

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 180/2003

WEDNESDAY THIS THE 9TH DAY OF
NOVEMBER, 2005

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

R. Somasundaram
Taxes Assistant
Office of the Commissioner of
Income Taxes(Appeals)
Thiruvananthapuram. Applicant

By Advocate M/s Santhosh and Rajan

Vs.

- 1 Union of India represented by the
Secretary to the Government
Ministry of Finance
New Delhi.
- 2 The Chief Commissioner of Income Taxes
Kochi. Respondents

By Advocate Mr. Sunil Jose, ACGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant's prayer is for considering his adhoc service in the post of Lower Division Clerk for fixation of his seniority and other benefits. The applicant's case is that he commenced service as a Group-D employee having been appointed through

the Employment Exchange on 10.6.1971. "After completing five years of service he had passed the Departmental test for promotion to the post of LDC on adhoc basis w.e.f. 8.2.1980 and continued in the post under the respondents without any break and was regularised on 1.7.1983. According to the applicant he is entitled to get seniority w.e.f. 8.2.1980 as his adhoc service was uninterrupted. Despite several representations given to the second respondent, vide Annexure A2 order dated 4.9.2002 the representations have been rejected on the ground that he had accepted the terms and conditions at the time of his adhoc appointment that there would not be any request to regularise the adhoc appointment so made and that adhoc promotion did not confer any claim for continued officiation in the grade of LDC or for seniority in that grade.

2 The respondents have denied the averments in the Application. They have explained that in the Income Tax Department the post of LDC used to be filled up by direct recruitment as well as promotion from Group-D employees who have passed the Departmental Examination, in the ratio of 9:1. In the year 1979 when it was found that there was considerable delay in getting candidates from the Staff Selection Commission it was decided as a temporary measure to fill up the vacancies of LDC with the candidates from the Department. This was a stop gap arrangement. In consultation with the Department of

Personnel & Training it was decided that till the regular nominees report for duty, educationally qualified Group-D employees may be appointed on adhoc basis subject to the condition that there will be no request later to regularise the adhoc appointment. Based on this decision conveyed through Annexures R-1 and R-2 names of qualified and willing candidates were called for and the applicant was also one of the candidates who agreed to these conditions but the office was unable to trace out the order appointing the applicant due to lapse of time. However, similar order issued in the case of another person one Shri K.K. Abdul Kareem was produced by the respondents as Annexure R-4. The said order clearly discloses that the promotion was purely on adhoc basis and did not confer any claim for continued officiation in the post, even though no vacancies were then existing to be filled up under promotion quota. The request of the applicant for promotion was considered according to their quota for promotion i.e. 10%, depending on the vacancies which arose and he was regularised w.e.f. 1.7.1983. If the request of the applicant for counting his adhoc service is considered, the nominees of the Staff Selection Commission who joined the Department on various dates after 8.2.1980 will lose their seniority which cannot be permitted because in 1980 there were no vacancies to be earmarked to the promotees like the applicant. Some of the direct recruits were later promoted as Upper Division Clerks

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also and any resetting of seniority will now upset their seniority and the applicant has not impleaded any such persons who are likely to be affected by such regularisation. They also relied on the Full Bench decision of the Hon'ble Supreme Court in Direct Recruit Engineers Officers Association Vs. State of Maharashtra reported in (1990) 2 SCC 715 stating that:

"....where the initial appointment is only adhoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."


3 The applicant thereafter filed two rejoinders and the respondent filed two additional reply statements rebutting the contentions of the applicant. In the rejoinder the applicant contended that during the period of his adhoc appointment no direct recruits joined the department, and the vacancy to which he was appointed was a permanent vacancy available from 1979. The respondents on the other hand produced a copy of the Disposition list of Non-Gazetted Establishment as on 1.9.1984 (Annexure R-6) which makes it clear that officials from serial Nos. 134 to 187 had joined the Income Tax Department under direct recruitment quota. They also stated that 12 vacancies in the grade of LDC arose in 1981 as seen from the files against which 1 post was filled up by Group-D staff at Sl.NO. 130 of Annexure R-6 under the promotion quota who joined on 1.1.1982. The number of vacancies during the year 1982 was 42 out of which four vacancies were filled up by

Group-D staff who were at Sl. Nos. 182 to 192 of the seniority list. The applicant herein is at Sl. No. 192 of the seniority list. They also denied the contention of the applicant that the vacancy occupied by him was continuing from the year 1979. In 1979 there were 29 vacancies out of which 2 posts were earmarked for Group-D staff and two Group-D staff senior to the applicant were promoted on regular basis. Even though adhoc appointments would not have been permitted to be continued after one year, in order to avoid hardship to the officials including the applicant the Department had allowed them to continue as LDC on adhoc basils. The applicant is now trying to take undue advantage of this gesture shown to him and his claim is devoid of merit.

4 We have gone through the pleadings and heard the learned counsel for both the parties. The short question before us is whether the applicant who is appointed as a stop gap arrangement is entitled for regularisation from the date of adhoc appointment thereby conferring the benefit of seniority. This question has already been settled by the Apex Court in the case of Direct Recruitment Engineers Officers Association Vs. State of Maharashtra (1990) 2 SCC 715) relied upon by the respondents. It is clear from the detailed reply filed by the respondents that the adhoc appointment was made in order to meet the administrative exigencies pending finalisation of the



selection by the Staff Selection Commission, and that the orders of adhoc appointment given to the applicant had clearly mentioned the conditions of adhoc appointment. The respondents have also categorically stated that the rules provided that only 10% of the vacancies every year had to be filled up by promotees and that two posts were reserved for promotees in 1979 and one post was earmarked in 1981. Out of the 12 vacancies in 1981 one post had been filled by a Group-D staff and in the year 1982 out of the 42 vacancies 4 vacancies were earmarked for Group-D staff, three posts were filled by promotion of group-D staff senior to the applicant, and the fourth vacancy was given to the applicant. The applicant had been appointed against a vacancy meant for direct recruitment by selection through Staff Selection Commission, and he cannot claim a right to regularisation against a direct recruit vacancy. He cannot also claim the promotion quota vacancies on which seniors to him were promoted and regularised. The applicant's appointment on adhoc basis was therefore not made in accordance with Rules and the period of such officiation cannot therefore be taken into account for conferring the benefit of seniority. His claim for conferring the benefit of seniority on retrospective basis from 1980 will result in upsetting the settled seniority of the direct recruits. From that point of view also there is no ground for consideration.



5 We therefore do not find any merit in the prayers of the applicant. The application is dismissed. No costs.

Dated the 9th day of November, 2005


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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