

(d9)

CAT/J/12

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW BOMBAY BENCH

O.A. No.

342/87

XXXXXX  
XXXXXX

198

DATE OF DECISION 9.2.1990

Ullal Janardhan Kini

Petitioner

Mr. G.S. Walia

Advocate for the Petitioner(s)

Versus

The Secretary, Ministry of Textiles &amp; Ors.

Respondent

Mr. P.M. Pradhan

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. G. Sreedharan Nair, Vice-Chairman,

The Hon'ble Mr. M.Y. Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
 (G. SREEDHARAN NAIR)  
 VICE-CHAIRMAN.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.342/87.

Ullal Janardhan Kini.

... Applicant.

V/s.

Secretary to the Government  
of India, Ministry of Textiles,  
Udyog Bhavan,  
New Delhi & Others.

... Respondents.

Coram: Hon'ble Vice-Chairman, Shri Sreedharan Nair,  
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:-

Applicant by Mr.G.S.Walia, and  
Respondents by Mr.P.M.Pradhan.

JUDGMENT:-

Dated: 9.2.1990

(Per Shri G.Sreedharan Nair, Vice-Chairman)

The applicant, a Deputy Director (Costing) under the second respondent, the Textile Commissioner, Bombay has filed this application, being aggrieved by his ranking <sup>in</sup> the seniority lists of Assistant Director <sup>as on 31.12.1977</sup> Gr.I (Costing) circulated on 5.5.1978, and as on 1.6.1984, circulated on 15.11.1984 (Appendix P & Q to the application). The complaint is that his continuous and uninterrupted service in the cadre from 1.3.1971 to 15.7.1977 has been ignored and the third respondent who was appointed as Assistant Director only on 3.2.1977 has been shown senior to him. A representation was submitted by the applicant which was rejected by the letter dated 3.4.1987 (Appendix 'A'). The applicant prays for quashing the said order and for declaring that the entire period from 1.3.1971 to 15.7.1977 be counted as regular service for the purpose of assigning seniority to the applicant in the cadre of Assistant Director Gr.I (Costing) and for consequential benefits.

2. It is urged that the principle of reckoning continuous service in a post for the purpose of determining seniority has been accepted in a number of judicial pronouncements. It is pointed out that the appointment ~~of~~ the applicant on ad hoc basis was against a substantive post and it was continued beyond the maximum permissible period and as such the entire period during which he worked in the post of Assistant Director had to be reckoned in the matter of assignment of his seniority.

3. In the reply filed by the respondents 1 and 2 it is contended that the application is barred by limitation in view of section 21 of the Administrative Tribunals Act and that it is not maintainable in view of the laches on the part of the applicant, since the challenge is against the seniority list circulated as early as on 5.5.1978 and the one that was circulated on 15.11.1984. It is pointed out that the latter was merely based on the earlier seniority list and as such the publication of the same does not afford a fresh cause of action to the applicant. It is contended that against the seniority list that was circulated on 5.5.1978 the applicant had not made any representation.

4. On the merits it is stated that according to the Recruitment Rules governing appointment to the post of Assistant Director, Gr.I (Costing), Costing Investigators who have rendered 7 years of service in that grade alone are eligible for consideration for promotion. It is stated that the applicant having been promoted to the post of Costing Investigator only on 1.9.1965 did not even have the eligibility for being considered for promotion as on 1.3.1971, and that as

the proposal was only to have a purely ad hoc arrangement the applicant was appointed to the post with a clear stipulation that it will not confer any right on him to continue in the post indefinitely or to claim seniority on the basis of the said appointment. It is further stated that the DPC that met on 16.8.1971 for selection of Officers for promotion to the cadre of Assistant Director Gr. I recommended one Shri S.R.Ray who was officiating as Assistant Director since 1966. In the meanwhile, Shri Ray was selected by the U.P.S.C. against the direct recruitment quota and accordingly he was fitted in as a direct recruit. According to the Recruitment Rules there is scope for promotion only after accommodating three direct recruits. Since the next vacancy was meant for a Scheduled Caste candidate as per the reservation roster the post was advertised by the U.P.S.C., but the ~~re~~ was no response and as such the ad hoc arrangements were allowed to be continued with the permission of the U.P.S.C. After the vacancy was de-reserved, advertisement was again made and accordingly Shri L.A.Sahasrabudhe was appointed in a regular capacity w.e.f. 29.3.1975, and the ad hoc appointment of the applicant was continued against the reserved vacancy with the consent of the U.P.S.C. Thereafter, fresh requisition was made in September, 1975 for advertising the vacancy again and accordingly pursuant to the advertisement issued an interview was conducted by the U.P.S.C. on 27.1.1976 in which the applicant also participated, but the third respondent was selected. It was thus that the third respondent was appointed on 3.2.1977. Though the result of the selection was intimated by the U.P.S.C.

in February, 1976 the third respondent could assume charge only in February, 1977 since he was working in some other department. The respondents have also pointed out that the vacancy arising under the promotion quota actually arose only on 16.2.1976 when Shri S.R.Ray was appointed as Deputy Director. The DPC that met in June, 1977 recommended regular appointment of the applicant to the post and thus the applicant was promoted to the post on a regular basis w.e.f. 15.7.1977 against the first vacancy that is available for the departmental promotee in accordance with the amended Recruitment Rules. In view of the above it is contended that the period from 1.3.1971 to 15.7.1977 during which the applicant officiated in the post of Assistant Director cannot be reckoned for the purpose of determination of seniority as it was purely fortuitous and a stop gap arrangement. The third respondent has also filed a reply on the aforesaid lines.

5. The facts are not in controversy. Actually, when the applicant was promoted to the cadre of Assistant Director he did not even have the requisite qualifying service in accordance with the Recruitment Rules. It was clearly indicated in the order of promotion that it is purely ad hoc and will not confer any right on the applicant to claim seniority in that cadre on account of the same. Admittedly, the applicant was regularly appointed to the cadre of Assistant Director only on 15.7.1977.

6. Placing reliance on the Judgment of the Principal Bench of this Tribunal in K.N.MISRA's case (1986 (3) S.L.J. (CAT) 61) the Counsel of the <sup>l/cab</sup> applicant submitted the benefit of continuous

officiation by the applicant in the post of Assistant Director has to be given. Reliance was also placed on the decision of the Principal Bench in S.C.Jain V/s. Union of India (1986(3) S.L.J. 124) to argue that when once an ad hoc employee is regularly appointed to the post he has a right to count his previous ad hoc service for the purpose of seniority. The decision of the Supreme Court in A.N.Pathak V/s. Secretary ~~pressed~~ to Government was also placed into service, wherein ~~after~~ reference to the earlier decisions, the Supreme Court condemned the practice of keeping vacant the posts to be filled by direct recruitment and inserting the names of the direct recruits as and when they are recruited at the places reserved for them regardless of the fact that many promotees had put in years of service by then. These submissions were countered by Counsel for the respondents who pointed out that on the facts of the instant case the aforesaid decisions are of no application. Special reference was made to the later decision of the Supreme Court in Ashok Gulati's case where after a reference to the aforesaid decisions it was held that they turned on their ~~on~~ peculiar facts and do not lay down any rule of universal application.

7. We are inclined to agree with the Counsel of the respondents. It may be pointed out that even in the decision in Narendra Chadha's case the Supreme Court had made it clear that "it is not our view that whenever a person is appointed in a post without following the rules prescribed for appointment to that post he should be treated as a person regularly appointed to that post." Relief was granted in that case because the petitioners therein were holding the post

for nearly 15 to 20 years and the DPC met only thrice between 1965 and 1984.

8. It is now well settled by a series of decisions of this Tribunal that the rota rule of seniority cannot be given effect to only if there has been a break down of the quota rule or a violent ~~from~~ deviation ~~of~~ the same. There is no case for the applicant that there has been a break down of the quota rule. From the facts narrated earlier it is seen that respondents 1 and 2 had taken effective steps for making the direct recruitment, but it was only on account of the fact that there was no response to the advertisement that it could not be made in time. It was during this period that the applicant was permitted to continue in the post on ad hoc basis. It is also to be noticed that at the time of initial appointment of the applicant to the post he did not even have the requisite qualifying service. In the circumstances, we have to accept the contention of the respondents that the officiation of the applicant in the post during the period from 1.3.1971 to 15.1.1977 was purely fortuitous and on an ad hoc arrangement. As pointed out by the Supreme Court in the decision in Ashok Gulati's case "an ad hoc or fortuitous appointment on a temporary or stop gap basis cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold the post on a regular basis, as such temporary tenure hardly counts for seniority in any system of service jurisprudence".

9. It is in evidence that when the turn of ~~the~~

the promotee for regular appointment arose in accordance with the rules steps were promptly taken, the DPC was constituted and pursuant to the recommendation of the DPC the applicant was regularly appointed to the post. As such the applicant can claim seniority only from the said date viz. 15.7.1977, and cannot claim to be senior to the third respondent who was selected in the year 1976 and joined service in February, 1977.

10. There is considerable force in the contentions of the respondents that the application is barred by limitation and is not maintainable in view of the laches on the part of the applicant. The seniority list of Assistant Directors as on 31.12.1977 was circulated on 5.5.1978. In the said seniority list the third respondent was shown as senior to the applicant, the applicant did not choose to challenge the same, the subsequent seniority list as on 1.6.1984 based was circulated on 15.11.1984. It was only on the previous seniority list. The present application has been filed only in the year 1987. Admittedly, the first representation that was made by the applicant was on 16.5.1986, as is clear from paragraph 9 of the application.

11. It follows that there is no merit in the application. It is accordingly dismissed.

*W.H.*  
9.2.90  
(M.Y. PRIOLKAR)  
MEMBER (A)

*G.S.N.*  
9.2.1990  
(G. SREEDHARAN NAIR)  
VICE-CHAIRMAN.