

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1727/2003

New Delhi, this the 20th day of April, 2004

Hon'ble Shri Justice V. S. Aggarwal, Chairman
Hon'ble Shri S. K. Naik, Member (A)

1. Adesh Kumar
2. Jitendra Kumar

Both working as Scientific Assistant (Chemistry)
Forensic Science Laboratory, Police Complex
Malviya Nagar, New Delhi-17

...Applicants

(By Advocate: Shri Pradeep Dahiya)

Versus

1. Govt. of NCT of Delhi
through the Principal Secretary (Home)
Delhi Secretariat, IP Estate
New Delhi-2
2. The Deputy Secretary (Home III)
5th level, C wing, Delhi Secretariat
IP Estate, New Delhi-2
3. The Director/Incharge
Forensic Science Laboratory
Police Complex
Malviya Nagar, New Delhi-17
4. Ms. Kusum Singh
Scientific Assistant (Chemistry)
Forensic Science Laboratory
Police Complex
Malviya Nagar, New Delhi-17

..Respondents

(By Advocate: Smt. Sumedha Sharma with Shri Ajesh
Luthra)

O R D E R

Shri S.K. Naik:

The controversy in the present OA relates to the determination of seniority between a direct recruit and a deputationist who was subsequently absorbed into the service.

2. The brief facts of the case are that the applicants - S/Shri Adesh Kumar and Jitendra Kumar - were

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appointed as a Scientific Assistant (Chemistry) (for short 'SA (Ch.)') during December/November 1999 respectively after the due process of selection by the Delhi Subordinate Services Selection Board. One Ms. Kusum Singh, who was originally an employee of the Central Forensic Laboratory (BPR&D) Chandigarh but serving with National Institute of Criminology & Forensic Science (NICFS) as SA (Ch.) on deputation was appointed on second deputation basis by the respondents in the Forensic Laboratory Delhi, initially for a period of one year which was subsequently extended from time to time. On the request of the deputationist, Ms. Kusum Singh, the respondents passed an order of absorption vide order dated 30.10.2002. The said order reads as under:-

"Consequent upon to the approval of the competent authority, Mrs. Kusum Singh, Scientific Assistant (Chemistry) presently working on transfer/transfer on deputation basis is hereby absorbed permanently in Forensic Science Laboratory, Delhi on the post of Scientific Assistant (Chemistry) in the pay scale of Rs.4,500-125-7,000/- on the usual terms and conditions with immediate effect. Her inter se seniority will be fixed later on in accordance with the rules on the subject."

3. As is clear, the order of absorption states that inter-se-seniority of the absorbee was to fixed later on in accordance with the rules on the subject. The respondents thereafter fixed her seniority w.e.f. 12.10.1998, i.e., the day when Ms. Kusum Singh joined respondent No.3 on deputation. The applicants, who had joined as a direct recruit on 10.12.1999, thereafter became junior to Ms. Kusum Singh who is private respondent No.4 in the present case.

J. Prakash

4. The main grievance of the applicants is that the order of absorption being not in public interest is irregular. Further while the order of absorption dated 30.10.2002 clearly states that it will have effect immediately from the date of order, she has been given the benefit of past service on deputation and has been assigned seniority from the date of joining respondent No.3 on deputation, which is contrary to the well settled principle of law that in case of a person who is initially taken on deputation and absorbed at a later date, his/her seniority in the grade in which absorbed will normally count from the date of absorption.

5. Hence the present original application.

6. The counsel for applicants while arguing the case has stressed the point that the applicants was appointed as SA (Ch.) as a direct recruit by undergoing the entire process of selection held by the Delhi Subordinate Services Selection Board. He was appointed vide letter dated 10.11.1999 while respondent No.4 - Ms. Kusum Singh - was brought on deputation, which was not in accordance with the recruitment rules. He contends that respondent No.4 was originally the employee of the CFS, Chandigarh and was already on deputation to the NICFS whereas a deputationist should normally be sent on deputation for the second time only after completion of the cooling off period with the parent Department. In the case in hand, the counsel contends that neither has she been reverted to her parent Department nor has she undergone the cooling off period. The counsel, therefore, contends

7. *Devika*

that the respondents have acted in a partisan manner by first bringing the private respondent on deputation in an irregular manner and then subsequently absorbing her from the very date of deputation, despite the representations and objections raised by the applicants in the matter.

7. The counsel further contends that the deputation of private respondent has been done dehors the rules. According to the recruitment rules, the post of SA (Ch.) is to be filled through transfer on deputation only in case of non-availability of suitable departmental candidates and that too for a specified period. The period of deputation, as stated in the rule, could not ordinarily exceed a period of three years at the end of which the departmental officers had to be afforded an opportunity of being considered for appointment to the post. The counsel has vehemently argued that while absorbing respondent No.4 vide order dated 30.10.2002, the official respondents have not provided any opportunity to the departmental officers and have arbitrarily favoured private respondent No.4. The order of absorption, therefore, suffers from serious illegalities.

8. Referring to the judgment of the Hon'ble Supreme Court in G. Muniyappa Naidu v. State of Karnataka & others (1976) 4 SCC 543, the counsel contends that as had been held by the Apex Court, absorption of candidates into permanent service contrary to statutory regulations was not permissible. Similarly, not providing an opportunity for the departmental candidates to be considered for appointment to the post of SA (Ch.), as

Dr. A. K.

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provided for in the recruitment rules, was not sustainable as has been held by Hon'ble Karnataka High Court in Allasheb Doddamani v. State of Karnataka & others, 2001 (6) SLR 254, in which the Government had appointed respondent No.4 on deputation as Assistant Executive Engineer without determining whether there are any suitable candidates or not for the purpose of promotion when the petitioner was very well available for such promotion in the organisation. The High Court of Karnataka in that case had quashed the order of deputation. The counsel, therefore, contends that the situation being similar in the case in hand, the very act of the respondents to bring respondent No.4 on deputation was illegal.

9. The counsel for applicants further contended that respondent No.4 in her reply stated that her absorption in the Department was done in public interest but in the order absorbing respondent No.4, the words 'public interest' are not there.

10. Finally contending that assigning seniority to the absorbee from the date of deputation has adversely affected the right of the applicants as even though he was directly recruited and appointed on 10.12.1999, he has been made junior to respondent No.4 who has been absorbed only on 30.10.2002. The entire action of the respondents being arbitrary, illegal, unfair, unjust and against the relevant rules, he contends that the impugned order be quashed and set aside.

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11. Both the counsel for official respondents as well as for private respondent have filed their counter reply, to which the applicants have also filed their rejoinder.

12. The counsel for official respondents has refuted the claim of the applicants and has contended that the appointment of private respondent No.4 on deputation was fully in keeping with the provisions of the recruitment rules. According to him, the mode of recruitment for the post of SA (Ch.) as per the recruitment rules, is firstly by promotion/transfer/transfer on deputation, failing which by direct recruitment. Since the candidates in the feeder line were not eligible for promotion, the respondents had circulated four vacant posts of SA (Ch.) so as to fill them on the basis of the next mode of recruitment, i.e., on deputation. Private respondent No.4 - Ms. Kusum Singh - applied in response thereto and with the concurrence of her parent Department, she was appointed on deputation. The counsel further contends that since no other suitable candidate was available for being taken on deputation, the remaining three posts continue to remain vacant till the direct recruitment. In this context, the counsel has also referred to the matter of operationalising the FSL being monitored by the Delhi High Court. He, therefore, contends that the appointment of private respondent was in larger public interest and also in keeping with the provisions of the rules.

13. With regard to the contention of the counsel for applicants that the official respondents have not adhered to the provisions of the recruitment rules inasmuch as

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not affording the departmental candidates an opportunity of being considered for appointment to the post of SA before the deputationist could be absorbed, the counsel states that the applicants, who himself is an SA, has no locus standi to raise this issue as the feeder cadre for promotion/consideration is that of Laboratory Assistants, who have not raised any objection to either the deputation or absorption of private respondent as SA (Ch.). On the question of applicants' right being affected as a result of assigning the seniority to the absorbee from the date of deputation, the counsel contends that the same has been done by the respondents in keeping with the provisions of the rules as the private respondent was holding analogous post not only at the time of her joining respondent No.3 on deputation but even prior thereto while serving as SA (Ch.) in her parent Department right from the year 1995.

14. Referring to the judgment of the Hon'ble Apex Court in the case of SI Rooplal & another v. Lt. Governor through Chief Secretary, Delhi & others, JT 1999 (9) SC 597, in which in a case concerning seniority of SIs in BSF appointed on deputation and subsequently absorbed permanently, the Hon'ble Supreme Court upheld the view of the Central Administrative Tribunal that such appointees are entitled to count previous service, the counsel has argued that in keeping with the aforesaid judgment of the Hon'ble Supreme Court, the applicants was fully entitled to the benefit of her past service for the purpose of determining her seniority.

Forair

15. The counsel appearing on behalf of private respondent No.4 has also relied upon the said judgment and contended that as a result of the said judgment, the Office Memorandum dated 27.3.2001 issued by the Government of India, DoP&T on the question of seniority of persons absorbed after being on deputation had been amended to state that in the case of person who is initially taken on deputation and absorbed later, his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent Department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from; the date he has been holding the post on deputation or the date from which he has been appointed on regular basis to the same or equivalent grade in his parent Department, whichever is earlier. The grant of benefit for the past service for the purpose of seniority, therefore, is fully legal and cannot be questioned, the counsel contends.

16. With regard to the technical point raised by the counsel appearing for the applicants that the private respondent had not undergone the cooling off period before being taken on second deputation, the counsel contends that there are no general orders with regard to cooling of period between one spell of deputation and another spell of deputation. It is for the cadre controlling authority to decide whether there should be any cooling of period or not. In the case in hand, the

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counsel contends that the parent Department of the absorbee having given their 'no objection certificate' for her absorption, the question of cooling of period cannot be raised as an issue.

17. With regard to the contention of the counsel for applicants that just because the applicants was appointed on the basis of direct recruitment, his claim would be superior to that of the absorbee is not tenable. The official respondents have circulated the tentative seniority list and invited objections of all concerned and thereafter have finalised the same as per rules and instructions and if the absorbee has been assigned seniority higher than that of the applicants on the basis of her merit and as per rules, the applicants cannot grudge the same. The counsel, therefore, submits that on all counts, the orders passed by the official respondents are fair, just and as per the rules and need no interference by the Tribunal.

18. We have heard the counsel appearing for the parties and have perused the material placed on record. On the question as to whether the appointment of the private respondent - Ms. Kusum Singh - was as per rules or dehors the rules, it would be relevant to peruse the recruitment rules for the post of SA (Ch.). It reads as under:-

Name of the post	Number of posts	Classification	Scale of pay	Whether selection post or non-selection post	Age limit for direct recruits
(1)	(2)	(3)	(4)	(5)	(6)

For order



(10)

Scientific Assistant (Chemistry)	4 (four) 1997 subject to variation dependent on work load	General Central Service Group ~'C' Non-Gaz etted Non-Ministerial	Rs.1400-40-1800 CB-50-2300	Not Appl.	Below 28 years (Relaxable for Govt. servants in accordance with the instructions orders issued by the Central Government)
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Note:-
The date for determining the age limit shall be the closing date for receipt of applications from candidates in India (other than those in Andaman & Nicobar Island & Lakshadweep)

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Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer & percentage of the vacancies be filled by various methods.

(11)

In case of Recruitment by Promotion Deputation Transfer grades from which promotion/Deputation/Transfer to be made

(12)

By Promotion/Transfer/ Transfer on deputation failing which by direct Recruitment.

Promotion:

From amongst Laboratory Assistant with 3 years regular service in the pay scale of Rs.1320-2040.

Transfer/Transfer on Deputation:

Officers under the CFSL's/FSL's

(1) Holding analogous post on regular basis.

OR

(2) With 3 years regular service in the pay scale of Rs.1320-2040 possessing Educational Qualification and experience prescribed for direct recruitment under

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Col.No.8. The period of deputation shall ordinarily not exceed 3 years.

Note:-

The departmental officer will be considered alongwith outsiders appointed on transfer/ transfer on deputation. If the departmental candidate is selected for appointment to the post : it is to be treated as having been filled by promotion; otherwise, the post is to be filled by deputation contract for the prescribed period of deputation/ contract all the end of which the departmental officer will again be afforded an opportunity to be considered for appointment to the post."

19. The counsel for applicants has laboured on the note portion at the end of the recruitment rules which states that the period of deputation shall ordinarily not exceed three years and that the departmental officers will be considered along with outsiders appointed on transfer/ transfer on deputation. He has assailed the order of the official respondents on the strength of the endorsement that the departmental candidates have not been afforded any opportunity to be considered for the post and the private respondent has been continued on deputation and absorbed subsequently in violation of this rule. However, we find that as per column 11 of the recruitment rules, for the post of SA, the method of recruitment is by promotion/transfer/transfer on deputation, failing which by direct recruitment. Thus, the promotion is to be the first step for filling up of the post of SA. Column 12 states that for promotion, Laboratory Assistants with three years of regular service would be eligible. As has been explained by the counsel for applicants, since none of the Laboratory Assistants

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were eligible for promotion, they had to resort to the next step which is appointment by transfer/ transfer on deputation of officers holding analogous post on regular basis. The private respondent has thus been appointed by resorting to this alternate method. We find nothing irregular or beyond the rules in the appointment of respondent No.4 on deputation. Question of affording any opportunity could have arisen had the Laboratory Assistants been eligible for being promoted.

20. Coming to the question of fixing the seniority of the absorbee, it has to be taken note of that the absorbee, private respondent No.4 in this case, was also holding the analogous post with her parent Department and was appointed on deputation w.e.f. 12.10.1998 and the background, as explained by the official respondents in their reply, clearly indicates that they were in need of her services in public interest and as per citation, referred to by the counsel for respondents, i.e., SI Roop Lal (supra), private respondent No.4 was fully entitled to the credit of her past service for the purpose of seniority.

21. The citations referred to by the applicants will have no application to the facts of the present case. The case of G. Muniyappa Naidu (supra) refers to absorption of candidates into permanent service contrary to statutory regulations which is not the case here, as the recruitment rules do provide for appointment on transfer/ transfer on deputation. Similarly, in the case of Allasheb Doddamani (supra) relied upon by the applicants, the Government had appointed respondent No.4

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on deputation as Assistant Executive Engineer without determining whether there are any suitable candidates or not for the purpose of promotion when the petitioner was very well available for such promotion in the organisation. In the case in hand, the respondents have explained that those in the line of promotion, i.e., the Laboratory Assistants, were not eligible and thus, no parallel can be drawn to the case referred to above by the applicants.

22. In view of the discussions made above, we find that neither any irregularity nor any illegality has been committed by the respondents in taking private respondent No.4 - Ms. Kusum Singh - on deputation and subsequently absorbing her into the post with seniority from the date of deputation. The application, therefore, being without any merit fails and is accordingly dismissed without any order as to costs.


(S. R. Naik)
Member (A)


(V. S. Aggarwal)
Chairman

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