

(22)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

1) O.A.No.714/94

New Delhi: this the 9th day of MAY , 2000.

HON'BLE MR.S.R.ADIGE VICE CHAIRMAN(A).

HON'BLE MR.KULDIP SINGH MEMBER(J)

Santosh Kain,
W/o Shri N.S.Kain,
Senior Typist,
Mech.Br., Baroda House,
New Delhi.

2. Veena Srivastava,
W/o Ashok Mohan,
S & T (M), Baroda House,
New Delhi

3. Renu Bhatia,
W/o N.K.Bhatia,
Mech.Br. Hq.,
Baroda House,
New Delhi.

4. Mrs. Dinesh Chawla,
W/o Shri Harish Chawla,
LOFMDW, Tilak Bridge,
New Delhi.

5. Mrs. Saroj Verma,
W/o Shri Harish Verma,
Baroda House,
New Delhi.

6. Mrs. Surinder Kaur,
W/o Shri Anup Singh,
Senior Typist,
Baroda House,
New Delhi.

....Applicants

Versus

1. Union of India
through
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Chief Administrative Officer,
Central Organisation for Moderation of Workshops ,
Tilak Bridge,
New Delhi - 2

3. The Chief Personnel Officer,
Northern Railway, Baroda House,
New Delhi

4. Nimal Sharma,
W/o Sh. Suresh Chander Sharma,
Sr. Typist, Baroda House, New Delhi

...Respondents

(24)

2) OA No. 1719/98

1. Ashok Kumar Sharma,
S/o Shri Salik Chand Sharma,
Sr. Typist,
Reservation Office,
IRCA Building,
New Delhi.

2. Rajinder Singh,
S/o Shri Sushil Kumar,
Sr. Typist,
Reservation Office,
IRCA Building,
New Delhi

..... Applicants

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
Headquarters Office,
New Delhi.

2. Chief Personnel Officer,
Northern Railway Baroda House,
New Delhi.

3. Chief Commercial Manager (C & PM),
Northern Railway Reservation Office,
IRCA Building,
New Delhi.

.... Respondents

3) O.A. No. 1285/99

Mrs. Nirmal Sharma,
W/o S.C. Sharma,
Senior Typist, G. Branch,
H.C. Office, Baroda House,

..... Applicants

Versus

Union of India,
through
General Manager,
Northern Railways,
Baroda House,
New Delhi

2. The Chief Personnel Officer,
Northern Railway,
Baroda House,
New Delhi

.... Respondents

4/0/A/No. 1092/98

27

1. Indira Rani Agarwal,
W/o Shri P. K. Agarwal,
Sr. Typist, 'P' Branch,
Northern Railway HQs Office,
Baroda House,
New Delhi.

2. Smt. Mithlesh Sharma,
Sr. Typist, 'P' Branch,
Northern Railway, HQs. Office,
Baroda House,
New Delhi.

3. Smt. Neelam Kapoor,
Sr. Typist 'P' Branch,

4. Smt. Anita Saxena,
Sr. Typist, TCO Cell.

5. Smt. Neelam Mahna,
Sr. Typist, ST Branch

All 3, 4 & 5 working in N.R.HQ. Office,
6. Smt. Saroj Dang, Baroda House, New Delhi.

Sr. Typist, Const. Office,
K. Gate,
Northern Railway Delhi.

.... Applicants

Versus

1. Union of India
through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Chief Personnel Officer,
Northern Railway HQ. Office,
Baroda House,
New Delhi.

3. Chief Administrative Officer (C),
Northern Railway Construction Office,
Kashmere Gate,
Delhi.

4. Chief Administrative Officer,
Central Organisation for Moderation of
Workshop (COMOW),
Tilak Bridge,
New Delhi.

.... Respondents

Advocates:

Shri G.D. Bhandari for applicants in all cases except/
Ms. Geeta Sharma for applicants in OA -1285/99
Shri R.L. Dhawan for official respondents and
Shri B.S. Maini for private respondents.

OA-1285/99

62

HON'BLE MR. S. R. ADIGE VC (A)

As these four OAs involve similar questions of law and fact, they are being disposed of by this common order. For this purpose, the material facts and circumstances in OA No. 714/94 would be referred to.

2. In this OA 714/94 applicants impugn respondents' order dated 24.11.93 (Annexure-A1) rejecting their request for fixation of seniority as Typist Grade II with effect from the date of their initial adhoc appointment.

3. Admittedly these applicants were appointed on adhoc basis on various dates in 1979 onwards. Respondents' letter dated 1.5.79 (Annexure-A2) addressed to Applicant No. 2 Km. Veena Srivastava calling her for Typing test for appointment as a Typist made it clear that she was to furnish proof of the fact that she was the son/daughter of a serving/retired Railway employee which goes to show that this appointment of Typist on adhoc basis was restricted to sons/daughters of serving/retired Railway employee. After successfully completing the typing speed test, the qualifying test in English and the interview, appointment letters were issued to applicants. Appointment letter dated 10.4.80 addressed to Km. Veena Srivastava (Annexure-A3) made it clear that her appointment was purely on

68

ad hoc basis with the condition that she would be replaced as and when qualified candidates were made available by the Railway Service Commission.

4. Private respondents 3 to 19 have annexed materials with their reply to show that upon regularly selected candidates being made available by the Railway Service Commission, applicants were under threat of being terminated from service. The letter dated 31.1.81 (Annexure-RR-3) written by Special Assistant to the Prime Minister to the General Manager, Northern Railway makes it clear that some of the ad hoc typists had met the Prime Minister on 29.1.81 and prayed that issue of termination notices be stopped and they be absorbed on regular basis. The G.M. N.Railway was requested to look into the matter and let him know the action taken, for Prime Minister's information. It was also urged that the aforesaid typists would face difficulty if they were not absorbed and this position be kept in view.

5. A similar letter urging sympathetic consideration of the cases of these ad hoc typists was sent to G.M. Northern Railway by Railway Board also on 5.2.81 (Annexure-RR4).

6. Thereupon the S.A. to the Prime Minister was informed by letter dated 11.2.81 (Annexure-RR5) that normally typists were recruited through Railway Service Commission but due to non-availability of a panel of selected candidates from RSC and the urgent

need to fill up the vacancies, the respondents with Railway Ministry's approval had made adhoc appointments of some typists after holding a local selection in 1979. In that notice for appointment and in the offer of appointment, it had been made clear that they would be replaced as and when qualified candidates from RSC were made available. On receipt of a panel from RSC some adhoc typists became surplus and it had been decided to terminate their services but after reviewing the vacancy position, it had become possible to retain the adhoc typists for the time being, and the notices of termination had been temporarily withdrawn. These adhoc typists would however have to be replaced by regularly qualified candidates on receipt of a further panel from RSC unless they got themselves selected through RSC.

7. In reply of SA to Prime Minister's letter dated 21.2.81 (Annexure-RR 6) it had been urged that ^{the} problem of these adhoc typists does not seem to be appreciated in its proper perspective. Some of them would have become overaged and would be ineligible if their services were dispensed with. They had already put in 12 months' service and the situation would further aggravate if they were terminated at a later stage. In equity therefore it was urged that there was a case for regularisation of typists in the light of precedent cases of similar persons recruited

on adhoc basis who were absorbed on regular basis in the Northern Railway.

8. Thereupon, the General Manager, N.Rly referred the matter to the Railway Board for suitable orders vide his letter dated 18.3.81 (Annexure-RR-7). Subsequently with the approval of Railway Board some of the applicants were screened along with other adhoc typists and regularised w.e.f. 28.8.81 (Annexure-RR-8), while the remaining applicants were regularised thereafter.

9. The details of date of appointment on adhoc basis and regularisation of six applicants in OA No. 714/94 are shown as under:

Name	Date of Appointment	Date of Regularisation
Mrs. Santosh Kain	21.11.79	21.8.81
Mrs. Veena Srivastava	20.4.80	21.8.81
Mrs. Renu Bhatia	27.10.86	4.9.91
Mrs. Dinesh Chawla	30.9.81	7.9.88
Mrs. Saroj Verma	11.9.79	7.9.81
Mrs. Surinder Kaur	23.10.79	7.9.81

10. The short question for adjudication is whether applicants can be permitted to count their period of adhoc service as Typist Grade II for purposes of seniority.

11. After hearing both parties another Division Bench of this Tribunal vide its order dated 22.4.98 had allowed the OA.

12. C.P. No. 249/98 in OA No. 714/94 filed by applicants alleging contumacious non-compliance of the Tribunal's aforesaid order dated 22.4.98 was dismissed vide order dated 24.12.98 after accepting respondents' compliance affidavit. ~~the~~ CWP Nos. 4135/98 and 8614/98 filed in the Delhi High Court challenging the aforesaid order dated 22.4.98 was dismissed in limine by the Delhi High Court on 24.8.98. Meanwhile the private respondents in this OA who had not been impleaded till this point of time, filed RA No. 101/98 in CWP No. 4135/98 seeking review of the Delhi High Court's order dated 24.8.98.

13. Vide its order dated 15.2.99, the Delhi High Court allowed the RA and recalled its order dated 24.8.98 dismissing the writ petition in limine which was ordered to be posted for hearing afresh.

14. Thereupon vide its order dated 12.7.99, the Delhi High Court having regard to its decision dated 15.2.99 in the RA, set aside the Tribunal's order dated 22.4.98 and directed the parties to appear before the CAT to decide the matter in accordance with law with all the newly added parties who had been impleaded by the Delhi High Court vide its order dated 15.2.99.

15. We have heard Shri G.D. Bhandari and Ms. Geeta Sharma for applicants in these OAs. Shri R.L. Dhawan was heard on behalf of official respondents in all OAs while Shri B.S. Maini was heard for private respondents.

16. As mentioned above, the question for adjudication in all these OAs is whether the period of adhoc service put in by the applicants as Typists Grade II can be counted for the purpose of fixation of their seniority.

16. In this connection, para 175 of IREM Vol-II (Revised Edition 1989) lays down that vacancies in the category of Typists Grade II are to be filled in as under:

(i) 66-2/3% by direct recruitment through the Agency of the Railway Recruitment Board; and

(ii) 33-1/3% by promotion by selection of specified Group 'D' staff.

17. It is clear that the initial recruitment of applicants on adhoc basis was not made through the Railway Recruitment Board and indeed we have already noticed that in the appointment letters issued to applicants it was made clear that they would be replaced as soon as regularly selected candidates from the Railway Service Commission (which was the body at that point of time charged with the responsibility of making direct appointment to the post of Typist Grade II) became available.

18. Here we would like to reproduce relevant extracts of the Landmark Hon'ble Supreme Court's Judgment in Direct Recruit Class II Engineering Association Vs. State of Maharashtra AIR 1990 SC 1607 to determine whether applicants can be permitted to count their period of adhoc service as Typists Grade II for the purpose of seniority in the light of the

(3)

Conclusions
 7 ~~principles~~ set forth therein and extracted below:

(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 adhoc 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 rules, the period of officiating service will be counted.

19. The rationale for the aforesaid ^{Conclusions} ~~principles~~ is available in para 13 of the aforesaid judgment, which is extracted below:

"The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequal as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary."

20. The aforesaid conclusions (A) and (B) have been discussed at length by the Hon'ble Supreme Court in State of West Bengal & Ors. Vs. Aghore Nath Dey & Ors. and connected cases. (1993) 24 ATC 932. In paras 22, 23, 24 and 25 of that judgment it has been held that while Conclusion (A) covers those cases where the incumbent has been appointed according to rules, and the corollary to Conclusion (A) covers those cases where the initial appointment is only adhoc and not according to rules being only made as a stop-gap arrangement. Conclusion (B) covers a different kind of situation wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. Reconciling Conclusion (B) with Conclusion (A) their Lordships have held that it would cover those cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time and purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases.

21. Applying the aforesaid principles and conclusions to the facts and circumstances to these cases, it is clear that the applicants in all these OAs were ^{not} appointed in accordance with rules in as much as they were ^{not} appointed by the Railway Recruitment Board. It is also clear from the

appointment letters issued to the applicants that their initial appointment was limited to a fixed time i.e. till regular incumbents were made available through the Railway Service Commission, and the appointment letter clearly stated that the applicants were appointment purely on adhoc basis. It is also clear that at the time appointments were made, all the eligible available persons were not considered in as much as the adhoc appointments were made on restricted basis as a stop-gap arrangement owing to administrative urgency till regular candidates were available.

22. Under the circumstances, we have no hesitation in holding that these adhoc appointments fall under the corollary to Conclusion (A) of the Direct Recruit Class II Engineering Asso.'s case (supra) and under the circumstance applicants in these OA's are not entitled to count the period of their adhoc service for the purpose of seniority as Typist Grade II.

23. Indeed, we are supported in our conclusion by another ruling of the Hon'ble Supreme Court in Dr. Anuradha Bodi Vs. Municipal Corporation of Delhi JT 1998 (3) SC 757 which has been noticed by the Delhi High Court in its order dated 15.2.99. In Bodi's case (supra) also it has been held that the employees who were recruited outside the rules can get seniority only from the date of regularisation in service and not from the date of their initial appointment.

24. In the light of foregoing discussion, we find ourselves unable to grant the relief sought for

30

by the applicants in these OAs and the rulings in Narendra Chadha's case AIR 1986 SC 638 and A. Janardhan's case AIR 1983 SC 769 relied upon by Shri Bhandari do not advance the case of the applicants.

25. The OAs are therefore dismissed. No costs.

26. Let copies of this order be placed in each of the case records.

(KULDIP SINGH)
MEMBER (J)

(S.R. ADIGE)
VICE CHAIRMAN(A).

/ug/

Pat
Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
Faridkot House,
Copernicus Marg,
Delhi 110001