

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

10

ORDER SHEET

ORDERS OF THE TRIBUNAL

14.12.2011

OA No. 404/2011

Mr. C.B. Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

At the request of the learned counsel for the parties,
list it for final disposal at this stage on 19.12.2011.

Anil Kumar

(Anil Kumar)
Member (A)

K.S. Rathore
(Justice K.S. Rathore)
Member (J)

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19-12-2011

OA No. 404/2011 With MA No. 325/2011

Mr. C. B. Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents

Heard.

O.A. and M.A. are disposed
of by a separate order on the
separate sheets for the reasons
recorded therein.

Anil Kumar

[Anil Kumar]
Member (A)

K.S. Rathore

[Justice K.S. Rathore]
Member (J)

responder not
filed
in

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 19th day of December, 2011

ORIGINAL APPLICATION No. 404/2011

With

MISC. APPLICATION NO. 325/2011

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Manish Raj son of Shri Ram Phool Meena, aged about 31 years, resident of House No. 52, Yagyashala Ki Babri, Near Temple Santosh Mata, Nahargarh Road, Purani Basti, Jaipur. Last employed as LDC, Income Tax Appellate Tribunal, Jaipur Bench, Chamber Bhawan, M.I. Road, Jaipur.

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through its Secretary, Ministry of Law & Justice, Department of Legal Affairs, Shastri Bhawan, New Delhi.
2. The President, Income Tax Appellate Tribunal, Loknayak Bhawan, 10th Floor, Khan Market, New Delhi.
3. The Registrar, Income Tax Appellate Tribunal, Loknayak Bhawan, 10th Floor, Khan Market, New Delhi.
4. The Registrar, Income Tax Appellate Tribunal, CGO Building, 4th Floor, Maharshi Karve Marg, Mumbai.
5. The Assistant Registrar, Income Tax Appellate Tribunal, Jaipur Bench, Chamber Bhawan, M.I. Road, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

This is the second round of litigation. Earlier the applicant had filed an OA No. 320/2011 in which this Tribunal had given liberty to the applicant to represent before the respondents to make submissions as raised in the OA alongwith the judgments annexed with that OA within a period of 15 days and the respondents were directed to pass a speaking order in accordance with the provisions of law

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expeditiously but in any case not later than two months from the date of receipt of the representation to be filed by the applicant. The applicant was given liberty to file a substantive OA if any prejudicial order was passed by the respondents. In compliance with these orders, the applicant filed a representation which was considered by the respondents and after considering the same, the respondents have rejected the representation vide Memorandum dated 25.08.2011 (Annexure A/1). Aggrieved by this action of the respondents, the applicant has filed the present OA thereby praying for the following relief:-

- "(i) That respondents may be directed to interpolate the name of the applicant in order dated 15.07.2011 (Annexure A/3) and allow the applicant to work as LDC in the pay band-I Rs.5200-20200 with grade pay Rs.1900 in Income Tax Appellate Tribunal, Jaipur Bench, Jaipur by quashing memo dated 25.08.2011 (Annexure A/1) with all consequential benefits.
- (ii) That the respondents be further directed to regularize services of the applicant as regularized of the similarly situated employees on the post of LDC with due benefits as allowed vide Annexure A/8.
- (iii) Any other order/directions or relief may be granted in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case.
- (iv) That the cost of this application may be awarded."

2. Brief facts of the case are that the applicant was appointed as LDC in the scale of Rs. 3050-4590 in the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur on 07.07.2003 for a period of six months or till the post is filled in by the nominee of the Staff Selection Commission (SSC) whichever is earlier. That the applicant joined the post and

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has been working with the respondents from time to time and his last extension was given vide order dated 13.01.2011 for a period upto 08.07.2011 or till the post is filled up on regular basis (Annexure A/5). But the term of the applicant was not extended further and other officials were allowed extension vide order dated 15.07.2011 upto 11.01.2012. Two officials of Jaipur Bench were retained in service from which Ms. Yogita Sharma allowed ad hoc appointment after the applicant in 2006 and the posts are lying vacant and have not been filled up on regular basis.

3. The applicant has further stated that the recruitment rules of 1984 of Income Tax Appellate Tribunal (Group- C Posts) no where provide recruitment on the post of LDC through SSC and similarly situated persons when their appointment was cancelled by the respondents approached Hon'ble Principal Bench, New Delhi and Hon'ble Principal Bench quashed such orders vide order dated 18.07.2005 (Annexure A/6) and further some of the similarly situated employees approached CAT Bench, Mumbai for regularisation of their services and Hon'ble CAT Bench Mumbai vide order dated 20.07.2010 (Annexure A/7) allowed the OA to consider the cases for regularisation. Therefore, in view of the decisions taken by the Hon'ble CAT Principal Bench, New Delhi and Hon'ble CAT Bench Mumbai, the services of the applicant may not only be extended on ad hoc basis but he may also be regularized and the Memorandum dated 25.08.2011 (Annexure A/1) be quashed.

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4. The respondents have filed their reply. In their reply, they have stated that the applicant was initially appointed on ad hoc basis w.e.f. 07.07.2003 (Annexure R/2) which clearly states that the appointment is on ad hoc basis and it will not bestow upon him any claim for regular appointment in the grade. Further the services are liable to be terminated at any time without assigning any reasons. They have further stated that extensions given to the applicant were also on ad hoc basis. His appointment was extended from time to time as the candidates from SSC had not been sponsored in requisite numbers. They have further stated that as a matter of policy decision, the candidates who were not sponsored through Local Employment Exchange at the time of their initial appointment as LDC on ad hoc basis are not considered for grant of further extension of their appointment as LDC on ad hoc basis in the Income Tax Appellate Tribunal and besides the applicant, all over India 10 candidates have been discontinued since they were not sponsored by the Local Employment Exchange. Ms. Yogita Sharma whose name appear in the order dated 15.07.2011 (Annexure R/1) is sponsored by the Local Employment Exchange and hence, she was considered for further extension of her appointment as LDC on ad hoc basis.

5. The respondents have further stated that the judgment of the Hon'ble Principal Bench dated 18.07.2005 (Annexure R/3) is not applicable to the present case as the same was on different footing. The judgment of the Hon'ble

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CAT Bench Mumbai also does not apply to the facts of this case as all the six LDCs who were regularized as per the order of CAT Bench Mumbai were sponsored through local Employment Exchange. That the initial appointment of the applicant was not through Employment Exchange, therefore as per the policy of the respondents, he has no right to continue in service. That the services of the applicant came to an end on efflux of the period for that he was appointed on purely ad hoc basis i.e. 08.07.2011 (Annexure R/4). Therefore, the provisions of principle of natural justice are not applicable and the applicant has no right to continue in service.

6. Heard learned counsel for the parties and perused the relevant documents on record. Learned counsel for the applicant argued the same facts as he has stated in his OA. During the course of arguments, he also referred to the order of the Principal Bench dated 18.07.2005 and CAT Bench Mumbai order dated 20.07.2010. He also referred the judgment of the Hon'ble Supreme Court in the case of **The Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh vs. K.B.N. Visweshwara Rao & Others**, 1996 (7) Supreme 201 in which Hon'ble Supreme Court has held that the posts sought to be filled up from the candidates sponsored through the medium of employment exchange – It should be mandatory for the requisitioning authority to intimate the employment exchange – Employment exchange should sponsor the candidates names strictly according to seniority and reservation as per

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requisition – In addition the authority should call for the names by publication in the newspapers, announce on radio, television and employment news-bulletins – No case to disturb the directions issued by Tribunal where by appellant was directed to consider cases of respondents and to appoint if selected by selecting authority even if they were not sponsored through employment exchange. Learned counsel also gave a copy of the order dated 02.12.2011 passed by the Income Tax Appellate Tribunal in the case of **Ratan Lal Meena** who has been permitted to join his duties with immediate effect though he was also not sponsored by the Local Employment Exchange. He further argued that the applicant's ad hoc appointment was extended as late as 13.01.2011 upto 08.07.2011 or till further orders or till the post is filled up on regular basis, whichever is earlier but suddenly his name does not find mention in the order dated 15.07.2011 (Annexure A/3) though vide this order, the candidates have been appointed purely on ad hoc basis and, therefore, the name of the applicant should also be interpolated in the order dated 15.07.2011 at appropriate place.

7. On the contrary, learned counsel for the respondents argued that the order of the CAT Principal Bench dated 18.07.2005 and the order of the CAT Mumbai Bench dated 20.07.2010 are not applicable in the present case as the facts of these two cases are different to the facts of the present case. He also argued that the ratio decided by the Hon'ble Supreme Court in the case of **Excise**

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Andhra Pradesh vs. K.B.N. Visweshwara Rao & Others**

(supra) is also not applicable in the present case. That was a case for direct recruitment and not of recruitment on ad hoc basis. He further argued that Department has taken a policy decision not to extend the ad hoc period of the candidates who have not been sponsored by the Employment Exchange and, therefore, since the applicant was not sponsored through Employment Exchange, he was not given extension of employment on ad hoc basis and in this connection, he referred to a judgment of the Hon'ble Supreme Court in the case of **Vidya Vardhaka Sangh vs. Y.D. Despande**, 2006 (12) SCC 482 in which Hon'ble Supreme Court has held that in Para No. 4 "it is now well settled principle of law that the appointment made on probation/ad hoc basis for a specified period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post." Learned counsel for the respondents submits that therefore, the OA has no merit and needs to be dismissed with costs.

8. Having heard the rival submission of the parties and after careful perusal of documents on record, we are of the opinion that the order of the CAT PB New Delhi dated 18.07.2005 and CAT Mumbai Bench dated 20.07.2010 are not applicable to the facts & circumstances of the present case. Similarly, the ratio laid down by the Hon'ble Supreme Court in the case of **Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh vs.**

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K.B.N. Visweshwara Rao & Others (supra) is also not applicable in the present case. This case relates to appointment on regular basis whereas the instant case is of appointment on ad hoc basis. The respondents have referred the case of **Vidya Vardhaka Sangh vs. Y.D. Despande** (supra) and argued that the ratio laid down by the Hon'ble Supreme Court is applicable in the present case. However, in the case of **Vidya Vardhaka Sangh vs. Y.D. Despande**, the Department had discontinued the services of all similarly situated persons but in this case the respondents have allowed 61 candidates to continue on ad hoc basis vide order dated 15.07.2011 but the applicant has been denied extension. The respondents cannot pick & choose from amongst the ad hoc appointees for giving extension unless there are valid reasons for doing so. According to the respondents, the primary ground for not granting the extension to the applicant was that he was not sponsored by the Local Employment Exchange at the time of his initial appointment in 2003. That the respondents have taken a policy decision that only those candidates whose names were sponsored by the Employment Exchange would be given extension and since the applicant's name was not sponsored by the Employment Exchange, therefore, he could not be given extension on ad hoc basis. The respondents have not placed the copy of that policy decision taken by them. It is not disputed between the parties that the applicant was given extension from time to time since 2003 and he was given last extension as late as 13.01.2011 and even on that date the name of the applicant was not

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sponsored by the Employment Exchange. If any decision was taken after 13.01.2011 then it could be only effective prospectively. The applicant has been working with the respondents' department since 2003 from time to time and now suddenly his name has been excluded on the ground that his name has not been sponsored by the Employment Exchange. The respondents have given extension to one Shri Ratan Lal Meena vide their order 02.12.2011 whose name was also not sponsored by the Employment Exchange. Therefore, in the interest of justice, we deem it proper to direct the respondents to extend the ad hoc appointment of the applicant, Shri Manish Raj, as has been done in the case of other candidates vide order dated 15.07.2011. Since the appointment of the applicant is on ad hoc basis, therefore, the extension of ad hoc appointment will be from the date of this order. As far as regular appointment of the applicant is concerned, the respondents are at liberty to consider his case according to recruitment rules on the subject as & when situation arises.

9. With these observations, the OA is disposed of with no order as to costs.

10 In view of the order passed in the OA, no order is required to be passed in MA No. 325/2011, which shall also stand disposed of accordingly.

Anil Kumar

(Anil Kumar)
Member (A)

K. S. Rathore

(Justice K.S.Rathore)
Member (J)

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