

**Central Administrative Tribunal
Principal Bench**

OA No.3629/2014

New Delhi, this the 25th day of April, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Dr. S.S. Tak,
A-5B/54B, 2nd Floor,
Janakpuri,
New Delhi-110058.Applicant

(By Advocate : Shri Ashish Rana with Shri Shaveer Ahmed)

Versus

Union of India
Ministry of Steel,
Through Secretary,
Udyog Bhavan,
New Delhi.Respondent

(By Advocate : Shri Rajinder Nischal and Shri H.K. Gangwani)

ORDER (ORAL)

Justice Permod Kohli, Chairman :-

This Original Application has been filed seeking following reliefs:-

- “(i) The Hon'ble Tribunal may be graciously pleased to pass necessary direction to the Respondent for appointing the Applicant as Additional Industrial Adviser from retrospective effect i.e. the date of vacation of the post with all consequential benefits.
- “(ii) And to pass all such necessary orders as this Hon'ble Tribunal may deem fit in the context of equity and natural justice.

2. The relevant facts for disposal of the present OA are noted hereunder.

3. The applicant was appointed as Assistant Industrial Adviser(Assistant Development Officer) on 22.01.1990 pursuant to his selection through examination in the erstwhile Directorate General of Technical Development (DGTD). Vide decision dated 08.07.1993, the DGTD was closed and 142 posts in the said department were abolished. The concerned Technical Directorates were also shifted to the user Ministries/Departments along with personnel and posts with effect from 31.03.1994. The applicant being one of the technical officers, was transferred to the Ministry of Steel along with post during the year 1994. The applicant was absorbed in the Department of Steel as regular and permanent Assistant Development Officer on 01.04.1994. In the year 1997, a vacancy of Deputy Industrial Adviser was created (equivalent to the post of Development Officer). The applicant was promoted as Deputy Industrial Adviser on *ad hoc* basis on 04.09.1998. He continued to hold the said post on *ad hoc* basis up to 14.08.2003 and thereafter reverted to his substantive post of Assistant Industrial Adviser and was again promoted to the post of Deputy Industrial Adviser on *ad hoc* basis on 01.04.2007 and subsequently regularized on the said post

w.e.f. 14.09.2007. The applicant continued on the said post till 17.02.2012.

4. At the time of appointment of the applicant to the post of Deputy Industrial Adviser, there were no Recruitment Rules. Recruitment Rules came to be notified vide notification dated 19.02.2012. He was promoted to the post of Joint Industrial Adviser on *ad hoc* basis on 17.02.2012 and continued to occupy the said post on ad hoc basis till 30.05.2014 when he was regularized pursuant to the recommendations of the UPSC. The applicant retired from service on 30.09.2014. The grievance of the applicant is that he has been denied promotions at the relevant time despite availability of vacancies at the level of Deputy Industrial Adviser, Joint Industrial Adviser and Additional Industrial Adviser. Accordingly, the prayer made in the present OA is for a direction to the respondents to promote the applicant as Additional Industrial Adviser retrospectively i.e., from the date of creation of the post with all consequential benefits.

5. The prayer made by the applicant is vehemently opposed by the respondents. In para 4.4 of the counter affidavit, it is stated that the applicant was promoted to the grade of Joint Industrial Adviser w.e.f. 30.05.2014 on regular basis. It is stated that as per Clause 12 of the Ministry of Steel (Technical

Wing) Recruitment Rules, 2002, departmental Joint Industrial Adviser with 5 years regular service in the grade failing which Joint Industrial Adviser with ten years combined regular service in the grades of Joint Industrial Adviser (Grade Pay of Rs.7600) and Deputy Industrial Adviser (Grade Pay of Rs.6600) is eligible for promotion to the grade of Addl. Industrial Adviser. It is accordingly stated that the applicant did not have the eligibility as required under the Recruitment Rules and thus was not entitled for promotion to the post of Additional Industrial Adviser. This fact is not disputed in the rejoinder filed by the applicant.

6. From the record it is apparent that the applicant was appointed as Joint Industrial Adviser on *ad hoc* basis on 17.02.2012 and remained on the said post upto 30.05.2014 when he was appointed on regular basis and retired on 30.09.2014. Thus, the total service rendered by the applicant is w.e.f. 17.02.2012 upto 30.09.2014 including the *ad hoc* service. He was not having five years residency period on the post of Joint Industrial Adviser. Even applying the second part of the Recruitment Rules, the applicant did not have combined residency service of ten years, i.e., on the post of Joint Industrial Adviser and Deputy Industrial Adviser. The applicant was appointed as Deputy Industrial Adviser on regular basis on

14.09.2007 and continued up to 17.02.2012. Thus, the total service rendered by the applicant on these posts is less than ten years. Learned counsel for the applicant submits that *ad hoc* service of the applicant on the post of Deputy Industrial Adviser is also required to be counted. From the admitted factual position, we find that the applicant was promoted as Deputy Industrial Adviser on *ad hoc* basis on 04.09.1998 and remained there up to 14.08.2003 when he was reverted to the post of Assistant Industrial Adviser. He was re-appointed as Deputy Industrial Adviser on 01.04.2007 where he was confirmed on 14.09.2007. For promotion from the post of Deputy Industrial Adviser to the post of Joint Industrial Adviser, the prescribed residency period is five years' regular service in the grade of Deputy Industrial Adviser. On completion of the required residency period, the applicant was promoted to the post of Joint Industrial Adviser on 17.02.2012. At that time, the applicant never asked for counting of his *ad hoc* service as Deputy Industrial Adviser and accepted the promotion to the post of Joint Industrial Adviser on the basis of the requisite residency period as prescribed under the Recruitment Rules from the date of regular/substantive appointment as Deputy Industrial Adviser. The grievance of the applicant is that even when the vacancies were available, he was not promoted and thus, he is entitled to be considered for

promotion keeping in view the *ad hoc* promotion and even the period when vacancy was available, the applicant was not promoted. This contention is totally unsustainable in law. The rules required regular service in the grade. The applicant was not possessing requisite regular residency service. The applicant never raised the grievance while he was in service. This OA has been filed on the day of retirement, i.e., on 30.09.2014.

7. We do not find any valid ground to accept the applicant's contention. No merit. OA is dismissed. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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