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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.2861/2003

New Delhi, this the 30th day of July, 2004

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

Shri Naresh Kumar Verma
s/o Shri Ram Kumar Verma
r/o 302, Gautam Nagar
New Delhi - 110 049.
presently working as
Assistant Public Prosecutor-cum-OSD (Home)
Govt. of NCT of Delhi. ... Applicant

(By Advocate: Sh. S.K.Gupta)

Versus

1. Govt. of NCT of Delhi
through Chief Secretary
Delhi Secretariat
Players Bhawan
I.P.Estate
New Delhi - 110 002.
2. Principal Secretary (Home)
Govt. of NCT of Delhi
Delhi Secretariat
Players Bhawan
I.P.Estate
New Delhi - 110 002.
3. Director
Directorate of Prosecution
Tis Hazari Courts
Delhi - 110 054.
4. Registrar
Registrar of Companies
Office of Director
Western Region
Department of Company Affairs
Ministry of Law, Justice & Company Affairs
Govt. of India
Everest Building
Mumbai - 400 002.
5. Union of Public Service Commission
through its Secretary
Dhoulpur House
Shahjahan Road
New Delhi. ... Respondents

(By Advocate: Sh. Vijay Pandita with Sh. Rajeev
Bansal)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Naresh Kumar Verma), by virtue of the present application, seeks for an order that action of the respondents in not granting annual increments for the period when applicant was on ad hoc basis as illegal. It should be directed that he is entitled to annual increments for the period when applicant was working on ad hoc basis.

2. Some of the relevant facts are that in February, 1995 the applicant applied for the post of Assistant Public Prosecutor (for short 'APP') on ad hoc basis. In May, 1995, he was offered the appointment on ad hoc basis in the scale of Rs.2000-3200. The relevant part of the order of 9.5.1995 reads:

"On the recommendations of Selection Committee, approved by Lt. Governor, Delhi the Chief Secretary, Govt. of N.C.T. of Delhi is pleased to appoint Sh/Shmt/Miss Naresh Kumar Verma to the post of Assistant Public Prosecutor in the pay scale of Rs.2000-60-2300-EB-75-3200 plus usual allowances as admissible from time to time on purely adhoc and emergent basis, in the Directorate of Prosecution, Tis Hazari, Delhi for a contract period of six months only or till such time an appointment of candidates is made on regular basis through the Union Public Service Commission, whichever is earlier, subject to their being nothing adverse in his/her character and antecedents and fulfilment of other terms & guidelines and service requirements as prescribed by the Govt. rules/guidelines from time to time. Other terms and conditions of appointment are as follows:-

1. The appointment may be terminated by one month's notice given by either side, namely the appointee or the Appointing Authority,

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without assigning any reasons. The Appointing Authority, however, reserves the right of terminating his/her services forthwith or before the expiry of the stipulated period of notice by making payment to him/her of a sum equivalent to the pay & allowances for the period of notice or un-expired portion thereof. If, however, any candidate is found unfit on grounds of health and/or character verification, his/her services could be terminated forthwith."

3. The applicant joined on 6.6.1995 as Assistant Public Prosecutor on ad hoc basis. During this period, the Union Public Service Commission advertised the post of Assistant Public Prosecutor on regular basis. The applicant also applied and was called for interview but later on he was not allowed to participate on the ground that applicant is not entitled to the age relaxation. The applicant on filing the OA 416/95, was allowed to participate in the interview. It is not in dispute that Union Public Service Commission had challenged the order of this Tribunal dated 2.4.1997 by filing a Civil Writ Petition No.3474/1998. The same was dismissed and ultimately on implementation of the Judgement, the applicant was not recommended for the aforesaid post. The applicant contends that he has continued to work on the post since 1995. The Government of National Capital Territory of Delhi again advertised 61 posts of Assistant Public Prosecutors on regular basis through Union Public Service Commission. The applicant had again applied and was called for the written test and interview. The vacancies meant for OBC were not carried forward. The applicant filed OA 1452/1999 and had sought quashing of the entire

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selection. During the pendency of the said OA, the applicant had been given the appointment. The offer of appointment dated 29.1.1999 reads:

"I am directed to say that on the recommendation of the Union Public Service Commission, the President is pleased to offer you a Group 'B' Gazetted post of Company Prosecutor Grade-II in this Department on the following terms:-

1(i) The scale of pay of the post is Rs.6,500-200-10,500/- and your initial pay will be fixed according to rules or as per instructions issued by Govt. of India/at the minimum of the pay scale. You will also be entitled to draw dearness and other allowances at the rates and subject to the conditions laid down in the rules and orders governing the grant of such allowances.

(ii) The appointment is temporary but likely to continue indefinitely. The question of your confirmation will be considered in accordance with the rules at the appropriate stage."

4. The applicant joined the same after being relieved from the office of the Company Registrar.

5. The grievance of the applicant is that since he remained on ad hoc basis from 6.6.1995 to 9.8.1999 but was not granted annual increments and on the strength of the Government of National Capital Territory of Delhi, he is entitled to the increments and it is in this backdrop that the applicant has filed the present application seeking the reliefs to which we have already referred to above.

6. Needless to state that in the reply, the application has been contested. The respondents contend that the applicant is not entitled to any benefit of the service which was a stop gap arrangement because he was working on ad hoc basis/contract basis. His services had not been

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continued. Thus, he was not entitled to the increments. He was appointed on ad hoc/emergent basis for a period of six months. The procedure adopted was not as per the recruitment rules.

7. We have heard the parties' counsel and have seen the relevant records. Learned counsel for the applicant has drawn our attention to the order passed by this Tribunal in the earlier OA No. 489/1998, which was filed by the applicant, decided on 24.12.1999. Perusal of the said order reveals that this Tribunal had clearly dealt with the same controversy which came up for consideration regarding payment of difference in pay scales because applicant had been appointed on ad hoc basis and the salary having been revised after the Fifth Central Pay Commission's report had been accepted by the Government. So the applicant should be granted the revised pay scale. Therefore, this controversy that the applicant is entitled to earn increments in fact was not considered in this particular paragraph. Reliance on behalf of the applicant is being placed on the following paragraph of that order passed by this Tribunal:

"14. Now coming to the next condition regarding salary as mentioned in the appointment letter states that the applicants were appointed in the pay scale of Rs.2000-60-2300-EB-75-3200 plus usual allowances as admissible from time to time. This condition would show that the applicants were not appointed on a fixed salary for a period of six months or for a period till they are replaced. But this condition does show that they are to earn increments even they are to cross Efficiency Bar and the use of the word pay scale shows that they are to be given a regular pay scale and other usual allowances which is admissible from time to time. So now the question arises if

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the Pay Commission had recommended revision of pay scales and which has been accepted by the Government of India and Government of NCT of Delhi, this revision of pay scale had been made with retrospective effect and it covers the period when the applicants were working as Assistant Public Prosecutors. So the period when they were working for that particular time on a particular grade, the scale of Assistant Public Prosecutors had been revised. As such the respondents cannot take the shelter of contract period and deny them the benefit of admissible pay scales for the time when they were in the appointment and as per the revised pay scale for that particular period of time the pay scales had been revised."

8. In our opinion, the applicant cannot take advantage of the said findings in the present application. If the applicant has to take benefit of the same, he could only do so in the said application in accordance with law. He cannot file separate application even if it be assumed that the applicant is entitled to the said relief. Therefore, the applicant may, if so advised, take recourse prescribed in law.

9. In that event, it was urged that the applicant should be given annual increments while he was working on ad hoc basis and consequently his pay should be fixed on his regular appointment with the respondents itself. So far as this particular plea of the applicant is concerned, it is to be stated to be rejected. Perusal of the facts, of which we have given a brief resume above, reveals that the applicant had been appointed on ad hoc/contract basis. Subsequently, after joining on ad hoc basis, he even had applied for regular selection in the year 1996 and was not selected. It was only in the year 2001 that he was selected on regular basis. Applicant indeed

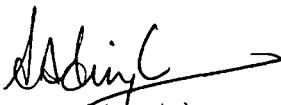


cannot take advantage in this backdrop to draw more salary than his counterparts and even those who were selected when the applicant was rejected. When the applicant was regularly appointed in the year 2001 it necessarily implies a fresh appointment which is in no way connected with his earlier ad hoc/contract appointment. Necessarily he cannot, therefore, take advantage of drawing the said increments claimed by him.

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10. No other arguments have been advanced.

11. For these reasons, OA being without merit must fail and is accordingly dismissed.



(S.A. Singh)
Member (A)



(V.S. Aggarwal)
Chairman

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