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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

O.A. No. 943/89.

DATE OF DECISION: - - - - -

- T.A. No. -

Between:-

N. Punniakotti - - - - - Petitioner(s)
Kum. N. Shakti,
Advocate. - - - - - Advocate for the
petitioner(s)

Versus

The Secretary,
Ministry of Defence, New Delhi & 2 others Respondent.

Shri E. Madan Mohan Rao,
Addl. CGSC. - - - - - Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. J. Narasimha Murthy : Member (Judl).

THE HON'BLE MR. R. Balasubramanian : Member (Admn).

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunals ?
5. Remarks of Vice Chairman on columns 1, 2, 4 (to be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HJNM
M(J)

HRBS
M(A)

(33)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH.
AT HYDERABAD.

O.A.No.943/89.

Date of Judgment : 19.7.90.

N.Punniakotti

.. Applicant

Versus

The Secretary,
Ministry of Defence,
New Delhi
& 2 others

.. Respondents

Counsel for the Applicant : Kum. N.Shakti,
Advocate.

Counsel for the Respondents : Shri E.Madan Mohan Rao,
Addl. CGSC.

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Jud1).

Hon'ble Shri R.Balasubramanian : Member(Admn).

I Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn) I.

Shri N.Punniakotti has filed ~~an~~ application under
section 19 of the Administrative Tribunals Act against the
Secretary, Ministry of Defence, New Delhi and 2 others.

2. The applicant was directly recruited as Manager (Gr.I) and appointed as such w.e.f. 9.4.80. He was confirmed in that post w.e.f. 1.4.82. The next promotional post is that of Asst. General Manager. According to recruitment rules, Managers (Gr.I) with 5 years of regular service are eligible for consideration for promotion to the cadre of Asst. General Managers. According to the applicant, at one stage the respondents relaxed the condition of 5 years of regular

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service to 3 years of regular service as a one time measure. The applicant contends that though by this relaxation he became eligible in 1983 itself and even otherwise without relaxation in 1985 also he was not promoted regularly till 14.10.87. However, he has been working continuously as Asst. General Manager from 1.8.85 on adhoc basis. In the orders promoting him regularly w.e.f. 14.10.87 S/Shri S.R.Paul, G.Ramachandran and N.S.Negi who were junior to him in the grade of Managers had been shown senior to him. It is his allegation that the D.P.C. had not considered year-wise vacancies and prepared panels as such and that they had not followed reservation in the promotions. It is his case that as a candidate belonging to Scheduled Caste community if the reservation had been followed he would have been assigned a higher place. He is particularly aggrieved that Shri G.Ramachandran who did not even come within the zone of consideration in 1985 had been shown senior to him. The applicant has prayed that the order dated 16.11.87 by which he was shown as promoted w.e.f. 14.10.87 be quashed and the respondents directed to reckon his seniority from the date of his initial appointment i.e., 1.8.85, the date from which he has been continuously officiating eventhough on adhoc basis.

3. The prayer is opposed by the respondents. They have raised the question of limitation because the relief sought for is with reference to 1.8.85, the date from which he want his seniority to be reckoned. They have denied that the qualifying service for promotion to the cadre of Asst. General Managers was relaxed from 5 years to 3 years in the

case of all candidates. It is their point that it was relaxed only in the case of promotee officers to protect their interests when direct recruits who are junior to them and who had joined service earlier had to be considered for promotion. There is a quota system of direct recruits to promotees in the ratio of 2:1 and it was to off-set the anomaly arising from this that they had given one time relaxation to protect the interests of promotee officers. They have also contended that there is no reservation for promotion from one Grade-A post to another Grade-A post and as such he cannot claim any special treatment as one belonging to Scheduled Caste community. They have also contended that the D.P.C. which met in October, 1987 had considered the vacancies yearwise and prepared yearwise panels.

4. We have examined the case and heard the learned counsels for both the applicant and the respondents. The main question to be seen is whether the applicant is to be treated as having been promoted as Asst. General Manager w.e.f. 1.8.85 instead of 14.10.87. The question of limitation that the respondents have raised does not arise because the applicant came to know about his regular date of promotion only in November, 1987 when they issued the order promoting him to the grade of Asst. General Manager and he has filed the application well within the time limit.

5. For promotion from the cadre of Managers (Gr.I) to Asst. General Managers there is no reservation. The reservation aspect has already been taken care of in the direct recruitment to the post of Managers (Gr.I) itself. Besides, we find that in the final select list dated 16.11.87 there are enough candidates belonging to Scheduled Caste and Scheduled Tribe.

6. We have seen the D.P.C. proceedings. The D.P.C. which had its sitting on 14.10.87 had considered the vacancies yearwise for 1983, 1984, 1985 and 1986. Since none was eligible for the vacancies of 1983 and 1984 these vacancies were carried forward for the year 1985. In 1985 only 9 officers became eligible and 2 officers became eligible for the vacancies of 1986. Thus, they had prepared a consolidated panel of 11 names. The promotion to the grade of Asst. General Managers is by selection and we find from the grading accorded by the D.P.C. that the applicant could only be given the 9th place in the panel of 11 persons who were recommended for appointment. If those who were junior to him in the lower grade had superseded him, it was based on the confidential reports as assessed by the D.P.C.

7. The applicant had cited 4 cases relying on which he claims that his uninterrupted adhoc service should give him the benefit of regularisation from 1.8.85 instead of 14.1. The cases cited are:

- (1) ATR - 1988(1) - CAT - PB - 1 - B.Kumar Vs. U.O.I.
- (2) ATR - 1986(2) - CAT - PB - 346 - S.C.Jain Vs. U.O.I.
- (3) ATR - 1986(1) - SC - 49 - Narender Chadda Vs. U.O.I.
- (4) SLR - 1978(2) - 379 - Kuldeep Chand Sharma Vs. Delhi

7(a) 8. We have seen these cases. In the case of B.Kumar Vs. U.O.I. we find that this has no straight application to the case before us. In that case the applicant Shri B.Kumar was regularly selected but appointed adhoc w.e.f. 24.12.71. He was however appointed regularly only w.e.f. 15.2.75. The Principal Bench of this Tribunal which had taken into consideration the other 3 cases cited by the applicant had ordered that the appointment of the applicant as Developer/Printer from 24.12.71 could not be considered de hors the rules and that the said appointment has to be treated as regular from the same date notwithstanding the stipulation in the appointment order that the initial appointment was to be treated as on stop gap basis.

7(b) 9. In the case of S.C.Jain Vs. U.O.I. cited by the applicant the Principal Bench of this Tribunal had held that the applicant Shri S.C.Jain was initially appointed as a Technical Assistant on adhoc basis w.e.f. 29.12.72 merely because the recruitment rules for that post had not been framed by then. When the recruitment rules were finalised on 30.12.78, the petitioner's appointment was straightway regularised with effect from the very day. Quoting the case of Kuldeep Chand Sharma and another Vs. Delhi Admn., the Principal Bench of this Tribunal had held that once an adhoc appointee is eventually selected for the post in a regular selection on framing of recruitment rules the regular appointment would relate back to the date of adhoc appointment.

To

1. The Secretary, Union of India, Ministry of Defence, New Delhi.
2. The Chairman, Board of Control, Canteen Services
New Delhi.
3. The General Manager, Canteen Stores Department,
(Adelphi 119, M.K.Road, Bombay - 20.
4. One copy to Kum.N.Shakti, Advocate.
1-1-745, Gandhinagar, Hyderabad - 380,
5. One copy to Mr.E.Madanmohan Rao, Addl.CGSC.CAT.Hyderabad.
6. One spare copy.
7. One copy to Mr. J.Narasimha Murty, Member(J) CAT.Hyd.Bench
8. One copy to Mr.R.Balasubramanian, Member(A) CAT.Hyd.Bench.

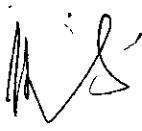
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7(c). In the case of Narender Chadda and others Vs. U.O.I., the Hon'ble Supreme Court had observed "But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post." In this case, the Hon'ble Supreme Court was dealing with cases where persons had been officiating on adhoc basis for nearly 15 years and where the Hon'ble Supreme Court had to find out a solution to the vexatious problem of interse seniority between promotees and direct recruits.

7(d). In the case before us the applicant is a direct recruit, and was promoted on adhoc basis for a period of about 2 years to overcome the administrative delay in holding the D.P.C. meetings. His promotion through regular selection in accordance with statutory rules cannot be earlier than 14.10.87. It could thus be seen that none of the 4 cases cited above (the 4th case is also covered by the 3 cases discussed) supports the contention of the applicant.

8. In the result therefore the application fails with no order as to costs.


(J. Narasimha Murthy)
Member(Judl).


(R. Balasubramanian)
Member(Admn).

Dated

19th July 90

for

R. Balasubramanian
Deputy Registrar(Judl)

ASR
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CHECKED BY

APPROVED BY

TYPED BY ~~✓~~ COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA : V.C.
AND
THE HON'BLE MR. J. SURYA RAO : MEMBER (JUDG.)
AND
THE HON'BLE MR. J. NARASIMHAMURTHY : M.(J.)
AND
THE HON'BLE MR. R. BALASUBRAMANIAN : M.(A.)

DATE : 19/9/96

ORDER / JUDGMENT

C.A./R.A./C.A./No. in

T.C. No.

W.P. No.

O.A. No. 943/89

Admitted and Interim directions issued.

Allowed.

Dismissed for default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. ordered/Rejected.

No order as to costs.

