

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI-5

O.A. No. 243 of 1994

Date of decision 22.5.1995

Sri Siba Prasad Saikia

PETITIONER(S)

Sri K. Basar

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Sri S. Ali, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (ADMINISTRATIVE).

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether the Judgement is to be circulated to the other Benches?

Judgement delivered by Hon'ble *M.G. Chaudhari*
Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 243 of 1994.

Date of decision : This the 22nd day of May 1995.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman.

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Sri Siba Prasad Saikia
S/o late Bapu Ram Saikia
Ordnance Officer,
Civilian (Store), at No. 1 Base
Stationary Depot,
Guwahati.

..... Applicant

By Advocate Sri K. Basar.

-versus-

1. Union of India
represented by the Secretary
Ministry of Defence,
New Delhi.
2. The Director General
Ordnance Services
Master General of the Ordnance Branch
Army Headquarters, DHG,
P.O. New Delhi 110011
3. The Director Ordnance Services (Personnel)
Army Headquarters,
DHG, P.O. New Delhi-110011.
4. The Officer Commanding No. 1
Advance Base Stationary Depot.
C/o 99 A.P.O.
Guwahati

..... Respondents

By Advocate Sri S. Ali, Sr. C.G.S.C.

ORDER

CHAUDHARI J (V.C.).

The applicant was promoted on adhoc basis to the post of Ordnance Officer Civilian (Stores) by order dated 13.6.89 issued by the office of the Director General, Ordnance

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Services, Army Headquarters, New Delhi. He was so promoted alongwith 45 other senior store superintendents. The period of the adhoc promotion continued upto the date of the order of reversion dated 7.1.94 (Annexure II) passed by the same authority who had passed the order of promotion. The aforesaid order dated 7.1.94 is impugned in this O.A. The order states that that the competent authority has decided not to accord fresh approval for promotion on adhoc basis beyond 31.12.93 and therefore the officers concerned be reverted to their substantive rank with effect from 1.1.94.

2. The applicant contends that he has worked on the promotional post although on adhoc basis continuously for five years and therefore the action of the respondents in reverting him is bad in law. In the relief clause in paragraph 7 he has merely prayed for setting aside the order of reversion without claiming any other relief. The question therefore that necessarily arises is as to whether the applicant is entitled to be regularised by virtue of his continuous officiation on adhoc basis in the post.

3. The respondents contend that the promotion given to the applicant was only on adhoc basis and temporarily and did not bestow upon him any right of regularisation. They also dispute that the applicant was working continuously in the promotional post. They have explained that the initial appointment of the applicant was for one year with effect from 1.7.89 to 30.6.90. Thereafter he was given fresh spell of adhoc promotion against the vacancy with effect from 5.7.90 to 31.12.90 with break in service. After the expiry of that period he was given another fresh spell of adhoc promotion

with effect from 03.01.91 to 31.12.91 giving two days break and on expiry of that period he was once again given a fresh promotion on adhoc basis with effect from 31.01.92 to 31.12.92 giving two days break and lastly after that period had expired he was again given adhoc promotion with effect from 4.1.93 to 31.12.93 again giving 3 days break. The respondents further contend that since the competent authority did not consider it necessary to grant further adhoc promotion the applicant ~~he~~ automatically stood reverted to his substantive rank with effect from 1.1.94. It is maintained that every time the applicant was given adhoc promotion that was in fresh spell and necessary technical break after each spell was given as per the rules.

4. The respondents further point out that the applicant was considered for promotion for a regular post by the departmental promotion committee chaired by the Director General of Ordnance Services in June 1989 but the DPC did not find ^{him} suitable for promotion on regular basis as he did not meet the bench mark laid down for promotion. It is further stated that the applicant has also failed to make the grade for promotion on regular basis in the DPC held on 13.12.93. The respondents have contended that the case of the applicant was not an isolated case and there is no question of discrimination. They point out that initially 46 officers were promoted on adhoc basis alongwith the applicant. However despite exposure to work as adhoc officer for 4-5 years being given as many as 10 officers had to be reverted to the substantive rank of OOC(S) on regular basis. The respondents also point out that there is no vacancy in any of the Adv Base Sty establishment located at Guwahati and retention of the applicant in the promotional post at Guwahati remains in suspended

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animation. Thus according to the respondents as the applicant was promoted purely on adhoc basis and he having not been recommended by the DPC for promotion the application is liable to be dismissed.

5. The order of adhoc promotion dated 13.6.89 provided the duration of the promotion in the following manner.

"MGO has approved the promotion of 46 Senior Stores Supdts to the post of Ordnance Officers Civilian (Stores) on adhoc basis as per Appendix 'A' to this letter with effect from 01 Jul 89 to 30 Jun 90 or till the posts are filled up on regular basis or till their death, retirement, resignation whichever is earlier".

6. The applicant has tried to contend that all ~~these~~ ^{the} eventualities mentioned ^{above} should be read together and therefore so long as the vacancy in the post against which he was promoted was not filled on regular basis or he retired or resigned he could not be reverted. This contention deserves to be rejected. All the contingencies are relatable only to the period of appointment so that if the post happened to be filled in on regular basis or the incumbent happened to retire or resign between the period of 1.7.89 to 30.6.90 the appointment was to stand terminated and did not continue for the ^{remaining} duration of that one year. It is true that the respondents ^{continued} ~~continued~~ the applicant on adhoc basis in the promotional post even after 30.6.90 till 31st December 1993. That however was in the manner as described in the written statement and noted above hence is of no avail.

7. The next contention urged by the applicant is that the long period of five years of service could not be ignored and that goes to show that a vacancy was available and the respondents needed the service of the applicant. Even assuming that there is substance in this submission we fail to understand as to how that would convert the adhoc appointment into a regular appointment. Moreover there is also another side of the coin namely that as despite having been given exposure to work as adhoc officer for 4-5 years the applicant could not earn the bench mark at the selection for regular promotion by the DPC either in 1989 or in the year 1993. The length of service therefore is of no consequence.

8. It is next contended that the order of reversion is violative of principle of natural justice as no opportunity was given to the applicant to show cause against it. All that needs to be stated in this connection is that the applicant is not reverted by way of a penal measure. The order of promotion stipulated that the promotion on adhoc basis will not bestow a claim for regular promotion nor will it count for the purpose of seniority or eligibility for promotion and confirmation. It automatically had to come to an end on expiry of the stipulated period and it is the principle in service that once the adhoc promotion comes to an end the person stands reverted to his substantive rank. No notice or show cause can be contemplated for such a consequence. Hence this contention has no merit.

9. The applicant has also contended that Article 14 of the Constitution has been violated inasmuch as although 46 officers were promoted alongwith him he alone has been reverted. There is no substance in this contention because the respondents have .

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stated in the written statement that not only the applicant but 9 others have also been reverted. That is also clear from Annexure 2 to the O.A. wherein the names of the 10 officers have been mentioned. The applicant cannot have any comparison with the remaining officers and therefore there does not arise any question of violation of Article 14 of the Constitution.

10. It is also not correct to say that the order of reversion had required to state the ground for reversion. That apart the order itself states that the competent authority had decided not to accord fresh approval for his promotion. That is the sufficient reason indicated and against that reason there can be no legal controversy.

11. The fact that the applicant was put up for consideration before the DPC for regular promotion has not been denied by the applicant. He could not be automatically regularised without selection. Moreover in Annexure IV to the application the applicant had represented that as a special case his case may be considered for promotion on adhoc basis till the date of his retirement. No rule or law has been pointed out to confer such a right. Moreover that was also not claimed as a matter of right. It is not the claim of the applicant that he stood automatically regularised by virtue of some legal provision or executive instruction. In the absence of it being shown that he has any legal right to be automatically regularised or that selection is not the requirement for regular appointment the applicant does not acquire any vested right to the promotional post and as the promotion on adhoc basis has come to an end we find no illegality in the impugned order.

11. Mr. Basar the learned counsel for the applicant submitted that the respondents were not entitled to give artificial breaks and that the applicant is entitled to be considered to have been in

continuous service from the date of his first adhoc appointment on promotion till the date of the reversion. In the first place that not being the subject matter of the O.A. we are not called upon ^{to} express any view on that aspect. That apart even if for the sake of argument it is assumed for a moment that the entire period can be taken into account without breaks even then that does not create any legal right ⁱⁿ on the applicant to claim permanency as he was promoted only on adhoc basis and he has to go back to his substantive post on its termination. We hasten to add that we have only assumed the above situation for the sake of testing the contention of the applicant and should not be understood to have expressed our view on that aspect.

12. The learned counsel next submitted that the applicant was never informed that he was not selected by the DPC and he also is not in a position to know as to for what reason the DPC did not find him suitable for getting higher bench mark than earned. In that connection also we do not express any opinion as the non-selection by the two DPCs ~~as pointed out in the written statement~~ is not the subject matter of this O.A. We are therefore not called upon to decide that question. The fact remains that the applicant has not been regularly selected ^{and} promoted. That is sufficient for us to dispose of the present application, which is confined to challenge the order of reversion dated 7.1.94. Since we find no illegality in that order the applicant is not entitled to any relief.

In the result, the O.A. is dismissed. There will be no order as to costs.

(G.L.SANGHVI)
Member (A)

M.G. CHAUDHARI
(M.G. CHAUDHARI)
Vice-Chairman