

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 17.04.02

OA No.463/1997

K.B.Sharma s/o Ram Kishore Sharma r/o 75, Vasundra Colony, Tonk Road, Jaipur at present employed on the post of Statistical Assistant in the office of Director, Census Operations, Rajasthan, Jaipur

..Applicant

Versus

1. Union of India through the Home Secretary, Government of India, Ministry of Home Affairs, New Delhi.
2. The Registrar General of India, 2-A, Mansingh Road, Kota House Annexe, New Delhi.
3. The Director of Census Operations, Rajasthan, Jaipur
4. Shri K.C.Gupta, Statistical Assistant, Office of Director Census Operation, Rajasthan, Jaipur

.. Respondents

Mr. Shiv Kumar - Counsel for the applicant.

Mr. R.L.Agarwal, proxy counsel to Mr.Bhanwar Bagri - Counsel for the respondent No. 1 to 3

Mr. Manish Bhandari - counsel for respondent No.4

CORAM:

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

Hon'ble Mr. H.O.Gupta, Member (Administrative)

ORDER

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

The applicant is aggrieved of the office order dated 21.7.97 (Ann.A1) whereby revised final seniority list of Statistical Assistants as on 1.11.91 has been



published. In relief, he has prayed for holding the said seniority list as illegal/arbitrary and for inserting his name at Sl.No.2 below one Shri Sitaram Singhal and to allow him all consequential benefits after the said modification.

2. The case of the applicant as made out, in brief, is that:-

2.1 He was appointed on regular basis on the post of Assistant Compiler in April, 1968. Thereafter, vide office order dated 4th April, 1970 he was accorded ad-hoc promotion on the post of Computer and thereafter his services were regularised on the said post vide order dated 18.2.76 (Ann.A3). He was promoted to the post of Statistical Assistant (SA) vide order dated 2.6.80 (Ann.A4) on ad-hoc basis. His services were regularised on the post of SA vide order dated 7.7.83 w.e.f. 15.4.83 based on the recommendations of the DPC.

2.2 In the seniority lists published in the year 1985, 1988 and 1991, his name appears being regularly appointed and senior to respondent No.4. Now, the respondents have issued fresh and final seniority list of SA as on 1.11.91 wherein respondent No.4 has been shown at Sl.No.3 whereas his name appears at Sl.No.8.

2.3 The respondents have also rejected his representation for amending the seniority list vide their order dated 11.7.97 (Ann.A1A). It is relevant to mention here that in the seniority lists published in the year 1985 and 1988, name of respondent No.4 does not appear. Copy of these seniority lists as also his representation



dated 16.12.91 may be perused from Ann.A6, A7 and A8 respectively.

2.4 The appointment of respondent No.4 was made in violation of the rules. As per recruitment rules, 50% of the vacancies of SA are required to be filled by promotion and balance 50% to be filled by direct recruitment. The aforesaid percentage was modified through notification dated 3.3.82 to read as 75% by promotion and 25% by direct recruitment through Staff Selection Commission (SSC). The respondent No.4 was appointed on ad-hoc basis vide order dated 11.4.80 (Ann.A11) for a period of 3 months from the date of his joining i.e. from 21.3.80. The appointment was temporary and ad-hoc. It was specifically mentioned that it will not bestow any right on the respondent No.4 for regular appointment and the services rendered by him will not count for the purpose of seniority etc. and for promotion to the next higher grade.

2.5 The respondents vide their order dated 11.3.91 issued a circular for regularising the services of ad-hoc appointees in the grade of SA from the date they were holding the post on ad-hoc basis. Para 1 of the circular dated 19th February, 1980 (Ann.A10) issued by the respondents specifically mentions that in the event of the post being continued beyond 1982-83 on long term basis, the ad-hoc appointment will have to be regularised by the SSC. As a result of the circular dated 11.3.91, the respondents regularised the services of the respondent No.4 vide order dated 11.3.1991 (Ann.A1) with immediate effect. But they have been granted seniority from the date of their ad-hoc appointment.

3. The main grounds taken by the applicant are that:-

3.1 The respondent No.4 cannot be given the benefit of continuous service on the said post since he was not appointed in accordance with the recruitment rules. The respondent No.4 has not cleared the selection through the SSC, which is mandatory condition for regular appointment. The respondent No.4 is neither appointed by the DPC nor through the SSC. Therefore, his appointment is illegal. The ad-hoc SAs, not appointed in accordance with the rules, cannot be allowed the benefit of past services because the seniority has to be counted from the date of regularisation.

3.2 The seniority is one of the terms and conditions of employment, which cannot be changed from the retrospective date to the dis-advantage of the applicant. The date of regularisation of the applicant is 15.4.83 whereas date of regularisation of respondent No.4 is 11.3.91. Thus, the applicant is senior to the respondent No.4 and is entitled to the higher seniority.

4. The respondents have contested this application and have submitted that:-

4.1 The respondent No.4 is senior to the applicant, as per provisional seniority lists for the years 1985, 1988 and 1991 issued on 20.5.93 and 3.12.91 respectively. The applicant represented against his seniority at the time of final seniority lists for the year 1985, 1988 and 1991 but the same was rejected after examining the facts as the respondent No.4 was found senior to the applicant in accordance with the orders dated 11/12.3.91 and 17.6.91



(Ann.R1 and R2) issued by the Registrar General in consultation with the Department of Personnel and Training by which a decision was taken that services of all such ad-hoc appointees in the grade of SA who were recruited through the Employment Exchange and who fulfils all the conditions like age and educational qualification at the time of their initial appointment may be regularised w.e.f. a prospective date after screening on the basis of assessment of CRs and their seniority in the respective grade and eligibility for promotion to the next higher grade will be counted from the date of their initial appointment on ad-hoc basis.

4.2 The name of respondent No.4 does not appear in the seniority lists of SA for the year 1985 and 1988 issued on 4.7.85 and 6.1.89 since he was in service on ad-hoc basis. Direct recruitment was made as per guidelines received from the office of the Registrar General vide order dated 19.2.1980 (Ann.R3). The instructions contained in the circular did not impose any ban on direct recruitment. It is submitted that respondents have made direct recruitment based on exemption given by the SSC which is mentioned in the said circular of 1980.

4.3 As regards regularisation of services through SSC, it is submitted that powers has been conferred in the Central Government to relax provisions of these rules with respect to any class or category of the post as per Para 7 of Gazette of India, October 26, 1974 GSR 1143 pertaining to the recruitment rules of 1974, as may be seen from Ann.R4. Accordingly, the decision taken by the Registrar General vide letters at Ann.R1 and R2 to regularise the ad-hoc services of respondent No.4 and counting his



seniority from the date of his initial appointment is perfectly legal and justified.

5. The applicant has filed rejoinder controverting certain contentions of the respondents.

6. Heard the learned counsel for the parties and perused the record.

6.1 It is an admitted fact that the respondent No.4 was holding the post of SA on ad-hoc basis w.e.f. 21.3.80 and he continued thereafter on this post till he was regularised in the year 1991. The applicant was promoted as SA on ad-hoc basis on 2.6.80 and was regularly promoted w.e.f. 15.4.83. The respondent No.4, although appointed on ad-hoc basis initially for a period of 3 months with certain conditions but continued in that post without any break till he was regularised in 1991. The name of the respondent No.4 was not included in the seniority list published in 1985 and 1988 as he was regularised on the post of SA only in 1991 vide order dated 14.3.91 (Ann.A12). The respondents have further submitted that they had obtained exemption from the SSC as may be seen from the circular dated 19th February, 1980 issued by the Registrar General. Applications were invited from the Employment Exchange and the respondent No.4 was duly selected and was appointed w.e.f. 21.3.80 on ad-hoc basis for a period of 3 months but thereafter continued. During the course of arguments, the learned counsel for the applicant submitted that appointment of the respondent No.4 was dehors the rules whereas the contention of the learned counsel for the respondents was that the



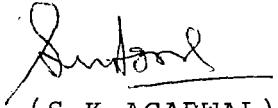
respondent No.4 was appointed after obtaining names of eligible candidates from the Employment Exchange and after having been successful in due selection process. Therefore, his appointment cannot be said to be dehors the rules. In the clarification given by the DOPT, as contained in the Registrar General letter dated 12.3.1991 (Ann.R1), the DOPT have clarified that seniority of the applicant shall have to be reckoned from the date he was continuously functioning on ad-hoc basis. He also submitted that the respondent No.4, whose appointment was as per rules and who continued on adhoc basis for a long period of 8 years, was entitled for the benefits of continuous officiation on the post of SA as per established law. The applicant was promoted on regular basis only from 1983 and the respondent No.4 continued in service since March,1980, therefore, the respondent No.4 was correctly shown as senior to the applicant. We are inclined to agree with the contention of the learned counsel for the respondents and accordingly hold that the action of the respondents in showing respondent No.4 as senior to the applicant in the final seniority list as on 1.11.91 (Ann.A1) cannot be said to be illegal.

7. In view of above discussions, this OA is devoid of merit and accordingly dismissed without any order as to costs.



(H.O.GUPTA)

Member (Administrative)



(S.K.AGARWAL)

Member (Judicial)