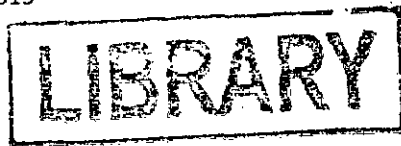


**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**



O.A. 350/00417/ 2015

Order dated: 07.08.2019

**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

Niranjan Kumar Purkait,
Son of Late Gurupada Purkait,
Aged about 59 years, 5 months,
Working as Office Superintendent
Head Quarter Office,
Zoological Survey of India,
'M' Block, New Alipore,
Kolkata – 700 053,
Residing at Village – Sitarampur,
P.O. Srinagar, Bakae Para,
P.S. Kakdwip,
Dist. South 24 – Parganas,
Pin – 743 374.

..... Applicant.

Versus

1. Union of India,
Service through the Secretary,
Ministry of Environment,
Forest and Climate Change,
Room No. 744, C.G.O. Complex,
Lodhi Road, New Delhi – 110 003.

2. The Director-in-Charge,
Zoological Survey of India,
'M' Block, New Alipore,
Kolkata – 700 053.

..... Respondents.

For the applicant : Mr. T.K.Biswas, Counsel
For the respondents : Ms. D.Nag, Counsel

ORDER (ORAL)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal praying for the following relief:

"8. a) An order directing the respondents to set aside the order dated 11.2.2015 (Annexure- A-10) and further directing the respondents to regularise the ad-hoc period (i.e.

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22.9.1982 to 23.2.1985) as regular service and said period may be counted for the length of service purpose and thereafter release the all consequential service benefits;

b) An order directing the respondent to treat the half of the service (i.e. February 1981 to 22.9.82) and the same may be counted the length of service purpose and release the pensionary benefits for the aforesaid period;

c) Any other or further order or orders as to this Hon'ble Tribunal may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The facts of the matter, in brief, is that the applicant was appointed as a Contingent Typist-cum-Clerk on "no work no pay" basis commencing from February, 1981. He was further appointed as Lower Division Clerk on ad hoc basis at the same station w.e.f. 22.09.1982, and, after having qualified in the Clerk's Grade Examination for L.D.C., the applicant's service was regularized in the same post w.e.f. 23.02.1985. In August 1999, the applicant had represented before the respondent authorities praying that the period between 22.09.1982 to 23.02.1985 (when he was placed on ad hoc service without any break) be treated as regular service.

Thereafter, the applicant was promoted to the post of UDC w.e.f. 04.10.2002 and further to the post of Assistant w.e.f. 15.03.2010. The applicant superannuated on 31.10.2015.

The ad hoc service of the applicant from 22.09.1982 to 23.02.1985 was not counted for the purpose of promotion, ACP, MACP etc., resultant to which, his juniors in the respective grades superseded him.

The applicant, thereafter, preferred a representation on 22.09.2014 praying for fixation of inter se seniority in the grade of LDC, which was rejected on the

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grounds that ad hoc appointment would not bestow any right for regular appointment and for the purpose of seniority and also for eligibility for promotion to the next higher grade as per DoPT O.M. dated 29.10.1975. Being aggrieved with such rejection order dated 11.02.2015, the applicant has approached the Tribunal for relief.

4. At the outset, we examine the representation of the applicant dated 22.09.2014 annexed at Annexure-A/7 to the O.A., which is as under:

"To

The Director,
Zoological Survey of India,
New Alipur,
Kolkata - 700 053.

Dated 22 September, 2014

Subject : Fixing of Inter-se-seniority in the grade of L.D. Clerk,
as per selection after sponsoring Through
Employment Exchange - Prayer

Sir,

With due respect, reference to the subject mentioned above several prayer have been made earlier but neither reply nor action of rectification has yet been conveyed to me. Once again I am submitting herewith my prayer to the present administrator giving in details of the fact for consideration of my prayer.

On 23.02.1982 I was appointed as L.D. Clerk on ad-hoc basis at SFRC, ZSI, Kakdwip, on being sponsored by Employment Exchange and through a competitive test at the appropriate level among other candidates. Relevant documents Annexure 1-3 enclosed for ready reference. In this connection I like draw your kind attention to the DOPT No. 28036/8/87Estt(D) dated 30.03.1988 that the ad-hoc service is limited to one year only. But in my case I was allowed to continue beyond one year without break and ultimately regularized on 23.02.1985 vide this Office Order No. 30/86 dated 1.3.1985. (Copy enclosed Annexure 4). In this regard kindly see point No. 4 of Direct Recruit in the general principles for determination of seniority in the Central Civil Services Annexure To Govt. of India, Min. Of Home Affairs O.M. No. 9-11/55, RPS, dated the 22nd December, 1959, (Copy enclosed Annexure 5). The above O.M. clearly states the fixing of seniority similar to my case selected for appointment as per recommendation of the selecting authority. My humble submission to you Sir, that I am due to retire on

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31.10.2015 and if before that my seniority is counted from the date of my ad-hoc appointment based on the above rules mentioned, the date of benefit of ACP/MACP will be automatically revised by which my pensioner benefit will be raised and ultimate relief can be extended to this poor fellow who is suffering since long and standing at the verge of retirement. For ready reference I am also enclosing herewith all my earlier correspondence in this regard.

Considering the above circumstances and gesture of rectification of staff grievances, which I have observed during the period from when, you have taken over the charges of this great institution, once again I appeal to you Sir, for kind consideration of my prayer before my retirement.

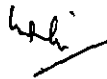
Awaiting your early considerable reply.

Encl: As above.

Yours faithfully,
Sd/-
(Niranjan Kr. Purkait)
Assistant (Office)"

Following is inferred from the above representation of the applicant:

- (i) That, the applicant had been appointed as L.D. Clerk on 23.02.1982, and, that, although he was placed in ad hoc service, he was allowed to continue beyond one year without break, and, ultimately, regularized on 23.02.1985. That, continuing in ad hoc service beyond one year period was contrary to the circular of the DoPT dated 30.03.1988 which mandates that ad hoc service would be limited to one year only.
- (ii) That, according to the O.M. of Ministry of Home Affairs, on the subject matter of general principles for determination of seniority in the Central Civil Services, dated 22.12.1959, the applicant's seniority should be counted from the date of his ad hoc appointment.
- (iii) The applicant prayed that his seniority be counted from the date of his ad hoc appointment so that dates of effect of benefits of



ACP/MACP would automatically be revised resulting in consequent revision of pensionary benefits.

The representation of the applicant dated 22.09.2019 was disposed of by the Respondent authorities on 11.02.2015 with reference to DoPT's O.M. dated 29.10.1975, with the observation that ad hoc appointment will not bestow on a person a claim for regular appointment for the purpose of seniority in that grade and also eligibility for promotion to next higher grade.

The decision of the authorities dated 11.02.2015 is reproduced verbatim as below:

"F.No.22-01/2015-Estt./1856

Dated 11th Feb. 2015

Subject:- fixing of inter-se-seniority in the grade of LDC, as per selection after sponsoring through Employment Exchange-reg.

References is invited to your representation, dated 22nd September, 2014 on the subject mentioned above and directed to state that the claim for fixation of inter-se-seniority in the grade of LDC, as per selection after sponsoring through employment exchange cannot be acceded in views of the Department of Personnel & A.R. (now Department of Personnel & Training) OM No. 22011/3/75-Estt.(D), dated 29-10-1975 which clearly stated that an ad-hoc appointment will not bestow on a person a claim for regular appointment and for the purpose of seniority in that grade and also for eligibility for promotion to next higher grade.

(DHIRTI BANERKEE)
SCIENTIST-D
&
HEAD OF OFFICE"

5. We next proceed to examine the contents of the DoPT O.M. dated 29.10.1975, which formed the basis of rejection of applicant's representation and decipher as follows therefrom:

(1) According to para 8 of the Annexure to the Ministry of Home Affairs Office Memorandum No. 9/11/55-RPS, dated the 22nd December, 1959, persons appointed on ad hoc basis to a grade are to be replaced by persons

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approved for regular appointment by direct recruitment, promotion or transfer, as the case may be, and until they are replaced such persons will be shown in the order of their adhoc appointments and below persons regularly appointed to that grade. The "General Principle (8)" of the Explanatory Memorandum annexed to the aforesaid OM also clarified that while the seniority of persons appointed on adhoc basis would be determined as indicated above, the seniority list should clearly show that such persons are not eligible for promotion or confirmation.

(2) The persons appointed on ad-hoc basis are not entitled to any seniority in the grade concerned and that their ad-hoc appointment does not entitle them to any claim for promotion, confirmation etc. in the grade.

(3) Whenever an appointment is made on adhoc basis, the fact that the appointment is adhoc and that such an appointment will not bestow on the person a claim for regular appointment, should be clearly spelt out in the orders of appointment. It should also be made clear that the service rendered on ad-hoc basis in the grade concerned would not count for the purpose of seniority in that grade and for eligibility for promotion to next higher grade.

Nothing has been brought on record by the applicant to substantiate that the above noted O.M. of DoPT has since been amended, modified or superseded so as to permit seniority with effect from the dates of ad hoc appointment.

6. Some of the documents brought on record by the applicant are now examined:



Annexure-2 to the O.A., which is an order dated 20th January 1982, clearly refers to his "purely ad hoc" engagement.

Annexure-3 to the O.A., i.e. the offer letter dated 4.3.1985, lays down the applicant's terms of appointment, *inter alia*, as follows:

"2(i) the post is temporary but is likely to become permanent. In the event of its becoming permanent, his/her claims for permanent absorption will be considered in accordance with the rules in force.

OR

The appointment is temporary and will not confer any title to permanent employment."

In his representation dated 10.08.1999 (Annexure-A/4 to the OA), the applicant has cited **K.C.Joshi & Os. Vs. Union of India & Ors, AIR 1991 SC 284**, in support. The ratio in K.C.Joshi is as under:

"Seniority would be counted only from date of substantive appointment- Adhoc appointment not according to Rules and was made as stop gap arrangement-Period of officiation in such post cannot be considered for computing seniority.

Seniority-Computation-Service is to be counted only from date of substantive appointment-Period of continuous officiation in post cannot be considered."

This clearly controverts the claim of the applicant.

The Respondent authorities had not regularized the period of ad hoc service of the applicant, and, accordingly, as his ad hoc service has not been regularized, the scope of considering applicant's claim for the purpose of seniority and also for eligibility for promotion to the next higher grade does not arise.

7. Ld. Counsel for the applicant cites two decisions of the Hon'ble Apex Court in **Union of India Vs. Hemraj Singh Chauhan, (2010) 4 SCC 290**, as well as

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P.N.Premachandran Vs. State of Kerala, 2004 SCC (L&S) 170, to drive home his claim on the scope of regularization of ad hoc appointment.

In **Hemraj Singh Chauhan** (supra), we find that the IAS Cadre (Rules), 1954, were under consideration and the issue related to the scope of prospective operation of cadre review. As cadre review is not the cause of action in this O.A., the ratio in **Hemraj Singh Chauhan** supra is distinguishable from the case of the applicant.

In **P.N.Premachandran** (supra), the issue decided upon was on retrospective promotion on account of delay in convening the DPC. The applicant does not rest his case on delay in convening DPC but rather claims his seniority on the strength of regularization of his ad hoc service period, which was not accorded to by the Respondents. Accordingly, the scope of applicability of the ratio in **P.N.Premachandran** (supra) also does not succeed.

8. Accordingly, the claims of the applicant, not being substantiated by facts or established on legal principles, fails to succeed and the O.A. is, accordingly, dismissed on merit. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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