

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH, LUCKNOW

ORIGINAL APPLICATION NO.524/1992

this the 22^{hw} day of March, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Mr. A.K. Misra, Member (A)

Smt. Sudha Shekhar aged about 46 years, lecturer in
Biology, Northern Railway Inter College, Tundla, Firozabad.
R/o 3/46, Patrakarpuram, Gomti Nagar, Lucknow.

....Applicant

By Advocate: Shri Y.S. Lohit.

Versus

1. Railway Board through its Secretary, Rail Bhawan, New Delhi.
2. General Manager, Northern Railway, Baroda House, New Delhi.
3. Divisional Railway Manager (P), Northern Railway, Allahabad.
4. Divisional Personal officer, Northern Railway, Allahabad.

By Advocate: Shri Manik Sinha.

ORDER

A.K. MISRA, MEMBER (A)

The applicant of this O.A. has prayed for regularisation of their service w.e.f. 3rd January, 1979 and fixation of seniority w.e.f. 3rd January, 1979. It has also been prayed that the break in service of the applicant between April 1979 to 30th July, 1979 on account of maternity leave availed by the applicant be also condoned. A further prayer is for issue of directions to the respondents to grant the applicant senior grade and selection grade taking into account the entire service rendered by her from 3rd January, 1979. Lastly it has been prayed that all consequential benefits be also granted to the applicant.



2. Pleadings on record have been perused and learned counsel for the parties have been heard.

3. Briefly stated the facts are that one Sri R.B. Singh retired on 31.12.1978 causing a vacancy w.e.f. 1.1.1979. The applicant was appointed to the said vacancy on adhoc basis as per Annexure 4. After a couple of months, the applicant proceeded on maternity leave in April 1979 and remained on maternity leave till 30th July 1979. The applicant is stated to have been given a fresh appointment letter when she resumed her duty as Lecturer after 30th July, 1979 and thus she continued in service. According to the applicant, she has been requesting for regularisation from the date of joining service as lecturer in January, 1979. Finally, the applicant was regularised only in 1991 but the regularisation of the applicant as lecturer was only ~~XXX~~ prospective. The appointment of the applicant was challenged by one Shri K.M. Tiwari in T.A. No. 56/1988 decided by CAT, Allahabad on 14.2.1990. The petition filed by Shri K.M.Tiwari registered as T.A. No. 56/88 challenging the appointment of the applicant to the present o.A. and claiming that he had ^abetter claim for the said appointment over the applicant to the present O.A. was dismissed by order dated 14.2.1990 passed by the Allahabad Bench of this Tribunal. According to the applicant her regularisation made in 1991 should have been given retrospective effect from January, 1979 as she fulfilled the requisite qualifications for appointment as a lecturer.

4. Only question involved in this O.A is whether the regularisation of the applicant as a lecturer should be made with effect from January, 1979 having regard to the fact that the applicant's initial appointment as



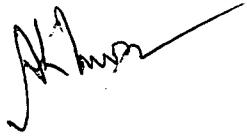
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lecturer in January, 1979 was adhoc and further having regard to the fact that she was regularised in 1991. Annexure 4 to the O.A. which is a letter dated 3rd January, 1979 shows that the applicant was appointed as a lecturer purely on adhoc basis for a period of 3 months without medical examination and further that she was to produce a medical certificate of fitness within 7 days if her appointment continued beyond the first 3 months. Thus the initial appointment of the applicant was only for 3 months and was made on adhoc basis. The fresh appointment given to the applicant by letter dated July 1979 on return from maternity leave (Annexure V to the OA) shows that her appointment was purely as a temporary arrangement and further it was provided in this appointment letter that her services were liable to be terminated at any time without notice on arrival of regular incumbent. This letter of appointment also contained a recital to the effect that the said appointment will not give any claim to the applicant for regular appointment in future. The endorsement made to the Principal of the Northern Railway Inter College, Tundla shows that the applicant was to be appointed as a substitute lecturer in Biology against an existing vacancy if otherwise found suitable. During the course of arguments it was pointed out on behalf of the respondents that T.A. No. 56/88 in the case of K.M. Tiwari Vs. Union of India was filed by way of Writ petition No. 2321/1978 before the Hon'ble High Court of Allahabad which was subsequently transferred to this Tribunal. It was submitted on behalf of the respondents that after the judgement was delivered on 14.2.1990 in the case of K.M. Tiwari Vs. Union of India in T.A. No. 56/88, the applicant was regularised by order dated 23.10.1991 (Annexure XI to the OA). The order of regularisation dated 23rd October, 1991 shows that the ~~appointment~~ ^{vacancy} of the applicant



wase regularised as a result of screening held under office notice dated 3rd June, 1991. Annexure X to the OA shows that earlier the applicant had been directed to appear for a screening/interview on 2nd Maye, 1991 before Senior D.P.O. in the office of the D.R.M., Allahabad. Thus subsequent to the order dated 14.2.1990 of the Allahabad bench of this Tribunal in the case of K.M. Tiwari Vs. Union of India, the applicant was called for screening on 4.6.1991 and having been found fit, her services were regularised from 23.10.1991.

5. There is no dispute that the appointment of the applicant by letter dated July 1979 was purely adhoc and temporary and did not entitle the applicant to any claim for regular appointment in future. The appointment letter of July 1979 also provided that her services were liable to be terminated at any time without notice. The initial appointment letter of 3rd January, 1979 was also purely adhoc and was for a period of 3 months. Thus the applicant had never been appointed on regular basis. It was only when the writ petition No. 2321/78 registered as T.A. No. 56/88 in the case of K.M. Tiwari was decided on 14.2.1990 that the applicant's claim for regularisation was considered and she was regularised by letter dated 23.10.1991 issued by the Divisional Personnel Officer, Northern Railway, Allahabad. The regularisation of the applicant was made as a result of screening and interview held on 4.6.1991. The applicant had not been screened or interviewed prior to 4.6.1991. It is not disputed that the appointment of the applicant made in January, 1979 or in July, 1979 was ^{not} by way of selection ~~made~~ by a duly constituted selection committee. It is also not disputed that the initial appointment of the applicant in January, 1979 or in July, 1979 was not through the Railway Recruitment Board. Having regard to these facts, the applicant's claim for regularisation and seniority w.e.f. January, 1979 or even from July, 1979 cannot be allowed.

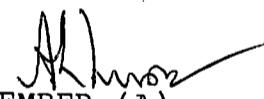


The reliance placed on behalf of the applicant on the decision of the hon'ble Supreme Court in the case of Rudra Kumar Sain and others vs Union of India 2000(3) HVD, 203 and on the decision of the Hon'ble Supreme Court in the case of L. Chandrakishore Singh Vs. State of Manipur and others 1999, 8 SCC page 287 will not help the applicant because both the decisions of the apex court were given under a different set of facts and are clearly distinguishable. In the case of Rudra Kumar Sain (supra), the apex court was deliberating on the question of inter-se seniority of promotees and direct recruits of the Delhi Higher Judicial Service. In this case the apex court held that promotees were appointed under Rule 16(2) of the Recruitment Rules and continuously held the post and further their appointments had been made in consultation with the High Court of Delhi and they had the requisite qualifications under Rule 7 of the Recruitment Rules. In the light of these facts, the apex court held that their appointments cannot be considered to be either adhoc or stop gap or fortuitous. Similarly in the case of L. Chandrakishore Singh (Supra), the apex court was deliberating on the question of determining the seniority of officers ~~as~~ under the Manipur Police Service Rules of 1965, where officiating appointment had been given to certain officers. The Hon'ble Court held that in ^a case of probation or officiating appointment followed by confirmation unless a contrary rule ^{is} shown, the services rendered in officiating capacity or on probation cannot be ignored for reckoning length of continuous ~~officiating~~ service for determining the seniority. In the case of Rudra Kumar Sain (Supra), the judicial officers had been appointed in accordance with recruitment rules and their appointments had also been made in consultation with the High Court. It will be useful in this contest to refer to the full Bench decision of this Tribunal in the case of Km. Kulwant Kaur Dhanjal and others vs. union of india reported in 1999(3)



ATJ, page 359. In this case the full Bench held that the stenographers sponsored by the employment exchange and appointed on adhoc basis after a written test and interview were not entitled to regularisation and seniority from the date of their adhoc appointment. It was held by the full Bench in this case that such stenographers were entitled to regularisation and seniority from the date of passing the regularisation test held by the Staff Selection Commission. In the present case also, the applicant after having been put through screening and interview was regularised by order dated 23.10.1991. She was not put through any interview or screening test prior to that and therefore her regularisation cannot date back to the date of her initial appointment in January, 1979 or even her appointment in July 1979. For the same reasons, the applicant cannot be given seniority (from January 1979) or from July 1979.

6. In view of the foregoing discussion, the O.A. fails and is dismissed. No costs.


MEMBER (A)

LUCKNOW: DATED: 22nd March 2001

HLS/-


VICE CHAIRMAN (TJ)