(31)

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

O.A.No. 970/89
~~T.A.No.~~

DATE OF DECISION: 22/6/90

Between:-

- Petitioner(s)

- Advocate for the petitioner(s)

Versus

- Respondent.

- Advocate for the Respondent(s)

CORAM:

THE HON'BLE MR. B.N. JAYASIMHA ; HJC

THE HON'BLE MR. D. SURYA RAO, HM(J)

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)

BNJ
(BNJ)
HJC

(DSR)
HM(J)

(37)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

O.A.No. 970 of 1989 Date of Order: 22/06/90.

Between:

P.Rajendra Babu .. Applicant

And

1.Govt.of India rep.by Secretary, Ministry of Personnel & Training, New Delhi.

2.The Chief Engineer (Civil), Civil Construction Wing, New Delhi. (AIR)

3.Superintending Engineer (Civil) Civil Construction Wing, Nagpur.(AIR)

4.The Executive Engineer (Civil), Civil Construction Wing, All India Radio, Hyderabad.

.. Respondents

Appearance

For the Applicant : SHRI I.DAKSHINA MURTHY, ADVOCATE.

For the Respondents : SHRI NARAM BHASKAR RAO, ADDITIONAL CENTRAL GOVT.STANDING COUNSEL.

CORAM

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI D.SURYA RAO, MEMBER(JUDICIAL).

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.)

1. The applicant herein is now working as Junior Engineer in the Civil Construction Wing of the All India Radio, Hyderabad. In this application he seeks to question the order No.A-33022/22/88-CW.I/09, dated 3-1-1989 issued by the 2nd respondent.

2. The applicant states that he was originally employed as

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Supervisor (Civil) in the scale of Rs.425--700 on 27th May 1981 in the office of the Superintending Engineer, Irrigation Circle, Dandakaranya Project, P.O.Dharampura/Jagadalpur (M.P.) under the Ministry of Internal Security and Home Affairs. This is a post of Junior Engineer, which is called Supervisor in Irrigation Department and Section Officer in Construction Wing and the next promotion is to the post of Assistant Engineer. This adhoc appointment was later regularised in their orders dated 29-12-1984. The applicant was placed on probation and completed the probation satisfactorily. He was subsequently appointed in a quasi permanent capacity w.e.f. 25-12-1987. The Government of India by an order dated 13-2-1988 declared ~~that~~ the applicant along with some others as surplus and that efforts were made for their redeployment in other posts. Later he was taken by the Superintending Engineer (Civil) Construction Wing, All India Radio, Faridabad Circle, by an order dated 4-7-1988. The applicant joined this post on 16-8-1988. Thereafter the applicant submitted a representation stating that he would be completing 8 years of service and therefore he might be considered for promotion to the post of Assistant Engineer. The Government of India by the impugned order dated 3-1-1989 informed the departments at Faridabad that surplus employees appointed through surplus cell are not entitled to the benefit of past service rendered in the previous organisation. It is contended that though they cannot claim seniority over the existing staff in the present organisation, they are eligible for promotion after their seniors in the present organisation. The applicant states that he brought this fact to the notice of the authority through a representation dated 25-4-1989 but no reply was received. Later the applicant was transferred to Hyderabad Office and he joined duty on 4-7-1989 at Hyderabad. He states that he has completed 8 years of continuous service without

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break and he is eligible for promotion as Assistant Engineer. He contends that his case is not being considered on the plea that he has not completed 8 years of service. He further contends that the matter is covered by the decision of the Chandigarh Bench of this Tribunal in the case of Tarlok Singh (ATLT 516 (1989 I) wherein the Tribunal directed the Government to consider the cases of the employees, who have put in a total service including the period they worked in the project where they had been in surplus, as eligible for promotion. He therefore prays that on the analogy of the Judgment of the Chandigarh Bench of the Tribunal, this Tribunal may direct the 2nd respondent to consider the applicant for promotion to the post of Assistant Engineer holding him eligible for promotion after his seniors in the organisation by taking into account the service rendered in the Dandakaranya Project.

3. On behalf of the respondents a counter has been filed stating that under Recruitment Rules, (as per provisions of 1988 Recruitment Rules) Junior Engineers holding Degree in Civil Engineering with 5 years regular service in the grade and Junior Engineers holding Diploma in Civil Engineering with 8 years regular service in the grade are only eligible for promotion. Since the applicant possesses a Diploma in Civil Engineering and joined the All India Radio as Junior Engineer (Civil) through 'Surplus Cell' on 16-8-1988, he has put in only 1 year and 5 months (approx.) service in the grade of Junior Engineer (Civil) against minimum requirement of 8 years. It is further stated that the applicant had been working in the Dandakaranya Project under the Central Government from 27-5-1981 before joining CCW through Surplus Cell on 16.8.88. It is also stated that the decision of the Chandigarh Bench of the Tribunal in Tarlok Singh and Raj Kumar Sharda's cases will not apply to the case of the applicant. It is contended

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that his initial appointment in the Dandakaranya Project was on adhoc basis for a period of three months and in the appointment order he was informed that the appointment is purely temporary on adhoc basis and will not confer on him any claim for regular appointment and the service rendered on adhoc basis will not count for the purpose of seniority in the grade and for eligibility for promotion to the next higher grade. Accepting the said conditions, the applicant joined the Dandakaranya Project on 27-5-1981 and he was appointed on regular basis in Dandakaranya project w.e.f. 26.12.1984 (FN). It is contended that the adhoc service rendered by the applicant earlier w.e.f. 27.5.1981 to 25.12.1984 will not count for any claim for regular appointment. It is further stated that the applicant has completed only 5 years of regular service in Dandakaranya Project of All India Radio against the minimum eligibility period of 8 years as per Recruitment Rules. Hence they prayed that the application be dismissed with costs.

4. We have heard Shri I.Dakshina Murthy, learned Counsel for the applicant, and Shri Naram Bhaskar Rao, Additional Central Govt.Standing Counsel, for the respondents.

5. Shri Dakshina Murthy, learned counsel for the applicant relies on the judgment of the ~~Cuttack~~ Chandigarh Bench of the Tribunal reported in 1(1989)ATLT (CAT) 516 (Tarlok Singh Vs. UOI) where a similar case was decided. In Tarlok Singh's case the applicant therein was initially appointed in Beas Project as a Junior Engineer in 1973. He was rendered service till 1985 in the said Project and was taken to All India Radio on 17-4-1985. The ~~Cuttack~~ Chandigarh Bench observed as follows:

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" Much stress was laid by the counsel for respondents on the point that the service rendered by the applicant has to be on regular basis to satisfy the eligibility criteria for promotion to the post of Assistant Engineer (E). However, the service rendered by the applicant in Beas Construction Board was against a temporary post and as such it cannot be termed as service on regular basis. This argument, to our mind, is simply fallacious and untenable in view of the admitted fact that the applicant joined service as Sectional Officer in Beas Construction Board way back in 1973 and he was declared quasi permanent vide order dated 17-7-80 (copy annexure P-2) with effect from 26th August 1986 as Sectional Officer in the Beas Project. Thereafter, he worked in the said post upto 1985 when vide order dated 25th May, 1985 of the Superintending Engineer (Admn.), Beas Construction Board, he was relieved from the said post so as to join the new post in the Civil Construction Wing of the All India Radio. It is thus manifest that the appointment of the applicant in the Beas Construction Board was on regular basis. Even though his appointment was to a temporary post, by no stretch of reasoning, it can be termed as ad hoc stop gap or even purely temporary. The law is now well settled that appointments on regular basis can be made even to temporary posts provided they are of long duration. In other words, a temporary post can be held in a substantive capacity. As observed by the Supreme Court in G.K.Dudani and others V.S.D.Sharma and others 1986 (Supp) SCC 239, the position that a temporary post can be held in substantive capacity is now firmly established by decisions of the Supreme Court in Baleshwar Dass vs.State of UP (1980) 4 SCC 226 and OP Singla Vs.Union of India (1984) 4 SCC 450. Again in K.Madhavan (supra) the Supreme Court observed as under:--

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To:

1. The Secretary,(Government of India) Ministry of Personnel & Training, New Delhi.
2. The Chief Engineer(Civil), Civil construction Wing, PTI Building, New Delhi,(AIR)
3. The Superintending Engineer(Civil) Civil construction wing, Seminary Hills Nagpur.(AIR)
4. The Executive Engineer(Civil) Civil construction wing, All India Radio, Hyderabad.
5. One copy to Mr.I.Dakshinamurthy, Advocate, 10-1-18/25, Shyamnagar, Hyderabad-500 004.
6. One copy to Mr.N.Bhaskara Rao,Addl.CGSC,CAT,Hyderabad.
7. One spare copy.

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D/O NE
26/6/90

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"In our view, therefore, the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stop gap or purely temporary basis".

Hence the applicant clearly satisfies the condition of having rendered regular service in the grade of Junior Engineer (E) for eight years so as to be eligible for promotion to the post of Assistant Engineer (E)."

In the instant case, the applicant was initially appointed in Dandakaranya Project and later taken into the All India Radio in the year 1985. The applicant's services were also regularised in the Dandakaranya Project in 1984. It will be seen that the facts of the case are exactly similar to that of Tarlok Singh's case cited above and the ratio of that case would therefore apply to this case in all aspects. The contention of the Department that the services should be counted only from the date of regularisation in the Dandakaranya Project and not from the date of initial appointment is without any merit. No such distinction is placed in the Tirlok Singh's case. In the result, the applicant succeeds and we hold that the applicant is eligible ~~for~~ to be considered for promotion to the post of Assistant Engineer (c) and accordingly the respondents are directed to consider the claim of the applicant for the post of Asst.Engineer (c) in accordance with the rules concerned. The application is disposed of with the above directions. No costs.

(B.N.JAYASIMHA)
Vice Chairman

(D.SURYA RAO)
Member(J)

(Dictated in open court)
22ne June, 1990

SQH*

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for Deputy Registrar(J)

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.D.SURYA RAO:MEMBER(JUDL.
AND
THE HON'BLE MR.J.NARASIMAHAMURTHY:M(J)
AND
THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

DATE : 22-6-90

~~ORDER~~ / JUDGMENT

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

~~T.A.No.~~ ~~W.P.No.~~

O.A.No. 970/88

~~Admitted and Interim directions Issued.~~

~~Allowed.~~

Dismissed for default.

~~Dismissed~~ as withdrawn.

~~Dismissed~~.

Disposed of with direction. NOCOSTS

~~M.A.ordered/Rejected.~~

~~No order as to costs.~~