ad hoc service cannot be ignored altogether when it is rendered by the Government servant under circumstances which obtain in case of a regular selection and appointment to the same post. It confers certain limited service benefits on the officer who rendered such service in the exigencies of administration.

9. The Principal Bench of Central Administrative Tribunal in Shyam Sunder & others Vs. Union of India (ATR 1989(1) CAT 211) following the Supreme Court's decision observed as follows:

" A Bench of This Tribunal in S.C. Jain v. Union of India.) (ATR 1985(2) C.A.T. 35) following the judgment of the Delhi High Court in Kuldeep Chand Sharma v. Delhi Administration and another 1978(2) SLR 379, and that of the Supreme Court in Narendra Chadha v. Union of India and others (AL 1985 Vol. 1 SC 49) held that the entire period of ad hoc service followed by regular appointment shall be counted for purposes of seniority.

The same view was held by the New Bombay Bench of this Tribunal in Kunjal Laxminarayan Nayak v. Union of India and others (A.T.R. 1987(1) CAT 458)."

10. Having regard to the facts and circumstances of this case the impugned order Annexure-8 is liable to be struck down. Accordingly, we do so and direct the respondents 1 & 2 to regularise the service of the applicant w.e.f. 31.12.1984.

11. There will be no order as to costs.

(N. Dharmadan)
Judicial Member

(S. P. Mukerji)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
XXXXXXX

129/ 198 89

DATE OF DECISION 30.8.1990

T.Sathyanathan Applicant (s)

M/s. K.P Dandapani & K.Jaju Babu
Advocate for the Applicant (s)

Versus

The Director General, Respondent (s)
All India Radio, Parliament Street,
New Delhi and 18 others

Mr.Sankarankutty Nair, ACGSC, 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? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicant is a Farm Radio Reporter in All India Radio, Calicut. His seniority in the cadre of Farm Radio Reporter has not been fixed from the date of his adhoc promotion w.e.f 9.8.1974 pursuant to Ext.P1, is his complaint.

2. The applicant, while working as Field Assistant at Trichur, *on an ad hoc basis* was promoted to officiate as Farm Radio Reporter in All India Radio, Calicut in the exigency of service from 9.8.1974 as per Ext.P1. The recruitment by promotion to the post of Farm Radio Reporter in All India Radio is governed by Ext.P2 rules. After complying with the formalities of promotion, the applicant

was regularly promoted as Farm Radio Reporter from 25.3.78 by order Ext.P3. In 1981 the applicant submitted Ext.P4 representation for getting seniority over the 3rd respondent by counting his adhoc service of four years as Farm Radio Reporter from the date of such appointment. Exts. P5 and P7 are further representations submitted in 1984 and 1988. In the seniority list of Farm Radio Reporter (Ext.P6) as on 5.8.1988 the applicant is at Sl.No.19, but the 3rd respondent is shown as Sl.No.18 just above the applicant. Relying on a judgment of the Central Administrative Tribunal, Jabalpur Bench(Ext.P8) and Ext.P9 proceedings, the applicant again submitted representation, but it was turned down by the Administrative Officer as per Ext.P10. The applicant has challenged the seniority list Ext.P6 and Ext.10 proceedings in this case.

3. The second respondent has filed a counter affidavit on behalf of respondents 1 and 2 in which it has been specifically stated that the promotion of the applicant as Farm Radio Reporter w.e.f 9.8.74 was purely on adhoc basis keeping the resultant vacancy in the cadre of Field Assistant unfilled making it clear that this appointment does not confer on the applicant any right for regularisation and the said appointment is without prejudice to the claims of those senior to him. They have also stated that the judgment of the Jabalpur Bench(Ext.P8) is not applicable to the facts and circumstances of this case.

It is further stated that the third respondent was shown in Ext.P6 seniority list as senior to the applicant by mistake and this has been since rectified by placing him below the applicant as shown in Ext.R1 and the applicant has no right to get seniority over respondents 4 to 19 and that his appointment as Farm Radio Reporter from 1974 till the regularisation as per Ext.P3 was in the exigency of service and it does not confer any right on the applicant to get regularisation from 1974.

4. We have heard the learned counsel on both the sides. Since there is no dispute with regard to the facts in this case, the only question that emerges for consideration is as to whether the adhoc appointment of the applicant as Farm Radio Reporter by Ext.P1 w.e.f 9.8.74 can be taken into consideration for regularisation on the facts and circumstances of this case, especially in the light of Ext.P2 rules.

5. The applicant has not produced any materials to satisfy us that at the time when the applicant was posted as Farm Radio Reporter on an adhoc basis in 1974, there was no other seniors eligible and qualified to be appointed to that post and that the respondents 1 and 2 have considered the merits of rival candidates for promotion to the post. Subsequently by Ext.P3, after complying with the statutory requirements ^{and} formalities, he has been regularised w.e.f 25.3.1978 so that he can claim regularisation only from the

date of Ext.P3.

6. It is a settled proposition that an adhoc appointment to a post does not confer on the appointee any right to claim such post or seniority on account of such appointment(see A.V Sharma v. State of Himachal Pradesh, 1981(1) SCR 359). Such appointments are being made in the exigency of service pending finalisation of promotion and filling up of the posts after complying with the statutory requirements ^{and} formalities for such promotion. This bench (same bench) considered the scope of the adhoc service rendered by a Government servant in OAK 258/88 and held as follows:-

"An ad hoc service cannot be ignored altogether when it is rendered by the Government servant under circumstances which obtain in case of a regular selection and appointment to the same post. It confers certain limited service benefits on the officer who rendered such service in the exigencies of administration.

9. The Principal Bench of Central Administrative Tribunal in Shyam Sunder & others Vs. Union of India (ATR 1989(1) CAT 211) following the Supreme Court's decision observed as follows:

"A Bench of this Tribunal in S.C.Jain v. Union of India(ATR 1985(2) C.A.T 35) following the judgment of the Delhi High Court in Kuldeep Chand Sharma v. Delhi Administration and another 1978(2) SLR 379, and that of the Supreme Court in Narendra Chadha v. Union of India and others (AL 1985 Vol.1 SC 49) held that the entire period of ad hoc service followed by regular appointment shall be counted for purposes of seniority.

The same view was held by the New Bombay Bench of this Tribunal in Kunjal Laxminarayan Nayak v. Union of India and others(A.T.R 1987(1) C.A.T 458). "

7. In order to count such ad hoc service for seniority as claimed by the applicant it is incumbent upon the Government servant, who seeks regularisation from the date of original appointment or promotion on ad hoc basis, to establish that he was appointed or promoted on adhoc basis after considering the claims of others who are having similar claims for such appointment. The Supreme Court very recently in Delhi Water Supply and Sewage Disposal Committee and others v. R.K Kashyap and others, AIR 1989 SC 278 held as follows:-

"There is, however, one other important and fundamental principle which should not be forgotten in any case. The principle of counting service in favour of one should not be violative of equality of opportunity enshrined in Arts. 14 and 16 of the Constitution. If ad hoc appointment or temporary appointment is made without considering the claims of seniors in the cadre, the service rendered in such appointment should not be counted for seniority in the cadre. The length of service in ad hoc appointment or stop-gap arrangement made in the exigencies of service without considering the claims of all the eligible and suitable persons in the cadre ought not be reckoned for the purpose of determining the seniority in the promotional cadre. To give the benefit of such service to a favoured few would be contrary to the equality of opportunity enshrined in Arts.14 and 16 of the Constitution. But if the claims of all eligible candidates were considered at the time of ad hoc appointments and such appointments continued uninterruptedly till the regularisation of services by the Departmental Promotion Committee or the Public Service Commission there is no reason to exclude such service for determining the seniority."

8. As indicated above the applicant had not proved that he was the senior most eligible person to be promoted and posted on ad hoc basis as Farm Radio Reporter in 1974 and that the claims of all the rival candidates had been

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duly considered by the respondents before posting him on ad hoc basis.

9. The applicant has further contended that he is entitled to the benefits of Ext.P8 judgment. We have gone through the judgment of the Jabalpur Bench (Ext.P8). That is a case in which the applicant therein has claimed seniority from the date of DPC's assessment and not from the original date of provisional promotion. Moreover, the question which specifically arises for consideration in this case was not considered by the Jabalpur Bench. Hence Ext. P8 judgment is distinguishable. It will not apply to the facts of this case. Under these circumstances, we are of the view that there is no substance in this application and it is only to be dismissed. Accordingly we do so. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

30.8.90


(S.P. MUKERJI)
VICE CHAIRMAN

30.8.90