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Central Administrative Tribunal
Principal Bench

O.A. No. 468 of 2003

New Delhi, dated this the 16th September, 2003.

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

S.C. Gupta,
S/o Late Shri H.C. Gupta,
23/175, Lodhi Colony,
New Delhi-3

....Applicant.

(Applicant in person)

Versus

1. The Union of India,
through
the Secretary to the Govt. of India,
Ministry of Textiles,
Udyog Bhawan,
New Delhi-11
2. The Development Commissioner (Handlooms),
O/o the Development Commissioner (Handlooms),
Ministry of Textiles,
Udyog Bhawan,
New Delhi-11

....Respondents.

(By Advocate: Shri R.N. Singh, proxy counsel for Shri
R.V. Sinha)

ORDER

Shri R.K. Upadhyaya, Administrative Member

By this application under section 19 of the Administrative Tribunals Act, 1985, the applicant has asked for the following reliefs:

"8.1 That the respondent no. 2 be directed to count the applicant's continuous uninterrupted officiation in the post of Jr. Investigator w.e.f. 26.4.1971 to 19.9.1976 and Sr. Investigator w.e.f. 20.09.1976 to 26.6.1979 and Technical Assistant w.e.f. 26.6.1979 to 3.3.1981 as regular for the purpose of fixation of pay, protection of pay scale, determining Seniority and Promotion to the higher grade as has been done in the case of other employees including

Consignment

Publicity Officers. The impugned orders which have adversely affected the interest of the applicant, being senior enough, either may be withdrawn by respondent no. 2 or the applicant may be treated on the same footings as that of Publicity Officers, but his eligibility/seniority should not be affected adversely.

8.2. That the Respondent no. 2 be directed to protect the pay scale of Rs. 550-25-750-EB-30-900 held by the applicant in the post of Sr. Investigator prior to his appointment as Tech. Assistant in the scale of Rs. 500-20-700-EB-25-900 w.e.f. 26.6.1979.

8.3. That keeping in view of the scale of Rs. 550-900 earlier held by the applicant and that in order to get the applicant's pay fixed under FR-22/C, on promotion to the post of Dy. Supdt., the Respondent no. 2 be directed to revise the pay scale of Rs. 550-20-650-EB-25-750 to a higher scale of Rs. 650-30-740-35-EB-880-EB-40-960 w.e.f. 04/03/1981 so that the recoveries made by the Respondent no. 2 from his salary are recouped and his pay is enhanced and fixed under FR-22/C.

8.4 That Respondent no. 2 be directed to correctly fix inter-se-seniority of the applicant with the Publicity Officer mentioned here in above in the application as the applicant was confirmed in the Pay Scale of Rs. 550-20-650-EB-25-750 as Dy. Supdt. and the Publicity Officers were confirmed in the lower Pay Scale of Rs. 470-15-530-EB-20-650-EB-26-750.

8.5 That the respondent be directed to promote the applicant to the post of Assistant Director Gr.I on regular basis from a date in 1979 or in 1980 when the post of Assistant Director Gr. I had fallen vacant and had been filled up on deputation basis.

AND

Any other relief which the Hon'ble Tribunal may like to award.

8.6 Consequential relief following there from with approved rate of interest.

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8.7 That the cost of the application may be awarded in favour of the applicant as he has been dragged into uncalled for litigation."

2. It is stated by the applicant that he was appointed as Junior Investigator initially on adhoc basis in the scale of Rs.210-425/- (Revised Rs.425-700) on 26.4.71 in the Office of Commission of Inquiry on Large Industrial Houses (CILIH for short). Subsequently, the applicant was offered an appointment to the post of Senior Investigator in the scale of Rs.350-700/- w.e.f. 1.1.75. The applicant claims that he "was not allowed to join the post of Senior Investigator in the World Bank Population Project" as he was being considered for promotion to the post of Senior Investigator in his office itself. It is further claimed that he continued to officiate uninterrupted as Junior Investigator till 20.9.76 the date he was appointed as Senior Investigator on deputation basis in the scale of Rs.550-900/-. In view of Govt. of India order for winding up of CILIH, directions were issued by Ministry of Industry vide order dated 21.4.79 for suitable absorption of the employees who had been made surplus or retrenched. The applicant claims that he was relieved as Senior Investigator on 26.6.79 and transferred to the post of Technical Assistant on temporary basis in the scale of Rs.500-900. The basic pay of Rs.600/- last drawn by the applicant on 26.6.79 in the post of Senior Investigator was protected. However, his request for protection of higher pay scale of Rs.550--900/- was not accepted. The applicant claims that he was selected by DPC for appointment as Deputy Superintendent on regular basis on 4.3.81 in the pay

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scale of Rs.550-750/- as per order dated 13.3.81 (Annexure-M). He further claims that initially "he did not join the post of Deputy Superintendent". It is alleged that on the oral assurance that his scale would be revised, he joined the post of Deputy Superintendent. The applicant claims that the recruitment rules for the post of Deputy Superintendent were notified on 25.5.81 whereas he was already promoted to post of Deputy Superintendent on 4.3.81. In view of the fact that the representations made by the applicant have not been favourably decided, the applicant has claimed for reliefs as already stated by this application.

3. The respondents have opposed the reliefs claimed by the applicant. In the reply filed, the respondents have stated that the reliefs claimed by the applicant are not based on facts. According to the respondents, CILIH where the applicant had served for about eight years on adhoc basis from 26.4.71 to 26.6.79 on the post of Junior Investigator and Senior Investigator was itself a temporary Organisation which existed for about eight years only. Therefore, the Organisation was wound up and all its employees including the applicant faced their termination. In order to mitigate the hardship of the temporary employees including the applicant, letter dated 21.4.79 (Annexure-V at page 326) regarding redeployment/absorption of retrenched temporary/Central Government employees in regular

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Govt. establishments was issued to all its non-participating attached and subordinate offices. It was requested that the possibility of re-deploying the retrenched temporary employees of the Commission in different Subordinate and non-participating attached offices be explored immediately in the light of Govt. of India. Department of Personnel and Administrative Reform's OM dated 27.3.76. The applicant was given appointment on temporary basis to one vacant post of Technical Assistant in the grade of Rs.500-900/- in the Office of Respondent No.2. The applicant joined the said post of Technical Assistant on temporary basis on 26.4.79. The respondents have further stated that though the Recruitment Rules for the post of Technical Assistant in the office of Respondent No.2 were notified on 25.5.81, the applicant did not fulfil the eligibility criteria for appointment to the post of Technical Assistant in accordance with the provisions of the Recruitment Rules. The applicant did not belong to the feeder cadre for such appointment nor he possessed the requisite technical qualification in field of Textile Technology/Handloom Technology. Therefore, he was required to be shifted from the post of Technical Assistant to some other suitable non-technical available post in the Office of Respondent No.2 so that no hardship was caused to him.

4. Learned counsel of the respondents stated that the respondents took a sympathetic attitude and

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the applicant was appointed as Deputy Superintendent on 3.3.81 on the basis of recommendations of the Selection Committee. The Recruitment Rules for the post of Deputy Superintendent were notified in February, 1982 and later amended in May, 1984. These amended recruitment rules for the post of Deputy Superintendent contained the specific provision, viz., "every Officer who was holding immediately before the commencement of these rules the post of Deputy Superintendent in the Office of the Development Commissioner (Handlooms) (i.e. Office of Respondent No.2) shall be deemed to have been appointed to the said post and the continuous service of such officer in the said post prior to such commencement shall be taken into account for purposes of calculating qualifying service for confirmation and promotion to higher post". In accordance with the said specific provisions of the Recruitment Rules, the applicant had been confirmed on the said post of Deputy Superintendent and he earned eligibility for further promotion. On completion of three years' regular service as Deputy Superintendent, the applicant was promoted to the post of Office Superintendent w.e.f. 13.5.88. Learned counsel invited attention to the order dated 13.3.81 (Annexure-M) by which the applicant had been appointed as Deputy Superintendent in the scale of Rs.550-750/- w.e.f. 4.3.81. Learned counsel of the respondents clarified that the word "promotion" mentioned in the order dated 23.4.81 (Annexure-N) conveyed a wrong impression to the applicant that he

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was promoted from the post of Technical Assistant in scale of Rs.500-900/- to the post of Deputy Superintendent in the scale of Rs.550-750/-. According to the learned counsel, the order dated 13.3.81 (Annexure-M) is the order of posting on selection of the applicant in the scale of Rs.550-750/- as Deputy Superintendent. The order dated 23.4.81 (Annexure-N) is merely a posting order by which he had been directed to report to Admn.II(B) Section with immediate effect. It was further clarified by the learned counsel of respondents that the pay of the applicant has always been protected. This fact has also been stated by the applicant in his application wherein he has stated that when the applicant joined the post of Technical Assistant on 26.6.79 in the scale of Rs.500-900, his basic pay of Rs.600/- which he was drawing as Senior Investigator, had been protected. Copy of the Office order dated 26.10.87 of pay fixation has been filed as Annexure-AN to the OA. According to the respondents, the applicant can claim only pay protection and not protection of his pay scale. According to him, the application being devoid of any merit should be rejected.

5. The respondents have also stated that the Publicity Officers (S/Shri R.V.Subramanian, T.R.Batra and T.P.A. Narayanan) "earned eligibility for promotion to the post of Office Superintendent on earlier dates i.e. on 1.12.81 (Shri R.V.Subramanian), 8.8.82 (Shri T.R.Batra) and 15.9.82

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(Shri T.P.A. Narayanan) respectively than the date of eligibility (4.3.84) for promotion of the applicant to the post of Office Superintendent."

6. We have heard the applicant as well as the learned counsel of the respondents. From the materials available on record, it is undisputed that the applicant joined as Junior Investigator on adhoc basis. The Office of CILIH was a temporary one. The applicant who was given adhoc and temporary appointment was liable to be terminated from his service. However, the Government decided to absorb the erstwhile employees of CILIH in its non-participating attached and subordinate offices in terms of Govt. of India, Department of Personnel & Administrative Reforms' OM dated 27.3.76. As has been pointed out by the learned counsel of the respondents, the post of Technical Assistant offered to the applicant on temporary basis was lying vacant. However, it was noticed that the applicant did not possess the necessary qualifications for Technical Assistant and his recruitment to that post was not in conformity with the rules subsequently notified. Therefore, Respondent No.2 appointed him on the post of Deputy Superintendent. The applicant's posting as Deputy Superintendent was considered as regular. Therefore, he had been allowed such benefit and had subsequently been given promotion also. The respondents have categorically stated that the pay of the applicant has always been protected. The applicant had been offered and given alternative job instead of being retrenched or declared surplus. The claim of the applicant for consideration of the

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entire service as being one in continuation cannot be accepted as his all appointments before regular appointment as Deputy Superintendent w.e.f. 23.4.81 were temporary and on adhoc basis. He was initially appointed in temporary Organisation which was wound up after eight years. The services of the applicant were liable to be terminated or legally retrenched but he was given alternative job by protecting his pay. The right of applicant for benefit of continuous service can be determined from terms of appointment letter only. It is not that the applicant was selected on temporary basis following the prescribed procedure against a permanent post. On the other hand, we find that the applicant was given adhoc and temporary appointment in a temporary Organisation and when the Organisation was wound up, he was given alternative job. Since the applicant was not qualified for the post of Technical Assistant, he was appointed to the post of Deputy Superintendent. This post was a regular one in a regular department. Therefore, the applicant had been given further promotion also.

7. The applicant's grievance regarding promotion to the next higher grade of Office Superintendent is also misconceived. Publicity Officers and Deputy Superintendent are both feeder cadres to the next higher promotion post of Office Superintendent. The three Publicity Officers (S/Shri R.V.Subramanian, T.R.Batra and T.P.A.Narayanan) completed their eligibility period of five years much earlier (in

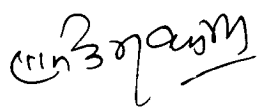
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1981 and 1982) than the applicant who became eligible only on 4.3.84 on completion of three years' regular service as Deputy Superintendent. Therefore the applicant cannot be said to be unfairly treated vis-a-vis Publicity Officers.

8. On the facts of this case, we do not find any justification for grant of reliefs as claimed by the applicant. Therefore, this application is dismissed without any costs.



(R.K. Upadhyaya)
Administrative Member



(V.S. Aggarwal)
Chairman

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