

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 399 OF 1998.

Date of Decision: 4/5/98

Shri Pravin D. Shrotri,

Applicant.

Shri P. A. Prabhakaran,

Advocate for
Applicant.

Versus

Union Of India & Anr.

Respondent(s)

Shri R. R. Shetty for

Shri R. K. Shetty,

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri. D. S. Bawaja, Member (A).

(1) To be referred to the Reporter or not? *W*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *W*

Reported
(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

os*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG. NO. 6, 4TH FLR, PRESCOT RD, FORT,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO: 399/98.

DATED THE 4th DAY OF APRIL, ^{may} 1999.

CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman.
Hon'ble Shri D.S. Beweja, Member (A).

Shri Pravin D Shrotri,
Naval Materials Research Laboratory,
Naval Dockyard, Tiger Gate,
Ballard Pier, Mumbai - 400 023. ... Applicant.

By Advocate Shri P.A. Prabhakaran.

v/s.

1. Union of India, through
The Director General Research &
Development, R&D Organisation,
Directorate of Personnel,
'B' Wing, 'Sena Bhavan',
DHQ P.O. ; NEW DELHI-110 011.
2. The Director,
Naval Materials Research Laboratory,
Naval Dockyard, Tiger Gate,
Ballard Pier, Mumbai - 400 023. ... Respondents.

(By Advocate Shri R.K. Shetty for Shri R.K. Shetty).

I O R D E R I

I Per Shri R.G. Vaidyanatha, Vice Chairman I

This is an application filed under section 19 of
Administrative Tribunals Act. Respondents have filed reply.
We have heard the learned counsels appearing on both sides.

The applicant's case is as follows:-

- 1) The applicant was promoted as Junior Scientific Assistant (JSA-I) by order dated 6/3/84, mentioning that it is a promotion on adhoc basis and the service will not count towards qualifying service for promotion to next grade and the promotion was subject to de-reservation of reserved vacancy. The applicant's adhoc promotion came to be regularised with effect from 22/8/84 after the reserved vacancy was de-reserved. The applicant was not given promotion to the next grade after

expiry of three years from 6/3/84 on the ground that it was adhoc service and hence will not count for qualifying service for next promotion. It is stated that the applicant's immediate 5 seniors got their first promotion as JSA-I by order dated 2/1/84 and they were given next promotion after completion of three years from that day. The applicant's allegation is that 3 of his seniors, Smt. S. S. Mandvilkar, Shri S. A. Lonkar and Shri S. B. Shaikh had also been promoted against reserved vacancies subject to de-reservation but their promotion from 2/1/84 was treated as regular promotion for the purpose of qualifying service for the next promotion. According to the applicant the adhoc service followed by regularisation should be counted for all purposes including seniority and promotion. The applicant made number of representations to the Government on this point. After number of representations from the applicant, the Government issued a letter dated 23/7/96 under which clarification was given that in case of adhoc promotion resulting in regularisation, the service from the date of DPC or the date of assumption of promotion whichever is later should be treated as commencing of regularisation of service. On the basis of this letter dated 23/7/96, the applicant wants that his initial promotion from 6/3/84 which has been subsequently regularised should be treated as qualifying service for the purpose of next promotion and seniority. But the Government issued one more letter dated 30/12/96 stating that the adhoc service will only count for the purpose of seniority in the cadre but it will not count for the purpose of qualifying service for next promotion. On these allegations, the applicant has approached this Tribunal that respondents be directed to implement their decision conveyed in the letter dated 23/7/96 and accordingly they be directed to declare that applicant's promotion from 6/3/84 shall be treated as qualifying service for the purpose of next promotion and accordingly the respondents

may be directed to consider the case of applicant for next promotion after the expiry of three years from 6/3/84 and grant him all consequential benefits including pay fixation, payment of arrears, interest, etc.

2. The respondents in their reply have asserted that this adhoc promotion subject to dereservation cannot be treated as qualifying service for next promotion. They have made it clear that this adhoc promotion from 6/3/84 till it was regularised in 22/8/84 cannot be treated as regular service and qualifying service for the next promotion. It is further stated that the claim of the applicant is belated and it will affect the seniority position of other officials. The Supreme Court has ruled that adhoc service prior to regularisation cannot be counted for the purpose of seniority. The application is barred by limitation, delay and latches.

The applicant was not eligible for the next promotion on 6/3/87 since he did not have the required qualifying service of regular service of three years. It is therefore stated that the applicant is not entitled to any other reliefs hence ^{they} pray that application be dismissed.

3. The Learned Counsel for the applicant contended that applicant must get both seniority and eligible service for next promotion from the date of adhoc promotion, namely - 06.03.1984. On the other hand, the Learned Counsel for the respondents maintained that since the applicant's adhoc promotion was against a non-existing vacancy, he cannot get benefit of that adhoc service till the date of de-reservation. Admittedly, the applicant's promotion was against a reserved vacancy subject to obtaining orders of dereservation. Since SC/ST candidate was not available, the administration has given adhoc promotion to the applicant subject to obtaining the orders of dereservation from the competent authority.

We need not go into the question on first principle, since the matter is covered by a direct decision of the Apex Court reported in 1998 SCC (L&S) 1429 [P.K. Singh V/s. Bool Chand Chablani & Others]. That was also a case where adhoc promotion was given against a reserved post subject to getting dereserved. Then subsequently, order of dereservation came and a fresh order of regular promotion was issued. The Supreme Court held that the adhoc promotion was dehors the rules and the official cannot get the benefit of the said adhoc service for seniority, etc. Since it is an identical case of adhoc promotion against reserved post subject to dereservation, the authority directly applies to the facts of the present case. In view of the law declared by the Apex Court, the applicant cannot claim the benefit of the adhoc service either for seniority or eligibility for qualifying service for next promotion.

The Learned Counsel for the applicant relied on 1998 SC (L&S) 1362 [Scientific Advisor to Raksha Mantri & Another V/s. V. M. Joseph]. In our view, the said decision has no bearing on the facts of the case. The question decided in that case was that in a case of request transfer, though the official loses seniority, since he will be placed at the bottom of seniority list in the transferred place, ^{whether} he is entitled to get the benefit of erstwhile service in the previous place for the purpose of eligibility for next promotion. The Supreme Court held that though in a case of request transfer the official may lose seniority, the previous service can be counted for the purpose of deciding eligibility service for the next promotion. The question of adhoc service being considered for the purpose of



seniority or eligibility was neither raised nor decided in that case. If there is an adhoc promotion dehors the rules, the said decision will not help the applicant in any way. On the other hand, the earlier decision mentioned above in P. K. Singh's case is directly attracted to this case. Though the applicant is not entitled to seniority and eligibility on the basis of adhoc promotion, still the department itself has taken a policy decision to give seniority from the date of adhoc promotion to everybody but they have made it clear that it will not count for eligibility or qualifying service for the next promotion.

4. Then the Learned Counsel for the applicant contended that officials similarly placed like the applicants have been given benefit/ of adhoc service and this has been denied to the applicant and thereby there is vice of discrimination which is hit by Article 14 of the Constitution. Now let us examine this grievance of the applicant about discrimination.

Five of the seniors to the applicant were promoted by order dated 02.01.1984 from Lab. Assistant to J.S.A.-I but applicant could not be promoted for want of vacancy. Then applicant was promoted on 06.03.1984 on adhoc basis subject to dereservation of the reserved vacancy and with a further condition in the order that the said adhoc service will not count towards qualifying service for promotion to the next grade. The applicant has pleaded that those five seniors who were promoted as J.S.A.-I by order dated 02.01.1984 were further promoted as Sr. Scientific Assistant by order dated 16.03.1987. He has further alleged that out of those five persons,

three persons namely - Smt. S. S. Mandvilkar, Shri S.A. Lonkar and Shri S. B. Shaikh, got the next promotion as S.S.A. subject to dereservation of reserved vacancy but still they were given further promotions to the higher grade of Rs. 2375-3500 on the expiry of three years and it could not have been granted.

Let us examine the grievance of the applicant.

For one thing, it is not a case of promotion from S.S.A. to another post. It is the case of giving higher pay scale on the expiry of three years from the previous promotion. Admittedly, the three officials, Smt. S. S. Mandvilkar, Shri S. A. Lonkar and Shri S. B. Shaikh, were given adhoc promotions against reserved vacancy by order dated 16.03.1987. But the applicant has not placed before us as to on what date dereservation order was issued. If exactly from 16.03.1997 on the expiry of three years higher scale had been given, then it can be argued that those officials have been given the benefit of adhoc service though they had been promoted against reserved vacancy subject to dereservation. On the other hand, the order granting higher pay scale dated 22.08.1995, which is at page 27 of the paper book clearly shows that these three officials who are at Sl. Nos. 122, 124 and 125 are given higher scale w.e.f. 23.07.1990. It is not w.e.f. 16.03.1990. The respondents have clearly stated in the reply that these three employees were given further adhoc promotion on 16.03.1987 but they were given higher pay scale not on the expiry of three years which should have been 16.03.1990 but they have given the higher pay scale w.e.f. 23.07.1990. It is also stated by them that these three officials were given regular promotion as

S.S.A. w.e.f. 01.07.1987 though the adhoc promotion was from 16.03.1987. Only after three years they were given higher pay scale w.e.f. 23.07.1990. The applicant has nowhere alleged the date of dereservation order in respect of these three officials. At any rate, the higher scale is not given exactly on the expiry of three years, as alleged by the applicant but there is difference of four months and it is quite possible that during that period their promotion had been made regular and that is how the respondents have clearly stated in para 11 that those three persons were given regular promotion as S.S.A. w.e.f. 01.07.1987. Therefore, in our view, the question of discrimination does not arise, since those three candidates were given higher pay scale only on the expiry of three years of regular promotion and not on the expiry of three years of adhoc promotion.

5. In para 4.10 of the Original Application the applicant has alleged two other Lab. Assistants, Shri R. S. Pandey and Shri Dharmant Singh, who were given adhoc promotion as J.S.A.-I subject to dereservation by order dated 15.03.1985 and their services have been made regular from that very date itself. The respondents have explained in the reply that by mistake those two employees' promotion has been shown against dereserved vacancy and the mistake was corrected later.

The promotion order of Shri R. S. Pandey and Shri Dharmant Singh dated 15.03.1985 is at page 38 of the paper book. It no doubt shows that it is adhoc promotion

subject to dereservation of the reserved vacancy of SC/ST by competent authority. Therefore, this document no doubt supports the case of the applicant. But however, the very next document produced by the applicant which is dated 11.04.1985, the department has issued correction order. It says that in respect of promotion of R. S. Pandey and Dharmant Singh, the words "on adhoc basis subject to dereservation, etc." should be deleted.

Therefore, by mistake those two promotions have been shown against reserved vacancy which was infact against regular vacancy and not reserved vacancy. The department realised the mistake and ... within a month issued the order of correction. Therefore, it is not a case of giving benefit of adhoc promotion to those two employees but it is a case of correcting the mistake by deleting the words and showing it as a case of regular promotion and not a case of promotion subject to dereservation. Therefore, we find that there is no merit in the grievance of discrimination so far as these two officials are concerned.

6. The next and the last submission regarding discrimination is as alleged in para 4.11 of the O.A. It is alleged that four officials Shri D.D. Ghosh, Avijit Roy, Vinit Mazumdar and R. K. Patra under two separate orders were given promotion against reserved vacancy subject to dereservation but they were given seniority and other benefits from the date of respective D.P.Cs.

We have seen the two orders under which the four officials came to be promoted on adhoc basis.

The first order is dated 04.06.1992 in respect of the first two officials and the order says it is a case where promotion has been made regular from the date of dereservation. Then it is stated that, however the officials will get their seniority in the grade of S.S.A. from the date of D.P.C. Similarly, we note in respect of the other two officials also same kind of note is made in the order dated 08.01.1993 which is at page 43 of the Paper Book.

What the department has given to the four officials is only seniority from the date of D.P.C. and not eligible qualifying service. We have already noticed that even in the present case the respondents are conceding the seniority to the applicant from the date of his initial adhoc promotion but their stand is, that he will not get eligible qualifying service for the purpose of next promotion. In these two orders mentioned above, there is no mention of qualifying service at all.

It is, therefore, seen that there is no case of discrimination at all. We have pointed out above how the cases of other officials is quite distinct and different from the case of the applicant.

The Learned Counsel for the applicant placed strong reliance on a letter dated 23.07.1996 by the Joint Director to all the Directors of Laboratories. This is a latter in the form of clarification. The subject of the letter is "determination of seniority in case of adhoc promotion subject to dereservation." Then the letter clarifies that in such cases the official will get seniority from the date of adhoc promotion. The letter also says

fr

: 10 :

that the promotion is also regularised from the date of D.P.C. or date of assumption of charge, whichever is later.

Then there is a further clarification by the department which the applicant himself has produced and which is at page 76 of the paper book. It is a letter dated 11.06.1998 again by the Joint Director to all the Directors of the Laboratories. They have referred to the previous letter dated 23.07.1996 mentioned above. In this letter they have clearly clarified that the promotion can be treated as regular only from the date of D.P.C. or date of assumption of charge on regular basis, whichever is later, for the purpose of counting of 'qualifying service' for next promotion. But for the purpose of seniority, the date of initial promotion may be counted to maintain uniformity.

In our view, the earlier clarification letter dated 23.07.1996 has to be read with this later clarification dated 11.06.1998. We cannot give any relief to the applicant on the basis of clarificatory letter dated 23.07.1996, which is not a statutory order or a statutory rule. It is just a letter of clarification and it cannot create rights if no right flows from the statutory rules. We have already pointed out the latest judgement of the Supreme Court which clearly says that adhoc promotion against reserved vacancy is dehors the rules and cannot be treated as regular promotion. It may be in view of these two clarification letter dated 23.07.1996 and 11.06.1998 the department is now conceding seniority of all the officials from the date of adhoc promotion but they have made it clear that it will not count for qualifying service for next promotion.

fw

: 11 :

In view of the above discussions we hold that the applicant is not entitled to treat the period from the date of initial adhoc promotion for the purpose of qualifying service for next promotion. However, he will be entitled to count the service from the date of adhoc promotion only for the purpose of seniority and here also not as a rule of law but only as a concession given by the department to such candidates to have uniform policy.

7. In the result, the application is allowed partly as follows :-

(i) The applicant is entitled to the benefit of adhoc service from 06.03.1994 only for the limited purpose of 'seniority' as conceded by the respondents in the two letters dated 23.07.1996 and 11.06.1998.

(ii) Applicant's prayer for treating the adhoc service from 06.03.1994 also for the purpose of qualifying service for next promotion is hereby rejected. It is made clear that the applicant is not entitled to the benefit of adhoc service from 06.03.1984 for the purpose of qualifying service for next promotion.

(iii) In the circumstances of the case, there will be no order as to costs.

(D. S. BAWEJA)
(D. S. BAWEJA
MEMBER (A))

R. G. Vaidyanatha
4/5/99
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

abp/os*