

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH  
LUCKNOW.**

ALLAHABAD this the \_\_\_\_\_ day of **2012.**

**HON'BLE MR. B.V. RAO, MEMBER -J**  
**HON'BLE MS. JAYATI CHANDRA, MEMBER -A**

*Pronounced on 31.07.2012*

**ORIGINAL APPLICATION NO. 199 OF 2006.**

Dr. Vijay Kumar Saksena son of late Shri Indra Sahai Saksena aged about 60 years, retired Assistant Director, R/o 1-A, Awadhpuri Survodaya Nagar, Lucknow.

.....Applicant

**V E R S U S**

1. Union of India through the Secretary, Ministry of Communications, Department of Post, Dak Bhawan, Sansad Marg, New Delhi 110 001.
2. Chief Postmaster General, U.P. Lucknow.
3. Shri Pal Maurya, Senior Hindi Translator Office of Chief Postmaster General, U.P. Lucknow.

.....Respondents

Advocate for the applicant: **Shri R.S. Gupta**

Advocate for the Respondents: **Shri V. Chaudhary**

Reserved on 19.7.2012

**ORDER**

**BY HON'BLE MS. JAYATI CHANDRA, MEMBER -A**

The applicant has sought quashing of order No.12-7/97-SPG dated 18.8.2005 by which his representation seeking parity with certain others regarding counting of adhoc continuous service in Group 'B' post for the purpose of promotion to Group 'A' was turned down. He has prayed for the counting of ad hoc services for the purpose of promotion and seniority to the post of Senior Hindi Officer at par with others.

*J. Chandra*

2. The brief facts as averred by the applicant are that he had been appointed as Senior Hindi Translator Grade I on 19.3.1981 (Annexure A-2) and was made a Hindi Officer by order dated 7.1.1986 (Annexure A-3). He was further promoted to Hindi Officer in Group 'B' cadre on temporary basis by order dated 6.7.1986 (Annexure A-4). He was made permanent w.e.f. 9.11.1995 after working on an adhoc basis for 9 years by order dated 9.11.1995 (Annexure A-5). Thereafter he was denied promotion to Group 'A' post while certain other was promoted vide order dated 11.3.1997 (Annexure A-12). Aggrieved by certain discrimination as he was eligible for promotion to Group 'A' in 1994 only he was filed O.A. No. 340/1997, which was disposed of with a direction to consider his representation on merits and the same was disallowed by the impugned order.

3. The applicant has given specific instance of discrimination:-

(a) In the case of one Shri S.P. Maurya averments are that he was initially appointed on adhoc basis as Hindi Translator II w.e.f. 18.1.1984 even though he was ineligible on grounds of not having the required educational qualification. His services in Grade II were regularized vide O.M No. Rectt./R-89/93/1 dated 4.2.1994 (Annexure A-7). This regularization was made disregarding the fact that there was a period when Shri Maurya was not working as adhoc Hindi Translator Grade II but had been reverted to

*J. Chaudhary*

his substantive post of U.D.C. Order dated 19.3.1987 (Annexure A-9B) is a transfer order for U.D.C in which Shri Maurya is being transferred as U.D.C.

(b) One Shri Hira Lal and Shri Raj Kumar were also regularized w.e.f. 11.1.1983 and 5.10.1987 respectively by order dated 5.3.1991 (Annexure A-6). The said Shri Raj Kumar was promoted to the level of Group 'A' by order dated 11.03.1997 which had been challenged in the earlier O.A. NO. 340/1997. Similarly S/Shri Bharat Singh and R.S Srivastava were promoted as Senior Hindi Officer in Group 'A' after counting their adhoc continuous service in Group 'B'.

4. The respondents No.1 and 2 have basically reiterated the stand which they took in the impugned order. Their averments are that the case of the applicant and that Shri S.P. Maurya are different. Shri Maurya was initially appointed on adhoc basis in the post of Hindi Translator Grade II. Since his services were regularized by memo dated 4.2.1994, w.e.f. 1984 therefore, in promoting him to Senior Hindi Translator Group I, there was no question of counting his adhoc services. The applicant was throughout working on adhoc basis. He was appointed as Hindi Officer Group 'B' adhoc basis w.e.f 6.7.1986. Recruitment Rules for Hindi Officer is that 50% is appointed through Direct Recruitment, 30% by promotion and 20% by transfer on deputation basis. The applicant was working against the quota

*J. Chaudhary*

of 20% deputation basis. As the vacancy in he promotion quota arose only in 1995 the applicant, based on his educational qualification, merit and seniority was regularized against the vacant post only on 9.11.1995. His seniority was fixed accordingly. They have stated "the matrix in the case of Shri S.P. Maurya is not similar to Dr. V.K. Saksena. The services of Shri Hira Lal and Raj Kumar have no concern with Postal Department. Their cases relate to Office of Chief General Manager, Telecom, U.P. Lucknow.

5. Private respondent No. 3 has also stated in his counter that the services of the applicant was initially taken w.e.f. 10.3.1981 as Senior Hindi Translator Grade I but his services were never regularized in that grade. He was promoted on adhoc basis on 7.1.1986 to the post of Hindi Officer against 20% vacancy meant for deputationist. In fact this appointment itself was irregular as the Recruitment Rules to the post of Hindi Officer is three years regular service in the post of Senior Hindi Translator Grade I and he was never regularized in that post. The applicant was regularized as Hindi Officer only in 1995.

6. The respondent No. 3, on the other hand, initially appointed on adhoc continuous basis as Hindi Translator Grade II on 18.1.1984. His services were regularized in Grade II with effect from 18.1.1984. He was promoted to the post of Hindi Translator Grade I on 18.10.1994 and he was promoted as Hindi Officer/Assistant Director vide order dated 7.7.2006. He

*S. Chaudhary*

has further said that he was eligible for appointment on ad hoc basis and that Competent Authority has the power to relax qualification.

7. In his rejoinder to the counter affidavit, the applicant has stated that under rules ad hoc/temporary promotions are to be limited to 90/120 days but he carried on on an ad hoc basis for 5 years as Sr. Translator Grade I and on 9 years as Hindi Officer/Assistant Director for more than 9 years. It was also averred that the posts were vacant on 7.1.1986 in Group 'B' and on 9.11.1995 in Group 'A'. It was only due to the fact that D.P.C for regular promotion was not held during 1986 to 1994 and D.P.C. held in 1995, applicant was required to be regularized against 1986 vacancy even in 20% quota.

8. We have heard counsel for the parties and perused the records on file. The basic issue to be seen here is whether there was equality of treatment for employees having equal status and whether anyone, was fast tracked from the lower level to the equivalent level and beyond. The scope of this O.A is limited to the case of the applicant as measured against the treatment given to respondent No. 3 as other persons, who have been named, have not been impleaded as parties in the O.A.

9. The admitted facts by both the parties are on a comparative basis are as follows:-

*J. Chennakeshava*

In the case of Applicant	Post and Date of 1 <sup>st</sup> appointment	Effective date of regularization	Next appointment	Regularized as Hindi Officer
	Sr. Hindi Translator Grade I	Nil	Hindi Officer	
	19.3.1981			9.11.1995
In the case of respondent No.3.	Hindi Translator II w.e.f.		Senior Hindi Translator Grade I	Regularized as Hindi Officer
	18.1.1984	18.1.1984	4.2.1994	

10. It can thus be summed up that Shri Maurya were regularized after 10 years service on ad hoc basis with retrospective effect. Applicant was regularized after 14 years service with effect from the date of such order. A perusal of regularization order in the case of Shri Maurya is quoted below:-

*"In pursuance of instructions contained in D.O's letter No. E-11021/1/86-01 dated 19.5.1987, the Director Postal Services O/o Chief P.M.G U.P. Circle Lucknow has ordered the regularization of ad-hoc appointment of Shri S.P. Maurya on the post of Hindi Translator Gr. II in the pay scale of Rs.1400-2300. He was appointed to work as Hindi Translator Gr. II by D.P.S., Lucknow Region vide memo No.RDL/STA/L-1/1 dated 18.1.84".*

11. Although no service rules of regularization of the department are quoted by the respondents to show the governing principle of Regularization at various level, it would appear that while regularization at Grade II level have been done fairly, regularly and with ex-post facto effect, the same is

*T. Venkatesh*

not the case with persons working on ad-hoc basis at the Hindi Translator Grade I. In fact the applicant was regularized after working for 14 years. While certain persons may be employed on ad hoc basis for limited period of time but to have an employee continuously in a regular cadre on an ad hoc basis for a long period of time when others in the same cadre are being regularized without any overt reason is tantamount to discrimination.

12. Shri Maurya has been given the benefit of his regularization right through his promotion. Though various levels of Grade II, Grade I, Incharge, Hindi Officer, Hindi Officer Group 'B' and Group 'A'.

13. While in the case of applicant, it is stated that regularization process for applicant was not possible till a vacancy arose. It is not clear why the applicant was not regularized as Senior Hindi Translator Grade I. In regularizing the services of respondent No.3 no such constraint of availability of post has been stated.

14. The respondents No. 1, 2 & 3 have continued to state that the case of applicant cannot be compared with that of Respondent No. 3 as the "matrix (to quote from impugned order) was different". Of course it was different and the difference was allowed to be perpetuated through the omission of regularizing of the services of the applicant till as late as 1995.

*J. Chaudhary*

15. It is also not clear whether an employees working on an ad-hoc basis was required to be regularized at one level only or at various levels.

16. The only rule position quoted is in the case of recruitment to Group 'B' position and the requirement of vacancy. It is not clear how the case of Shri Maurya was difference in the matter of recruitment/promotion/deputation to Hindi Officer Group 'B'.

17. The Respondent No.3 has in his Counter Affidavit at one point has stated that (para 5) "*The Competent Authority has the power to relax the qualification*". This admission does inadvertently admit to his having been recipient of some relaxation regard to his eligibility as the same is made in reply to the averment of the applicant that he was ineligible for post of Hindi Translator.

18. Throughout the case, the applicant has pleaded for counting of his ad hoc services for consideration for promotion. The lacunae here appear to be non-regularization of services of the applicant in accordance with rules for regularization and the consequential benefit of promotion over a long period of time which rendered him ineligible for a post for which certain minimum tenure of regular appointment was the required qualification. The respondents cannot first carry on with an ad hoc position for a very long time and then take the plea that his services were ad hoc.

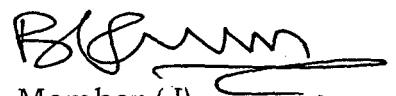
*J. Chandra*

19. We therefore, find merit in the O.A. O.A. is allowed. The impugned order dated 18.8.2005 is set aside. The case is remanded to the respondents to determine the regularization of applicant in the Senior Hindi Translator Grade I in accordance with rules and regularization and at par with persons who were equal to or junior to him and award all consequential benefits.

No costs.



Member (A)



Member (J)

Manish/-