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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

OA NO. 477/2003 ✓
OA NO. 2265/2002

New Delhi this the 19th day of December, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER (A)

OA NO. 477/2003

1. All India NSSO (FOD) Superintendents Association
through its General Secretary,
Shri Vijendra Singh,
National Sample Survey Organization
(Field Operations Division),
East Block No. 6,
Level 5-7, R.K. Puram,
New Delhi - 110 066.
 2. Shri G.S. Verma,
S/o Late Shri B.L. Verma,
R/o H.No. 116, Sector - 1,
R.K. Puram, New Delhi - 66.
 3. Shri R. Chakarvarty,
S/o Late Shri R.K. Chakravarty,
R/o 751, Laxmibai Nagar,
New Delhi - 110 023.
- ...Applicants

(By Advocate: Shri Keshav Kaushik)

Versus

1. Union of India through
Secretary,
Ministry of Statistics and Programme
Implementation,
Sardar Patel Bhawan,
New Delhi - 110 001.
 2. Additional Director General,
National Sample Survey Organization,
(Field Operations Division),
Ministry of Statistics and Programme
Implementation, East Block No. 6,
Level 5-7, R.K. Puram,
New Delhi - 110 066.
 3. Director (Administration),
(Headquarter)
National Sample Survey Organisation
(Field Operations Division),
Ministry of Statistics and Programme
Implementation, East Block No. 6,
Level 5-7, R.K. Puram,
New Delhi - 110 066.
- ...Respondents

(By Advocate: Shri A.K. Bhardwaj)

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OA NO. 2265/2002

1. All India Association of Assistant Superintendents, (i) through its General Secretary, K.V.B.K. Murthy, National Sample Survey Organization (Field Operations Division), Ministry of Statistics and Programme Implementation, 16-2-21, Lakshmana Rao Street, Vijay Wada - 520 003.

2. Shri Sushil Kohli,
S/o Late Shri B.S. Kohli,
R/o GH-II/100 D
Paschim Vihar,
New Delhi - 110 063.

...Applicants

(By Advocate: Shri Keshav Kaushik)

Versus

1. Secretary,
Ministry of Statistics and Programme Implementation,
Patel Bhawan,
New Delhi - 110 001.

2. Additional Director General,
National Sample Survey Organization,
(Field Operations Division),
Ministry of Statistics and Programme Implementation, East Block No. 6,
Level 6-7, R.K. Puram,
New Delhi - 110 066.

3. Director (Administration),
(Headquarter)
National Sample Survey Organisation
(Field Operations Division),
Ministry of Statistics and Programme Implementation, East Block No. 6,
Level 6-7, R.K. Puram,
New Delhi - 110 066.

...Respondents

(By Advocate: Smt. Meenu Mainee)

O R D E R

JUSTICE V.S. AGGARWAL:-

"8. The High Court, in our opinion, was not right in holding that promotion can only be to a higher post in the service and appointment to a higher scale of an officer holding the same post does not constitute promotion. In the literal sense the word "promote", means "to advance to a higher position, grade, or honour". So also "promotion" means "advancement or preferment in honour, dignity, rank, or grade" [See: Webster's Comprehensive Dictionary, International Edition, p. 1009].

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"Promotion" thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In Service law also the expression "promotion" has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post". [See: Union of India & Anr. v. S.S. Ranade 1995(4)SCC 462 at p. 468: 1995(2)SLR 718(S.C.)].

(From **State of Rajasthan v. Fateh Chand Soni**, 1996(1)SLR 1)."

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The Supreme Court, therefore, explained that promotion necessarily would mean advancement or preferment in honour, dignity, rank or grade. It would also include advancement to a higher position or rank and even to a higher grade. However, promotion can be on ad hoc basis, permanent or in any other form. According to the applicants, their ad hoc promotion that was made should be made from the past date when the vacancies were available. This is the short question that comes up for consideration in the facts of the case.

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2. The National Sample Survey Organisation (Field Operations Division) is an office of the Ministry of Statistics and Programme Implementation. It is engaged in the task of conducting large scale sample surveys in various socio-economic fields besides industry and agriculture. This is stated to be with the objective of building a sound data base of Indian economy for objective planning and policy making in Government. This organisation is spread throughout the country and has about 170 offices. The field work of collection and supervision of data collection is done by field functionaries designated as Investigators. The next promotion is to the rank of Assistant Superintendent and

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then to Superintendent. It has a sanctioned strength of 357 Superintendents, 1388 Assistant Superintendents and 1482 Investigators. The applicants in OA No.2265/2002 had been selected and appointed as Investigators between the years 1974-75. Between November 1998 to December 1999, they were promoted as Assistant Superintendent which is a Group 'B' and supervisory post on ad hoc basis. The applicants continued to work against the said posts. The respondents issued a vacancy position statement and it is pointed that there are 1388 sanctioned posts of Assistant Superintendent out of which 1315 posts were filled up. The applicants had submitted a representation that they should be regularised. Meanwhile, the respondents published a provisional All India eligibility cum seniority list of Investigators clubbing the applicants Assistant Superintendent with Investigators. Their grievance is that they should be regularised from the date they assumed charge of the post of Assistant Superintendent which they are still holding from the date of their joining as such.

3. The application has been contested. It has been pleaded that in the year 1998, 65 posts of Superintendent were created under the Plan Scheme (Working Class Family Living and Expenditure Survey) for a period of 12 months. 65 Assistant Superintendents were promoted as Superintendents on ad hoc basis. Out of 65 promotees, one officer refused promotion and another sought voluntary retirement. After regularising

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the appointment of 5 : 5 : incumbents against regular vacancies of 1999-2000, 7 additional ad hoc promotions to the posts of Superintendent were made. On completion of the survey work of the Scheme, 65 posts of Superintendents were abolished. However, 48 officials were allowed to continue on ad hoc basis against regular vacancies. 16 ad hoc Superintendents who were reverted were again given ad hoc promotion in February 2001 against regular vacancies. The promotion of the applicants as Assistant Superintendent on ad hoc basis had been made against the resultant vacancies caused due to ad hoc promotion from Assistant Superintendents to Superintendents. While giving ad hoc promotion to the post of Assistant Superintendent, it was made clear that these ad hoc promotions were made purely as a temporary measure as a stop gap arrangement without any right to seniority.

4. It has further been pleaded that considering the recommendations of the Fifth Central Pay Commission, a Subordinate Statistical Service had been constituted by grouping together all statistical function posts spread over various Ministries and the departments of the Government of India. The decision of the Government of India regarding constitution of Subordinate Statistical Service had been communicated on 30.1.2002. Consequent upon the constitution of Subordinate Statistical Service, the existing recruitment rules which had been included in the new Service cease to be in operation and had been ~~repealed~~ repelled. Meanwhile, the various cadres of

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statistical posts spread over in various Ministries and Departments of the Government of India through their respective associations challenged the modalities of the Subordinate Statistical Service and notified recruitment rules. Since the formation of Subordinate Statistical Service and its recruitment rules notified on 12.2.2002 became subjudice and the earlier recruitment rules for the posts of Investigator, Assistant Superintendent and Superintendent which have been included in the Subordinate Statistical Service ceased to be in operation, the respondents stated that they are not in a position to consider the case of the applicants for regularisation in respect of the post of Assistant Superintendent.

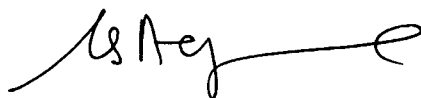
5. In OA No.477/2003, the applicants are Assistant Superintendents who had been promoted as Superintendents on ad hoc basis. Their claim is that the respondents should be directed to regularise them from the date they assumed the charge of the post of Superintendent which they are still holding. The facts basically are identical. It has been pleaded that against vacant sanctioned posts of Superintendent and after holding a proper Departmental Promotion Committee, the applicants were promoted as such mentioning that the promotion is on ad hoc basis. It has been pleaded that the sanctioned strength of Superintendent is 357 out of which 296 posts of Superintendent including the posts of Assistant Director were filled up. The applicants claim that they should be regularised from the date they were appointed

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— on ad hoc basis. It is pleaded that the post as such was available.

6. The application has been contested. It is denied that the promotions were made after conducting a regular and proper Departmental Promotion Committee meeting. These promotions were said to have been made as a stop gap arrangement and no Departmental Promotion Committee meeting was held. It has been pleaded that there were certain ex cadre plan posts against which ad hoc arrangements were made. In the year 1998, 65 posts of Superintendents were created regarding which we have already referred to the facts in OA No.2265/2002. The respondents pleaded that after regularising the appointment of 5 incumbents against regular vacancies of 1999-2000, 7 additional ad hoc promotions to the post of Superintendent were made. When the survey was completed, all the 65 posts of Superintendent were abolished, but 48 officials were allowed to continue on ad hoc basis against regular vacancies and 16 were reverted earlier were again promoted on ad hoc basis in February 2001. However, 19 more persons were appointed on ad hoc basis. It is denied that the applicants have a right to seek regularisation from the back date when they had been promoted on ad hoc basis.

7. By this common order, we propose to dispose of both the abovesaid applications together because the questions involved in both the applications is similar.



8. In OA 477/2003, the order appointing the applicants on ad hoc basis dated 17.8.1999 indicates:-

"Deputy Director General, NSSO (FOD) hereby appoints the under-mentioned Assistant Superintendents of this Division as Superintendents on ad hoc basis w.e.f. 1.9.1999 in the pay scale of Rs. 6500-200-10500. The promotion will take effect from the date (not before 1.9.1999), they actually assume charge at their respective places of posting indicated below:.....".

Perusal of the said order clearly shows that there is no adherence to the recruitment rules nor is there any mention that a regular Departmental Promotion Committee meeting was held. In the case of OA No.2265/2002, though there are few other orders, but the language basically is the same. In the order of 10.11.1998 promoting some of the Investigators as Assistant Superintendents, it has been mentioned:-

"On the recommendations of the DPC, the Deputy Director General, NSSO(FOD) hereby appoints the following Investigators of this Division as Assistant Superintendents on ad hoc basis in the pay scale of Rs. 5500-175-9000 from the day they assume charge at the places of their postings indicated below:.....

Above promotions are made on ad hoc basis as these are made against vacancies caused by ad hoc promotions to the post of Superintendent. The ad hoc promotions are being made purely as a temporary measure as a stop-gap arrangement and these promotions can be withdrawn/cancelled at any time without assigning any reasons. The ad-hoc promotions will not bestow on the above mentioned officials any claim for regular appointment and the ad-hoc service will not count for the purpose of seniority for eligibility for promotion etc. The above orders are subject to the judgement in different cases pending in

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various courts."

9. At this stage, it becomes necessary to refer to the decision of the Supreme Court in the case of **Rudra Kumar Sain and Others v. Union of India and Others**, (2000) 8 SCC 25. It was held:

"In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc." In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ad hoc/stopgap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous."

The said decision cannot be referred to the advantage of the applicants for the simple reason that therein the question was of seniority between the promotees and direct recruits and the service rendered by promotees on ad hoc basis was held to be liable for counting the seniority vis-a-vis the direct recruits in the facts of the case. That is not the question before us and, therefore, the said decision has little application in the facts of the case.

10. We have already pointed above the basic facts. The order clearly indicates that the persons were appointed on ad hoc basis. In OA No.477/2003, there was no adherence to the recruitment rules nor any Departmental Promotion Committee meeting even was held.

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It has been explained that certain new posts were created for 12 months for a specific purpose. As such, 65 Assistant Superintendents were promoted as Superintendents on ad hoc basis. Resultantly, the Investigators were also promoted as Assistant Superintendents temporarily on ad hoc basis. In this process, it became a chain reaction. To state, therefore, that merely because the vacancies were available, the applicants must be taken to be regularly appointed would not be a correct position in law.

11. Otherwise also, the person who is appointed on ad hoc basis has no right to the post. An officer has no indefeasible right to be promoted. He has a right to be considered. It is not the claim of the applicants that any person junior to them had been regularised ignoring their just claim. Thus even if there were vacant posts as was being told to us at the Bar, the applicants cannot claim as of right that they must be regularised against those posts. More so when as already pointed above, the manner in which the promotions firstly to Assistant Superintendent and then to Superintendent have been made clearly indicate that these were fortuitous promotions made as a stop gap arrangement. In this back-drop, even if in some of the cases, the Departmental Promotion Committee meeting was held, it will not take their matter any further.

12. The learned counsel for the applicants relied

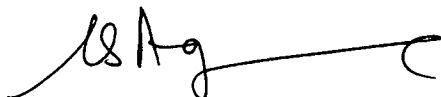
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upon the Office Memorandum No.28036/8/87-ESTT. (D)
dated 30.3.1988 issued by the Ministry of Personnel,
Public Grievances and Pensions. The same reads:-

"The undersigned is directed to say that instructions have been issued from time to time by the Department of Personnel & Training requesting all Ministries/Departments to fill all posts only in accordance with the prescribed procedure and Recruitment Rules on a regular basis. Consequently, Ministries/Departments are required to ensure that all appointments made on an ad-hoc basis are limited to posts which cannot be kept vacant until regular candidates become available. However, it has been noted that appointments continue to be made on an ad-hoc basis and proposals are being received in this Department for regularisation of these appointments on the grounds that the persons concerned have been working against these posts for a long time. This has led to instances where Courts and Tribunals have directed the Government to fix seniority after taking into consideration the period of service rendered on an ad hoc basis. This unintended benefit of ad hoc service has, therefore, been bestowed to a number of persons whose ad hoc promotions have been made on the basis of seniority-cum-fitness, even though the Recruitment Rules for the post may have prescribed promotion by selection."

Perusal of the same clearly shows that direction/advise was given to all the Ministries that appointments made on ad hoc basis are limited to posts which cannot be kept vacant until regular candidates become available.

13. The applicants cannot take advantage of the same because as already pointed above, certain temporary vacancies had occurred which resulted in promotion to the posts of Assistant Superintendent. Thereafter when the posts were abolished, some people on ad hoc basis



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were adjusted in the existing vacancies and others were reverted. The resultant vacancies were also filled up by Assistant Superintendents from Investigators. Thus it must be taken that this was an appointment made on temporary basis in light to the abovesaid directions.

14. It appears that the real grievance of the applicants is that since new recruitment rules had come into being, the matter can only be considered in light of those rules regarding which no controversy indeed has been raised as yet.

15. Though this question has not been raised, but we deem it necessary to mention that the promotions had been effected on ad hoc basis in the year 1999 onwards. The first application had been filed on 8.8.2003 while the second application had been filed on 25.2.2003. The same had been filed after one year of the promotion on ad hoc basis. The cause of action, if any, to claim regularisation from the date of initial appointments arose when the said appointments were made and the applications seemingly have been filed after the period had expired.

16. If by the new recruitment rules, the chances of promotions are in any way affected, it will not give a cause to the applicants. We refer with advantage to the decision of the Supreme Court in the case of Union of India and others v. S.L.Dutta and Another, (1991) 1 SCC

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505 wherein the Supreme Court held:-

"In connection with the question as to whether the conditions of service of respondent 1 could be said to be adversely affected by the change in the promotional policy, our attention was drawn by learned Additional Solicitor General to the decision of this Court in State of Maharashtra vs. Chandrakant Anant Kulkarni. There it was held by a bench comprising three learned Judges of this Court that mere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, chances of promotion are not. (See SCC p.141, para 16.) Reference was also made to the decision of this Court in K. Jagadeesan v. Union of India where the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni was followed"

On that count, therefore, precious little can be made out by the applicants.

17. In fact, the Supreme Court in the case of Ashwani Kumar and Others vs. State of Bihar and Others, AIR 1997 SC 1628 considered the question of regularisation of the Government servants and held:-

"13. In this connection it is pertinent to note that question of regularisation in any service including any Govt. service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily wage basis by a competent authority and are continued from time to time and if it is found that the concerned incumbents have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularise them so that the concerned employees can give their best by being assured security of tenure. But



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this would require one pre-condition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularisation may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by competent authority and the irregular initial appointment may be regularised and security of tenure may be made available to the concerned incumbent. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment. In any case back door entries for filling up such vacancies have got to be strictly avoided. However, there would never arise any occasion for regularising the appointment of an employee whose initial entry itself is tainted and is in total breach of the requisite procedure of recruitment and especially when there is no vacancy on which such an initial entry of the candidate could even be effected. Such an entry of an employee would remain tainted from the very beginning and no question of regularising such an illegal entrant would ever survive for consideration, however, competent the recruiting agency may be. The appellants fall in this latter class of case. They had no case for regularisation and whatever purported regularisation was effected in their favour remained an exercise in futility."

In the present cases, the applicants were regularly appointed in OA No.2265/2002 as Investigators and in OA No.477/2003 as Assistant Superintendents. Back date regularisation could not be claimed by them because it cannot be stated in the present cases that it was a long duration appointment on ad hoc basis. Long duration would only be in those cases where for years together a person continues to work on ad hoc basis. In the present cases as already indicated above such a

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situation had not arisen.

18. For these reasons, both the applications, namely OA No.2265/2002 and OA No.477/2003 being without merit must fail and are dismissed. No costs.



(S.K.Naik)
Member (A)

/sns/



(V.S. Aggarwal)
Chairman