

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 585/96
T.A. No.

199

DATE OF DECISION 4.2.2000

Rishiraj Singh Tyagi

Petitioner

Mr. Shiv Kumar

Advocate for the Petitioner (s)

Versus

U.O.I & Ors.

Respondent

Mr. V.S. Gurjar

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K. Agarwal, Judicial Member

The Hon'ble Mr. N.P. Nawani, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?

2. To be referred to the Reporter or not ?

Yes

3. Whether their Lordships wish to see the fair copy of the Judgement ?

Yes

4. Whether it needs to be circulated to other Benches of the Tribunal ?

N.P. Nawani
(N.P. Nawani),
Member (A).

S.K. Agarwal
(S.K. Agarwal),
Member (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.585/96

Date of order: 4/2/2000

Rishiraj Singh Tyagi, S/o Sh.Ghanshyam Singh Tyagi, working as Geographer, O/o Director, Census Operations, Rajasthan, 68, Jhalani Dungari, Jaipur.

...Applicant.

Vs.

1. Union of India through the Secretary, Mini. of Home Affairs, New Delhi.
2. Secretary to the Govt.of India, Deptt. of Personnel & Training, New Delhi.
3. Registrar General, Govt. of India, 2A, Mansingh Road, New Delhi.
4. Joint Registrar General(I), Govt. of India, 2-A, Mansingh Road, New Delhi.
5. Director of Census Operations Rajasthan, 6B, Jhalani Dungari, Jaipur.
6. Director of Census Operations Sikkim, Tadong, Gangtok.
7. Shri Mukesh Kumar, Geographer, O/o Director of Census Operations, Old Secretariat, Delhi.
8. Shri S.K.Kar, Geographer, O/o Director Census Operations, Meghalaya, Bomfyle Road, Shillong.
9. Shri R.Joseph, Geographer, O/c Director Census Operations, Unnasalai Tenampat, Madras.
10. Shri Rajendranath Tiku, Geographer, O/o Director Census Operations, Orissa, Bhuvaneshwar.
11. Tej Pal Singh, Geographer, O/o Director Census Operations Punjab, Chandigarh.
12. Hari Kirtan Ram, Geographer, O/o Director Census Operations Bihar, Patna.
13. A.Bragamza, Geographer, O/o Director Census Operations Maharashtra, Bombay.
14. Smt.Veena Thakur, Geographer, O/o Director Census Operations Himachal Pradesh, Shimla.

...Respondents.

Mr.Shiv Kumar - Counsel for the applicant

Mr.V.S.Gurjar - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

The applicant has filed this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, to direct the respondents to modify/revise the final seniority list which was

issued by letter dated 14.6.95 and to count the ad hoc services of the applicant in the cadre of Geographer w.e.f. 6.1.84 for the purpose of seniority and promotion with all consequential benefits.

2. In brief the case of the applicant is that he was initially appointed on the post of Geographer after following due process of the recruitment rules w.e.f. 6.1.84 and thereafter he is continuing on the post without any break and performing the services satisfactorily. It is stated that in view of his satisfactory and without break in service, the applicant has a legal right to count his ad hoc services for seniority, promotion as well as regularisation. It is also stated that the ad hoc services of Sh. Prem Chand and Kumari Suman Gupta, have also been counted for the purpose of seniority and regularisation, therefore, the applicant filed this O.A for the relief sought for.

3. Reply was filed. It is stated that the applicant has filed O.A No. 585/96, which was disposed of vide order dated 17.5.97. In this O.A, directions were given to the respondents to consider the case of the applicant for the relief sought for and in pursuance of the directions of this Tribunal dated 17.5.96, the case of the applicant was considered, therefore, this O.A is not maintainable as barred by the principles of res judicata. It is also stated that recruitment on the post of Geographer is under the purview of the Staff Selection Commission and the applicant was appointed on temporary and ad hoc basis as a stop gap arrangement only till the selection is made by the Staff Selection Commission, which is clear on a perusal of Annexes R1, R2 & R3. It was denied by the respondents that the applicant was appointed on regular basis and on substantive capacity. It is also stated that the services of the applicant were regularised w.e.f. 1.9.92 and the respondents never agreed to treat the ad hoc services rendered by the Geographers towards seniority and promotion purposes. It is also stated that the matter was examined at higher level and the respondents have taken the decision as per the service law jurisprudence which is perfectly legal and valid and the applicant has no case for interference by the Tribunal.

4. Rejoinder has also been filed reiterating the facts as stated in the O.A.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The learned counsel for the applicant has vehemently argued that (i) the applicant was appointed on regular basis after following the due process of selection and he is performing his duties continuously without any break on the post, therefore, the



services rendered by the applicant w.e.f. 1.6.84 must be counted for the purpose of seniority and promotion. (ii) He has also argued that the respondents had agreed to count the ad hoc services of Geographer for seniority and consequential benefits, therefore withdrawing the benefits already given is not sustainable in law. (iii) He further argued that the same benefit was given to Shri Prem Chand and Kumari Suman Gupta which has not been withdrawn so far, therefore, the action of the respondents for withdrawing the benefit of the applicant is discriminatory and in violation of Articles 14 and 16 of the Constitution of India.

7. In support of his contentions, he has referred to

- 1) JT 1999(7) SC 576 L.Chandra Kishore Singh Vs. S.O.Manipur.
- 2) 1990(2) SLJ SC 40, Maharashtra Engineering case
- 3) ATR 1992(2) CAT 139, Vasudev P Vs. UOI
- 4) ATR 1993(1) CAT 449, P.K.Roy Choudhary Vs. UOI
- 5) SLJ 1991(3) SC 61
- 6) 1997 SCC(L&S) 1715, B.D.Verma Vs. UOI
- 7) 1998 SCC (L&S) 98
- 8) 1998 SCC (L&S) 321 Raj Kishore V. Vs. UOI

8. On the other hand, the learned counsel for the respondents has argued that the decision of the respondents not counting the ad hoc period of service rendered by the applicant for the purpose of seniority and other consequential benefit is perfectly legal and valid and the same is in accordance with law. Therefore, this Tribunal should not interfere with the order passed by the respondents in this regard. He has also argued that this O.A is barred by principles of res-judicata as earlier the applicant had also filed an O.A which was disposed of vide order dated 17.5.96, therefore, he is estopped to file again an O.A on the same cause of action.

9. We have given thoughtful consideration to the rival contentions of both the parties and also perused the whole record and legal citations.

10. It is an admitted fact that the applicant was appointed on the post of Geographer w.e.f. 1.6.84, purely on ad hoc basis which is very much clear from the order of appointment itself. It is also not disputed that seniority list which has been challenged by the applicant in this O.A was made final after circulation among the concerned officials and taking into consideration the objections filed within the stipulated period. It is also not disputed that the applicant has earlier filed O.A No.585/96 which was disposed of by the Tribunal vide order dated 17.5.96 and in pursuance of the directions given by the Tribunal, the case of the applicant has



already been considered.

11. The contention of the respondents in unequivocal terms is that the post of Geographer is under the purview of the Staff Selection Commission and the applicant was appointed on temporary and ad hoc basis as a stop-gap arrangement only till the selection was made by the Staff Selection Commission. On a perusal of orders, Annexes R1, R2 and R3 placed on record, it becomes abundantly clear that the applicant was appointed on ad hoc basis.

12. In Kum. Kulwant Kaur Dhanjal & Ors. Vs. UOI & Ors., ATJ 1999(3) CAT (Full Bench Lucknow), 359, held that Stenographers sponsored by the Employment Exchange and appointed on ad hoc basis by the respondents after written test and interview were not entitled to regularisation and seniority from the date of their ad hoc appointment, they were entitled to regularisation and seniority from the date of passing the regularisation test held by the Staff Selection Commission.

13. In the instant case, it is contended by the respondents that the post of Geographer was within the purview of the Staff Selection Commission and the applicant was appointed on temporary ad hoc basis as a stop-gap arrangement only till the candidate selected by the Staff Selection Commission joins.

14. In view of the clear cut submissions of the respondents, the plea on behalf of the applicant that he was appointed on regular basis is not sustainable in law.

15. The law on the subject has come up for consideration before Hon'ble the Supreme Court in catena of judgments.

16. In P.D. Aggarwal & Ors. Vs. State of U.P., (1987) 3 SCC 622, it was held by the Apex Court that ad hoc appointees before their service had been duly regularised in accordance with the regularisation rules, cannot be taken into account in reckoning their seniority in service and that their seniority will be counted only from the date when such ad hoc appointees after regularisation in accordance with concerned rules had become members of the service.

17. In Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra & Ors., (1990) 2 SCC 715, the Constitution Bench held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The Bench summed up the law in the form of eleven propositions. It is sufficient to refer to the first two propositions which are in the following terms:

"A. Once an incumbent is appointed to a post according to

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rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rules that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

B. If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

18. In State of Bihar Vs. Akhouri Sachindranath & Ors., 1991 Supp.(1) SCC, 334, it was held that no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others.

19. In Keshav Chandra Joshi Vs. UOI, 1992 Supp.(1) SCC 272, it was held that promotees cannot claim the benefit of their officiation in the promoted post before the date of the vacancy within the quota as such service was fortuitous.

20. In Aghore Nath Dey, (1993) 3 SCC 371, the case of Direct Recruit Class II Engineering Officers Assc. case (supra) was discussed and it was held that the benefit of ad hoc service is not admissible if appointment was in violation of Rules.

21. In Director General, ESIC & Anr. Vs. Shri Trilok Chand & Ors., Hon'ble Supreme Court of India in SLP No.7393-96/91 decided on 10.12.93 held that ad hoc appointment without proper selection cannot be counted for seniority.

22. In Devendera Pathria & Ors Vs. UOI & Ors, 1998 SCC(L&S) 1331, the applicants were appointed on ad hoc basis as Enquiry-cum-Reservation Clerk from 1978 to 1982. It was held that applicants cannot be treated senior to those who in the mean time had been appointed according to the prescribed procedure.

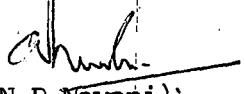
23. In Dr. Anuradha Bodhi & Ors. Vs. Municipal Corporation of Delhi & Ors., 1998 SCC(L&S) 1351, Hon'ble Supreme Court following Maharashtra Direct Recruit case held that the applicants are not entitled to regularisation from the date of their initial appointment on ad hoc basis.

24. The learned counsel for the applicant also argued that the respondents has given the benefits of seniority and consequential benefits to Prem Chand and Kmr. Suman Gupta, therefore, the

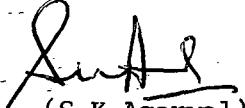
applicant is also entitled to be given similar benefits. But in reply filed by the respondents, it has been made very clear in para 4(m) that the cases of Prem Chand and Kum. Suman Gupta have been reviewed and the error in fixing the seniority of them have been rectified and corrected, therefore, the applicant is not entitled to any relief. In view of the clear cut and unambiguous reply of the respondents, the contention of the counsel for the applicant is not sustainable at all.

25. In view of the above legal propositions and facts and circumstances of the case, we are of the considered opinion that the applicant is not entitled to seniority and consequential benefits from the date of his ad hoc appointment i.e. 1.6.84 and we are not inclined to interfere, as this O.A is having no merit and the legal citations as referred by the applicant do not help the applicant in any way.

26. We, therefore, dismiss this O.A with no order as to costs.


(N.P. Nawani)

Member (A).


(S.K. Agarwal)

Member (J).