

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

Lucknow this the 24th day of May, 99.

O.A. No. 445/91.

HON. MR.D.C. VERMA, MEMBER (J)

HON. MR. A.K. MISRA, MEMBER(A)

A.K. Dass son of late Shri Gobardhan Dass,
aged about 43 years, r/o C-44/3, R.D.S.O.
Colony, Lucknow.

Applicant.

By Advocate Shri W.H. Haidari.

versus

1. Union of India through Secretary, Railway Board New Delhi.
2. Director General, R.D.S.O. Lucknow.
3. S.O.E. VI, R.D.S.O., Lucknow.

Respondents.

By Advocate Shri Praveen Kumar, Brief Holder for
Shri Anil Srivastava.

O R D E R

D.C. VERMA, MEMBER(J)

By this O.A., the applicant has claimed seniority on the post of L.D.C. w.e.f. 3.5.82, the date the applicant was appointed on the said post instead of 25.10.90 the date on which he was regularised.

2. The applicant was initially appointed on a class IV post on 26.7.73. For filling up two posts of L.D.C. through Limited Departmental Examination against 10% quota a notification was issued on 28.11.81. Both these posts were reserved. One was reserved for Scheduled Tribe and the other was reserved for Scheduled Caste. This notification, however, provided that in addition to these reserved vacancies, some more vacancies of L.D.C. will also be filled up

from candidates who qualified in this test on purely adhoc basis subject to their replacement on availability of candidates selected by Staff Selection Commission (in short S.S.C.). As a result of such selection a list of 12 qualified candidates was prepared and the applicant was placed at serial No. 10. ~~however, as~~ The post of L.D.C. to be filled from candidates selected by S.S.C. was available, so the applicant was appointed as L.D.C. on adhoc basis w.e.f. 3.5.1982 subject to replacement by candidate selected by S.S.C. Since then, the applicant has been working on the post of L.D.C. The respondents however, vide the impugned order dated 26.10.90 (Annexure-5 to the O.A.)~~as~~ regularised the applicant on the post of L.D.C. w.e.f. 25.10.90 against the available vacancy of L.D.C. The applicant has, by filing this O.A., claimed regularisation w.e.f. the date of his ad-hoc promotion i.e. 3.5.82. The submission of the learned counsel for the applicant is that as a clear vacancy was available, to which the applicant was promoted, after a selection test, the applicant should have been given seniority w.e.f. the date of his ad-hoc promotion. The submission in effect, is that though the applicant was promoted w.e.f. 3.5.82, on adhoc basis, the period the applicant served as adhoc L.D.C, be also counted towards seniority. In support of his submission the learned counsel for the applicant has placed reliance on the following decisions:

1. Direct Recruit Class II Engineering Officers Association vs. State of Maharashtra and others reported in (1990) 2, S.C.C., 715.
2. J.K. Verma and another vs. Union of India and others reported in 1990, A.T.C., 14,

3. Udai Veer Singh and others vs. Union of India and others reported in (1992) 19, A.T.C., 315.

4. Bhagwati Prasad vs. Smt. Bhaagwati Devi reported in A.I.R. 1981, S.C. 371.

3. The learned counsel for the applicant has also drawn our attention towards para 4(II) of the Counter Affidavit, wherein it is mentioned, with reference to ^{1/2} Railway Board Circular, that service rendered on adhoc basis shall be taken into account if it is followed by regularisation without break.

4. The learned counsel for respondents, has however, contested the claim of the applicant and has submitted that the case of the applicant for seniority is not covered by the decision of the apex court in the case of Direct Recruit Class II, Engineering Officers Association (Supra). The learned counsel for the respondents has also submitted that in para 2 ~~with reference~~ reference of Railway Board Circular has been wrongly quoted as the same is not applicable in the case of the applicant. The said Railway Board Circular, it has been submitted, is in respect of employees given higher grade within Group C. We are therefore, required to consider in this case, the principle which will be applicable for giving seniority to applicant who was promoted from Group D to Group C on adhoc basis against a vacancy to be filled up by a candidate selected by S.S.C.

6. It is ~~not~~ denied that for group D employees only 10% of vacancies of Group C ^{posts} are limited for promotion through Limited Departmental Competitive Examination. The remaining vacancies

are to be filled by direct recruitment basis from candidates selected by S.S.C.

7. Notice Anneuxre-1 shows that under 10% quota only two posts were available and both were reserved. However, due to vacancies in the direct recruitment quota, a list of 12 candidates was prepared. It was mentioned in the notice that those who cleared the test, (against the direct recruitment quota) may be appointed purely on adhoc basis subject to their replacement on availability of candidates selected by S.S.C. The appointment letter Anneuxre-3 also shows that the applicant alongwith others was appointed as L.D.C. purely on adhoc basis for one year from the date of appointment or till they were to be replaced by candidates from S.S.C. or by regularly empanelled candidates as and when selected against 10% quota reserved for Group D staff. Thus, promotion/^{of} the applicant was not against 10% quota reserved for group D staff. The appointment of the applicant was only adhoc and on temporary basis as the suitable candidates from S.S.C. were not available.

8. The Counter affidavit also shows that for subsequent vacancies under 10% quota reserved for group D staff, the applicant was given various opportunities to appear in the selection which was held in June, 83, June, 84, June 86 and October, 1988. The applicant either did not apply for the selection or did not appear in the selection. Thus, the applicant was never selected against the 10% quota on the basis of selection which was held between 1983 to 1988. The applicant continued to work on adhoc basis only against the quota prescribed for direct recruits.

[Signature]

9. The case of Direct Recruit Class II Engineering Officers Association(supra) has been considered by the apex court in the case of U.P. Secretariat U.D.A. Association and others vs. State of U.P. and others reported in (1999) 1, S.C.C. 278. The Supreme Court has held as below:

'Merely because temporary appointment or promotion came to be made, seniority cannot be counted from the date of officiation except when the appointment was made in accordance with rules. Though appointment is temporary, if it was made in accordance with rules, and to a substantive vacancy, seniority will be counted from the date of temporary promotion. Necessarily, the quota and rota require to be maintained so as to give effect to the object envisaged under the rules. Mere inaction cannot be made the ground to contend that the quota rule was broken down. It is not in dispute that appointments have been made in officiating capacity against the vacancies reserved for direct recruitment though no recruitment had taken place. They are not according to the rules and within the quota. Direct recruitment is to be treated from the date on which a candidate ~~was~~ actually joined the service, though vacancies did exist prior to that. As a consequence, the promotees are also required to be fitted into the service from the date when they are entitled to fitment in accordance with the quota and rota prescribed under the rules."



10. In the light of the decision of the apex court quoted above, the applicant who was appointed only on adhoc basis against direct recruitment quota cannot get seniority from the date of his ad-hoc promotion. ~~is~~. The period during which the applicant worked on adhoc basis cannot be counted towards seniority. The question whether the applicant could or could not be regularised against direct recruitment quota, is not open for examination in this O.A., and therefore, we refrain ourselves from examining the same.

11. The learned counsel for the applicant has submitted that the respondents themselves in their counter affidavit admitted that service rendered on adhoc basis shall be taken into account, if it is followed by regularisation without break. The learned counsel for the respondents, on the other hand, referred to the Railway Board circular, the extract of which was quoted in the Counter Affidavit and has submitted that out of context the quotation has been made in the counter affidavit. The submission of the learned counsel for the respondents is that the circular is meant for group C staff only. The copy of the circular has been brought on record and has been examined by us. Even in the Counter affidavit, it is mentioned in para 4(i) that "minimum period of service for eligibility for promotion within Group C, shall be determined in the immediate lower grade irrespective of whether the employee belongs to reserved community or not. Para 4(ii) says "service for this purpose shall be the service actually rendered on regular basis. (emphasis laid by us). The service rendered on adhoc basis however,



is to be taken into account for this purpose if it is followed by regularisation without break. A reading of the two paragraphs show that para 4(ii) is with reference to para 4(i). The two paragraphs cannot be read independently. Both the paragraphs have to be read jointly and not separately and therefore, the rule that service rendered on adhoc basis shall be taken into account if it is followed by regularisation without break, is for persons promoted within group C from lower grade to a higher grade. In view of this, submission of the learned counsel for the applicant that the applicant is entitled for benefits of this circular, has no merit.

12. The learned counsel for the applicant has placed reliance on the decision of Udai Veer Singh (supra). This decision is of no help to the applicant as it does not show that the applicants were not promoted on adhoc basis against the vacancy provided for group D staff.

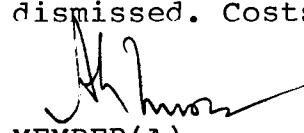
13. The other decision cited by the learned counsel for the applicant in the case of J.K. Verma and another (supra) is also of no help to the applicant. ~~as~~ In the cited case there was no rule and no quota was prescribed for direct recruits. The adhoc promotees who were duly selected were given seniority in the absence of rule. In the case before this Bench, there is rule for promotion and specific quota limited to 10% of the vacancies for group 'D' is provided. Thus, the decision of J.K. Verma's case (supra) is of no help to the applicant.

14. In the case of Bhagwati Prasad (supra) the question for consideration was equal pay for equal work to daily rated workers. The question of their non-regularisation on the ground of not

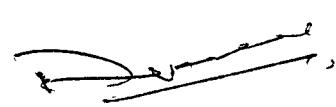


possessing minimum prescribed educational qualification was also under consideration before the apex court. The points before the apex court in the Bhagwati Prasad case are not relevant for decision of the present case.

15. In view of our discussions made above, we find no merit in the O.A. The same is therefore, dismissed. Costs easy.



MEMBER(A)



MEMBER(J)

Lucknow; Dated: 24. 5. 99

Shakeel/