

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.1635/2001

New Delhi this the 11th day of October, 2002.

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE SHRI M.P.SINGH, MEMBER (A)

1. Satpal Singh
S/o Shri Daulat am
R/o A-1/140, DDA Flats
Keshav Puram
Delhi-35.
2. Mahesh Kumar Gautam
S/o Shri Badri Prasad Gautam
R/o H.No.495, Gali No.2
Near "B" Block DESU Transformer
Meet Nagar, SHAHDARA
Delhi-94.
3. Raj Kumar Gupta
S/o Shri G.P.Gupta
R/o J-663, Gole Market
New Delhi-01. Applicants

(By Shri Harvir Singh, Advocate)

-versus-

1. Secretary
Ministry of Information and Broadcasting
Shastri Bhawan
New Delhi.
2. Director General
All India Radio
New Delhi-01.
3. Director General (News)
News Service Division
All India Radio
Parliament Street
New Delhi-01.
4. Station Director
All India Radio
New Delhi-01
5. Chief Engineer (R & D)
Research Department
All India Radio & Doordarshan
14-B, Inderprastha Estate
Ring Road, New Delhi-02.
6. Shri Shish Ram, LDC
O/O CE (R&D)
AIR & DD
I.P.Estate, New Delhi-02.

7. Smt. Elsamma Joseph, LDC
O/O CE (R&D)
AIR & DD
I.P. Estate, New Delhi-02.

8. Smt. Reena Wadhwa, Steno Grade-II
O/O CE (&D)
AIR & DD
I.P. Estate
New Delhi--02.

... Respondents

(Shri R.N. Singh, Advocate for Official
Respondents and Dr. D.C. Vohra, Advocate
for private respondents)

O R D E R

JUSTICE V.S. AGGARWAL:-

Applicant Satpal Singh and others had joined as Lower Division Clerks through competitive examination conducted by the Staff Selection Commission. They had been given ad hoc promotion from time to time to officiate as Upper Division Clerks. By virtue of the present application, they seek quashing of the seniority list dated 22.3.2001 and declaration that the appointment of Respondents 6 to 8 is illegal.

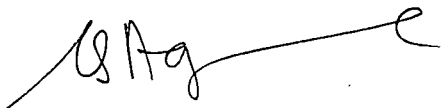
2. Applicants assert that respondent No.6 Shri Shishpal was appointed on 7.3.1989 purely on temporary basis under the United Nations Development Programme under the Ministry of Information and Broadcasting through the Employment Exchange. Similarly respondents 7 and 8 were appointed purely on temporary basis under the same scheme. The appointment of respondents 6 to 8 was to be terminated when the project of the United Nations Development Programme was to come to an end. The United Nations Development Programme does not form part of any department. Nor they were part of any regular cadre. In March 1997,

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the said project was completed. The services of respondents 6 to 8 were shifted to regular cadre of the Chief Engineer, Research Department, All India Radio & Doordarshan (respondent No.5) at par with the regularly appointed Lower Division Clerks.

3. Applicants' contention is that the recruitment to the posts of Lower Division Clerk is made by way of open competitive examination on centralised basis through the Staff Selection Commission and there is no other method except compassionate appointment to fill up the posts of Lower Division Clerks.. Respondents 6 to 8 could not be inducted into the said cadre. Nor can they claim seniority above the applicants. Their appointment is also said to be not in accordance with the recruitment rules. Hence the present application.

4. In the reply filed by respondents 1 to 5, it has been pointed that respondents 6 to 8 were recruited through the permissible channel i.e. Employment Exchange on temporary basis as per approval of the Staff Selection Commission. They were tested in typewriting and Stenography and interviewed by a Selection Board which was constituted as per recruitment rules. The said establishment continued and the said respondents gain sufficient experience. As they completed a long period of service, a proposal was made to regularise them against the regular posts



with respondent No.5. After due consideration, the Ministry had conveyed the approval and their services were regularised. Respondents 6 to 8 filed their separate reply. It was pointed that the applicant No.3 is a Stenographer and is governed by different set of rules. Similarly respondent No.8 is a Stenographer and is governed by different set of rules. It was urged that seniority follows the date of initial appointment made in accordance with the rules and once the respondents 6 to 8 have been inducted in the cadre necessarily, they have to be given the due seniority from their initial date of induction.

5. During the course of submissions, it was not disputed that so far as the applicant No.3 and respondent No.8 are concerned, they were Stenographers and, therefore, they had nothing to do with the present controversy pertaining to induction of others in the cadre of Lower Division Clerks. No relief could, therefore, be claimed by applicant No.3 or against respondent No.8. The application of applicant No.3, therefore, must fail.

6. The main thrust of the arguments herein has been to the effect that appointment of respondents 6 and 7 is against the recruitment rules for the posts of Lower Division Clerk. They had not been appointed to any regular cadre or by a proper Staff Selection

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Board. Therefore, neither they could be inducted in the cadre nor any seniority could be granted to them.

7. To appreciate the said controversy, we may refer to the recruitment rules called "All India Radio Group 'C' Posts Recruitment Rules, 1994" notified on 14.11.1994. Rule 5 gives, the Government, the power to relax the rules and is as under:-

"5. Power to relax:- Where the Central Government is of the opinion that it is necessary or expedient so to do it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

Furthermore as per the schedule, the method of recruitment for the posts has also been prescribed. 90% of the posts have to be filled by direct recruitment through the Staff Selection Commission and 5% by promotion on the basis of seniority from amongst Group 'D' employees and 5% by promotion on the basis of limited departmental competitive examination from Group 'D' employees. The appointment letter of Kumari Elsamma Joseph, respondent No.7 has also been placed on record as a representative order. She was appointed to begin with to the post of Work Munshi (work charged staff). Thereafter on 1.9.1987, she was appointed as a Clerk Grade II/Typist purely on ad hoc basis in the United Nations Development Programme which was a time bound project. It was mentioned that she will have no right for regular appointment. The said order reads:-

"Kumari Elsamma K.U., Work Munshi (W/C) of

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this office is offered a post of Clerk-Grade-II/Typist in the Office of the Chief Engineer (R&D), All India Radio New Delhi, on an initial pay of Rs.950/- in the scale of Rs.950-20-1150-EB-25-1500 plus usual allowances as admissible under rules, from time to time, for a period upto Feb.88 from the date of her appointment and likely to continue further depending upon the sanction of the Govt. of India. Her appointment will be subject to the following conditions:-

1. That her appointment will be purely on ad-hoc basis conferring on her no right for regular appointment as her appointment is against U.N.D.P. Project (Time-Bound),
2. That her services are liable to be terminated at any time without giving any notice and without assigning any reason."

On 24.12.1997, the services of respondents 6 and 7 were transferred on regular basis as Clerks with effect from the date of their initial appointment, namely 1.9.1987 in the case of Mrs. Elsamma Joseph and 7.3.1989 in the case of Shri Shish Ram.

8. The documents placed on record by respondents 6 and 7 clearly show that the assertion of Respondents 1 to 5 that the appointments had been made in accordance with the recruitment rules, therefore, is not correct. There is nothing to indicate that in terms of the recruitment rules referred to above, the Staff Selection Commission had appointed the respondents 6 and 7.

9. However, the learned counsel for the respondents strongly relied upon a decision of the Supreme Court in the case of **Direct Recruits Class II Engineering Officers' Association v. State of Maharashtra**, AIR 1990 SC 1607 to contend that even if



the earlier appointment is not made following the procedure but when the said respondents 6 & 7 have now been regularised, they are entitled to count their entire length of service for the purpose. The Supreme Court in this regard had laid various guide-lines and the respondents relied upon conclusions (A) and (B) which are being reproduced for the sake of convenience:-

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

9. It is true that the Supreme Court^{has} held that if initial appointment is not made by following the procedure but the appointee continues in the post till regularisation of his services in accordance with the rules, the period of officiation will be counted. In the present case before us, the initial appointment was not as per the rules but as noted above, their regularisation even has not been conducted in accordance with the rules. There is nothing on the record shown to us that in terms of the "All India Radio, Group 'C' posts Recruitment Rules, 1994," any

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such action has been taken.

10. We are conscious of the fact that under Rule 5 of the "All India Radio, Group 'C' posts Recruitment Rules, 1994" as already reproduced above, the power has been given to the Central Government to relax any of the provisions of the rules with respect to any class or category of persons. We have to consider whether such power, if any, has been exercised or not. In the case of **Narender Chadha v. Union of India**, (1986) SCC 157, the Supreme Court in the peculiar facts of that case had held that it was deemed relaxation of the rules. In the facts of the present case, it cannot be termed that there was any deemed relaxation. There is not even a whisper of the same in the reply in this regard. In the case of **Keshav Chandra Joshi and Others v. Union of India and others**, 1992 Supp (1) SCC 272, the Supreme Court in this regard held:-

"It is true that in Narender Chadha case this Court noticed that appointments by promotion were not made in accordance with the Rules and Rule 16 of Indian Economic/Indian Statistics Service Rules, 1961 as was in force empowers the government to relax **"any provision of the rules"** to such an extent as may be necessary to ensure satisfactory working or removing inequitable results held that as the government deliberately deviated from the rules and allowed the promotees to be in continuous service without reversion for well over 15 to 20 years, the government must be deemed to have relaxed the rules.(emphasis supplied). While holding so at page 238, it was stated that:

"We wish to make it clear that there is no question of any rotation system being applied under the Rules, as they exist now. All

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appointments shall be made hereafter in accordance with the Rules and the seniority of all officers to be appointed hereafter shall be governed by Rule 9-C of the Rules." "

In fact on the peculiar facts with which we are not concerned, it was held that it would not tantamount to relaxation of the rules.

11. Subsequently in the case of **Davinder Bathia and others vs. Union of India and others**, AIR 1998 SC 2098, certain persons had been posted against the posts without selection on ad hoc basis. The Supreme Court held that said persons will not have a right to be in the cadre until and unless they are regularised after going through the selection process. The finding in this regard read:-

"The answer to this question depends upon the relevant provisions of the Rules governing the manner of filling up of the post of Enquiry-cum-Reservation Clerk. Undisputedly the post of Enquiry-cum-Reservation Clerk is a selection post and therefore the railway administration would be entitled to select competent persons to man the cadre. As it appears, prior to 1978, 25% of the posts were being filled up by way of direct recruitment but rests of the 75% were being filled up by giving promotion to the Junior Commercial Clerks those of whom were exercising their option and also were giving a declaration that they would not revert back to the commercial side. But in 1978, the policy was changed and the Government decided to fill up the post by the direct recruitment by women candidates only. The appellants no doubt, have been admittedly there had been no process of selection in their case and they were posted as Enquiry-cum-Reservation Clerks merely on ad hoc basis as a stop gap arrangement. the post of Enquiry-cum-Reservation Clerk being a selection post, the persons like the appellants who were posted against those posts without going through the process of selection on ad hoc basis do not have a right to be in the cadre until and unless they are duly regularised after going through a process of selection. In the case in hand, this process of selection was made only in the year

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1982 and the appellants have been absorbed in the cadre of Enquiry-cum-Reservation Clerks after being duly selected. In this view of the matter, their continuance on ad hoc basis from 1978 to 1982 cannot be counted for the purpose of their seniority in the cadre of Enquiry-cum-Reservation Clerk nor can they be held senior to the women candidates who were directly recruited as Enquiry-cum-Reservation Clerks under the changed policy by undergoing a process of selection. In the aforesaid premises, we see no infirmity with the order of the Tribunal so as to be interfered with by this Court."

12. More close to the facts of the present case is the decision of the Supreme Court in the case of **IRCON International Ltd. v. Daya Shankar & Anr.**, 2002(1) S.C.SERVICES LAW JUDGEMENTS 48. Therein certain person was appointed in a project, namely, the Ballast project of the Northern Railway. He had been appointed as Khalasi and no formal letter of appointment was issued. Later on, he was informed that his services were no longer required and the question for consideration before the Supreme Court was that when an employee is appointed for the duration of a particular project, whether it could be directed to treat the said person in continuous service and accommodate him in a future vacancy. The answer was given in the negative holding:-

"7. As a matter of principle, when employee is appointed on a project and for the duration of that project, the question of his services continuing automatically thereafter do not arise. Mr. Jaidep Gupta, learned counsel for the appellant states that despite retrenchment, compensation having been paid, the appellant will as far as possible apply the directions contained in this Court's order in Sufal Jha's case and as and when a vacancy arises, the respondent will be considered for appointment apart from this, no other relief can be granted to the respondent."

13. From the aforesaid, the conclusion that can



be drawn is clear and unambiguous:-

(a) if there is an any indication in the order, it should be deemed that there was relaxation of the rules for any set of persons.

(b) if a person has been appointed on a project and the project is for a duration, ordinarily, the question of the services continuing automatically will not arise.

(c) a person who has ^{not} been appointed against the rules can only claim seniority for the past service if his subsequent regularisation is made as per rules in accordance with the decision of the Supreme Court in the case of **Direct Recruit Class II Engineering Officers' Association** (supra)


(d) there should be a specific order for relaxing certain provisions of the rules in terms of Rule 5 of the "All India Radio, Group 'C' posts Recruitment Rules, 1994" in case the rigour of the Rules is to be relaxed.


13. Position in the present case is different. As already pointed above, respondents 6 and 7 had not been appointed in accordance with the recruitment rules referred to above. They had been appointed for conducting a particular project. Once the project had

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... come to an end, their regularisation in the cadre could only be effected if the recruitment rules had been relaxed. There is no indication of the relaxation of the rules. Therefore, it must be held that respondents 6 and 7 could not be inducted in the said cadre.

14. For these reasons, the application is allowed and the regularisation of respondents 6 and 7 in the cadre referred to above is quashed. Necessarily, the applicants 1 and 2 should be senior to them. So far as applicant No.3 is concerned, as already mentioned above, since he is a Stenographer and he has not been inducted in the cadre of Lower Division Clerk, his application is dismissed. No costs.


(M.P. SINGH)
Member (A)


(V.S. AGGARWAL)
Chairman

/sns/