

(39)

Central Administrative Tribunal
Principal Bench

OAs 303/95, 306/95, 307/95, 308/95, 1611/95

New Delhi this the 30th day of June, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hon'ble Shri R.K. Ahooja, Member(A).

O.A.303/95

I.J. Malhotra,
S/o late Shri Sardarilal Malhotra,
R/o 2118, Sector D, Pocket-2,
Vasant Kunj,
New Delhi.

...Applicant.

By Advocate Ms. Shyamla Pappu, Sr. Counsel with Shri D.C. Vohra,
Counsel & Shri Krishna Murthi, counsel.

Versus

1. Union of India, through
The Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Central Public Works Department
through
Director General (Works),
Nirman Bhawan,

By Advocate Shri N.S. Mehta, Sr. Counsel with Shri K.B.S. Rajan and
Shri M.K. Gupta, Counsel.

O.A. 306/95.

S.P. Bansal,
S/o late Shri Ugar Sain Bansal,
R/o 599, Sector IV,
R.K. Puram,
New Delhi.

...Applicant.

By Advocate Ms Shyamla Pappu, Sr. Counsel with Shri D.C. Vohra
and Shri Krishna Murthi, Counsel.

Versus

1. Union of India, through
The Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

18.

2. Central Public Works Department
through
The Director General (Works),
Nirman Bhawan,
New Delhi.
3. The Central Engg. Services
and Central Elec & Mech Engg. Services,
Class-I (Direct Recruits) Association,
through its General Secretary Mr. R.D. Gupta,
CPWD Nirman Bhawan,
New Delhi.

...Respondents.

By Advocate Shri N.S. Mehta, Sr. Counsel with Shri K.B.S. Rajan
and Shri M.K. Gupta, Counsel.

O.A. 307/95

S.S.V.P. Rao,
S/o Shri S. Chittabbayi,
R/o A/132, Pandara Road,
New Delhi.

...Applicant.

By Advocate Ms. Shyamla Pappu, Sr. Counsel with Shri D.C. Vohra
and Shri Krishna Murthi, Counsel.

Versus

1. Union of India through
The Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Central Public Works Department,
through
The Director General (Works),
Nirman Bhawan,
New Delhi.
3. The Central Engg. Services
and Central Elec & Mech Engg Services,
Class-I (Direct Recruits) Assn,
through its General Secretary Mr. R.D. Gupta,
CPWD Nirman Bhawan,
New Delhi.

...Respondents.

By Advocate Shri N.S. Mehta, Sr. Counsel with Shri K.B.S. Rajan
and Shri M.K. Gupta, Counsel.

O.A. 308/95

1. L.C. Gupta,
S/o late Shri Ramdass Gupta,
R/o 65, DDA Flats,
Greater Kailash-I,
New Delhi.

28

2. S. Lakshminarasimhan,
S/o late Shri K. Srinivasachari,
R/o A-7/3, Peshwa Road,
New Delhi.

...Applicants.

By Advocate Ms Shyamla Pappu, Sr. Counsel with Shri D.C. Vohra
and Shri Krishna Murthi, Counsel.

Versus

1. Union of India through,
The Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Central Public Works Department
through the Director General (Works),
Nirman Bhawan,
New Delhi.

...Respondents.

By Advocate Shri N.S. Mehta, Sr. Counsel with Shri K.B.S. Rajan
and Shri M.K. Gupta, Counsel.

O.A. 1611/95

A.S. Bagga,
M-274, Guru Harkrishan Nagar,
Paschim Vihar,
New Delhi.

...Applicant.

By Advocate Shri G.K. Aggarwal.

Versus

1. Union of India through
Secretary,
Ministry of Urban Affairs and Employment,
Nirman Bhawan,
New Delhi.
2. The Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi.
3. The Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi.

...Respondents.

By Advocate Shri N.S. Mehta, Sr. Counsel with Shri K.B.S. Rajan
and Shri M.K. Gupta, Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

As ~~the~~ common questions of facts and law have arisen
for consideration in the aforementioned five cases, they have

B.

been heard together and are being disposed of by a common judgement. However, in the case of O.A. 1611/95 (A.S. Bagga Vs. Union of India & Ors.), Shri G.K. Aggarwal, learned counsel for the applicant, had advanced some additional arguments which have also been considered.

2. The relevant facts in O.A. 308/95 (L.C. Gupta & Anr. Vs. Union of India & Anr.) are as follows:

The applicants joined the services of Respondent 2 as Assistant Engineers (Elect) on the basis of the Combined Engineering Services Examination held by the U.P.S.C. in 1966, on 1.5.1968 and 2.7.1968 respectively. Their promotion to higher grades and other conditions of service are governed by the Central Engineering Service Group 'A' Recruitment Rules, 1982, as amended from time to time. They have submitted that Rule 23 of the Rules contains power to relax the rules. By Office Order No. 552 of 1979 dated the 6th October, 1979, the respondents appointed the applicants to officiate as Executive Engineers (Elect.) temporarily on ad hoc basis from the date they assumed charge till further orders. The order further states that their promotion will be on ad hoc basis and will be without any prejudice to the regular appointments to be made on the basis of ^{the} seniority list when finalised and subject to judgement of the Hon'ble Supreme Court in Writ Petition No.725/79 filed by S. Ramaswamy and Ors. The applicants are at Srl. Nos 9 and 15 of this order. The applicants have stated that due to plethora of court cases the respondents have not finalised the seniority list in the grade of Executive Engineers. In O.A. 1765/92, the Tribunal by order dated 30.12.1992 and the Supreme Court in SLP No.8405/93 dated 30.7.1993 directed the respondents to work out the correct/

8/

final seniority list of Executive Engineers. By a further order of the Tribunal in O.A. 1765/92 dated 9.6.1994, a further time was granted directing the respondents to complete the process of promotions to the cadre of Superintending Engineers (Elect) and Executive Engineers (Elect) and to publish a final list on or before 30.11.1994. In compliance of the aforesaid orders in O.A. 1765/92 filed by Shri B.P. Bindal & Ors., the respondents by Office Order No. 356/94 dated 23.11.1994 issued a supplementary seniority list of Executive Engineers (Elect) CPWD -1994. In the said office order, the respondents have, inter alia, stated that 'this seniority list has been prepared inter-mixing the officers promoted to this grade from Assistant Executive Engineer (Elect) and Assistant Engineer (Elect)-stream, in accordance with the principles laid down by the Hon'ble Supreme Court in their judgement dated 23.5.1984 in P.S. Mahal's case'. They have also stated that the list is subject to some re-adjustment, if necessary, on opening of sealed covers, containing DPC recommendations in respect of certain officers. The applicants are aggrieved by this list on the ground that whereas they had been working as Executive Engineers since 18.10.1979 and 10.10.1979, their places in the seniority list were shown w.e.f. 31.3.1992 against which they had made representations. Their grievance is that their seniority has not been correctly fixed even when they had rendered ad hoc service of more than 15 years in the grade of Executive Engineers, which they have submitted is in complete violation of the principles laid down by the Hon'ble Supreme Court in Direct Recruit Class-II Engineering Officers' Association & Ors. Vs. State of Maharashtra & Ors. (JT 1990(2) SC 264) (hereinafter referred to 'Maharashtra Direct Recruit's case) as interpreted by the Tribunal in Ashok Mehta & Ors. Vs. Regional Provident Fund Commissioner & Anr., etc.

82

24

with connected cases decided on 5.2.1993 (CAT Full Bench Judgements Vol.3, Page 194), copy placed at page 57 of the paper book.

3. Before coming to the grounds taken by the applicants in this case, it would be useful ^{to} briefly refer to the relevant facts in the other cases.

OA 303/95

4. In this case, the applicant has also impugned the seniority list issued on 23.11.1994. He had also been appointed by Office Order No. 552 of 1979 dated the 6th October, 1979 as Executive Engineer (Elect.) on ad hoc basis and he assumed charge on 30.11.1979. His main grievance is also that the respondents have failed to give him seniority in the grade of Executive Engineer since 30.11.1979 after his regularisation in that post. He submits that he has been shown in the impugned seniority list as Executive Engineer w.e.f. 31.12.1989 against which he also represented. He also claims the benefit of the ad hoc service in that grade for over 15 years in terms of the judgements in Maharashtra Direct Recruit's case and Ashok Mehta's case (supra).

O.A. 306/95

5. In this case, the applicant was also appointed on ad hoc basis as Executive Engineer (Elect) by Office Order No. 575 of 1977 dated the 25th October, 1977. He submits that he has been working in that post since 28.10.1977. His main grievance is also that his seniority has not been correctly fixed in the post of Executive Engineer even when he has rendered ad hoc service of over 17 years. He submits that this is in violation of the judgements of the Supreme Court and the Tribunal, referred to above.

18/

O.A. 307/95

6. In this case also, the applicant was appointed as Executive Engineer (Civil) on ad hoc basis by Office Order No. 449/79 dated the 18th September, 1979 and he submits that he has been working in that post without any interruption for the past more than 15 years. He further submits that his seniority has not been correctly fixed which is in violation of the judgements of the Supreme Court and the Tribunal, referred to above.

O.A. 1611/95

7. The relevant facts in this case are similar to the aforesaid cases. The applicant, who is working as Superintending Engineer, was also appointed w.e.f. 19.10.1964 as Assistant Engineer (Civil) through the UPSC as a direct recruit. He was also appointed as Executive Engineer (Civil) on ad hoc basis by Office Order No. 449 of 1979 dated the 18th September, 1979. This order mentioned that he will be on purely ad hoc basis without ~~any~~ prejudice to the regular appointments to be made on the basis of the seniority list when finalised and subject to the judgement of the Supreme Court in W.P. No. 725 of 1979 filed by S. Ramaswamy & Ors Vs. Union of India. He has also challenged the seniority list issued by the respondents dated 20.10.1994 in which he has been shown at Serial No. 856 and the his date of absorption in/ quota as 31.3.1991. Shri G.K. Aggarwal, learned counsel for the applicant, has submitted that the applicant should be allowed to count his service from the date of his initial appointment relying on the judgement of the Supreme Court in Keshav Chander Joshi Vs. Union of India (AIR 1991 SC 284), on the ground that he has become a member of the service

18/

on that date. He submits that under the relevant recruitment rules, there is no definition of 'member of service' and, therefore, once he has been appointed as Executive Engineer, according to him, he has become a member of this service. He further submits that since the appointment on ad hoc basis dated 18.9.1979 was 'till further orders' so it cannot be treated as ad hoc, as the same had continued for 15 years. He also relies on the fact that under the relevant recruitment rules, there is a provision for relaxation and the respondents should be deemed to have exercised this provision as the appointment of the applicant was continued for long number of years. He submits that since the ad hoc appointment was done by selection on merit-cum-seniority, there is no reason why the same could not be treated as regular from the date of appointment. He also submits that the judgement in R.L. Bansal & Ors. Vs. Union of India & Ors. (1992 Supp (2) SCC 318), decided on 8.5.1992 will not apply because the applicant was not party in that case and the seniority was provisional. He also strenuously argued that the judgement in P.S. Mahal & Ors. Vs. Union of India & Ors. (AIR 1984 SC 1291) is not applicable as this is a fall out of the judgement in A.K. Subraman and Ors. Vs. Union of India & Ors. (AIR 1975 SC 483), which was decided on 31.3.1972.

8. The respondents have filed similar replies in the aforesaid cases. They have submitted that the promotion to the grade of Executive Engineers in CPWD is made from the two feeder grades, namely, Assistant Executive Engineer (Group 'A') and Assistant Engineer (Group 'B') in the ratio prescribed from time to time. Due to various seniority disputes in courts in the grade of Executive Engineers as well as in the feeder grades, namely, Assistant Engineers, they have submitted that the

28.

(42)

promotions to the post of Executive Engineers have been made on ad hoc basis since 1972. These ad hoc promotions had been regularised in 1994 by holding yearwise DPCs. According to them, the seniority in the grade of Assistant Engineers, which is the feeder grade for promotion to the grade of Executive Engineers, has been under litigation for a long time since 1955. They state that the issue of seniority was finally decided by the judgement in R.L. Bansal's case (supra). They have, therefore, submitted that consequently the promotions to the grade of Executive Engineers could not be made on ^a regular basis because of the disputes and litigation in the feeder grade of Assistant Engineers. Further, they have ~~also~~^{is} submitted that there were disputes and litigation regarding the seniority in the grade of ~~of~~ Executive Engineers also. These were decided by the Supreme Court in A.K. Subraman's case (supra). In this case, the

department had issued a seniority list of Executive Engineers on 1.7.1971 which was challenged by the petitioners and decided by the Supreme Court in A.K. Subraman's case (supra). They have stated that in accordance with the directions of the Supreme Court in A.K. Subraman's case (supra), they had issued a fresh seniority ^{list} on 14.8.1975 which was again challenged by P.S. Mahal & Ors. in the Supreme Court which was decided on 23.5.1984. The Supreme Court set aside the seniority list issued on 14.8.1975 and further directed the Government to prepare a revised seniority list. Another seniority list of Executive Engineers (Civil) dated 4.8.1989 and Executive Engineers (Elect) dated 18.9.1989 are issued which was subject to the outcome of Writ Petition No. 1438/81 filed by Shri R.L. Bansal before the Supreme Court. The judgement in R.L. Bansal's case was delivered by the Supreme Court on 8.5.1992. They have referred to the operative portion of the relevant judgements delivered by the Supreme Court in

18.

48
P.S. Mahal's case (supra) dated 23.5.1984, R.L. Bansal's case (supra) delivered on 8.5.1992 and B.P. Bindal's case (O.A. No. 1765/92), decided by the Tribunal on 30.12.1992 and further directions on 9.6.1994. They have submitted that the seniority lists of Executive Engineers (Civil) dated 20.5.1994 and 20.10.1994, Executive Engineers (Elect) dated 12.1.1994 and 25.11.1994, have been finalised by the respondents in compliance with the aforesaid judgements of the Supreme Court and the Tribunal. They have submitted that as the applicants were Assistant Engineers, their seniority has to be determined as per the Supreme Court's judgement in R.L. Bansal's case (supra) and thereafter as Executive Engineers have to be determined with reference to the quota available for promotion in the grade of Executive Engineers as per the directions of the Supreme Court in P.S. Mahal's case (supra). They have, therefore, submitted that in the facts of the cases, the applicants, who are seeking benefit of the ad hoc service rendered by them as Executive Engineers prior to the date of regularisation is outside the laid down quota/ratio for promotion as Executive Engineers meant for the Assistant Engineers and as such the ad hoc period cannot be counted for seniority. They rely on the judgement of the Supreme Court in P.S. Mahal's case (supra). They also submit that the acceptance of the prayer of the applicants would have the effect of upsetting the seniority fixed in compliance of the judgements of the Supreme Court in P.S. Mahal's case and R.L. Bansal's case (supra). On the question of relaxation of the rules, Shri N.S. Mehta, learned counsel, has relied on the observations of the Supreme Court in State of Maharashtra Vs. Sanjay Thakre (1995 Supp (2) SCC 407). They have, therefore, submitted that the O.A. is not maintainable and liable to be dismissed.

9. The relevant portion of P.S. Mahal's case (supra) relied upon by the respondents reads as follows:

B.

49

"...The seniority between Assistant Engineers and Assistant Executive Engineers regularly promoted within their respective quota must be determined by the length of continuous officiation in service in the grade of Executive Engineers, subject to the qualification that in case of Assistant Engineers the length of continuous officiation shall be reckoned from the date when their promotion is regularised by absorption within their lawful quota.

We would, therefore, allow the writ petition and quash and set aside the Memorandum and the seniority list dated 14.8.1975 and the Rules of 1976. We would direct the government to prepare a new seniority list of Executive Engineers in the light of the observations contained in this judgement. The Government will prepare such seniority list within a period of two months from today. When the seniority in the grade of Executive Engineers is rearranged in accordance with the directions given in the judgement, the cases of Assistant Engineers who would have been due for consideration for promotion as Superintending Engineers and thereafter as Chief Engineer on the basis of their revised seniority, will be considered by a duly constituted Departmental Promotion Committee as on the dates on which they would have been due for such consideration if the correct seniority had been given to them, and if on the basis of their performance and record as on these dates they would have been selected for promotion, they must be given promotion with retrospective effect from such dates and if necessary, supernumerary posts in the grades of Superintending Engineers and Chief Engineers shall be created for the purpose of accommodating them and all arrears of salary and allowances shall be paid to them on the basis of such retrospective promotions. We may make it clear that those Assistant Executive Engineers who have been promoted as Superintending Engineers or Chief Engineers upto the date of this judgement shall not, on account of revised seniority in the grade of Executive Engineers, be disturbed from the positions which they are occupying at present but their seniority in such higher grades will have to be rearranged on the basis of the directions given in the judgement". (emphasis added).

18.

10. The operative part of the judgement in R.L. Bansal's case (supra) relied upon by the respondents is as follows:

"Having regard to the period for which this dispute has been pending and in the facts and circumstances of this case and for the reasons recorded hereinbefore, we direct that the seniority of Asstt. Engineers appointed on or after December 22, 1959 shall be determined on the same basis and in the same manner as it is determined in the case of Assistant Engineers appointed prior to the said date. This direction is made keeping in view the desirability of giving a quietus to this dispute at least now".(emphasis added).

11. We have also seen the reply filed by the private respondents, namely, the Central Engg. Services Class-I (DR) Association, and heard Shri K.B.S. Rajan, learned counsel. They have more or less reiterated the arguments advanced by the official respondents. They have submitted that the ratio in Maharashtra Direct Recruit's case (supra) is not applicable and what is applicable is only the case of P.S. Mahal(supra). They have further submitted that in view of the pending litigations regarding seniority, the promotions had to be made on ad hoc basis only and they ~~promotions~~ can be considered to be on regular basis only when they fell within the lawful quota. The applicants, who were promoted in 1977/79 on ad hoc basis were outside the quota. Their promotions could be regularised only on subsequent dates within the quota. They have further submitted that it was a matter of necessity that the promotions had to be made on ad hoc basis and, therefore, the applicants cannot be given any benefit, ^{of seniority} as claimed in the above applications. They have, therefore, submitted that the applications may be dismissed.

18/

12. Their Lordships of the Supreme Court in Maharashtra Direct Recruit's case (supra) after considering in detail the contentions relating to the perpetual rivalry in service between Direct Recruits and Promotees and dealing with several related cases, including Narender Chadha Vs. Union of India & Ors. (1986 SLR 211), P.S. Mahal's case and A.K. Subraman's case (supra), which were distinguished, have laid down the applicable principles of law. This is a decision of the Constitution Bench. The relevant principles laid down by the Supreme Court enunciated in paragraph 47 of the judgement relied upon by the applicants are 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 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 and 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.

F. Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule".

The above principles 'A' and 'B' were further explained by the Supreme Court in Keshav Chandra Joshi & Ors. Vs. Union of India & Ors. (AIR 1991 SC 284). In para 25 of this judgement after referring to principles 'A' and 'B' laid down in Maharashtra

18,

Direct Recruit's case (supra) and the arguments of the learned counsel, the Supreme Court held as follows:

"...The proposition 'A' lays down that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The latter part thereof amplifies postulating that where the initial appointment is only ad hoc and not according to rules and is made as a stop gap arrangement, the period of officiation in such post cannot be taken into account for reckoning seniority...Propositions 'A' and 'B' cover different aspects of one situation. One must discern the difference critically. Proposition 'B' must, therefore, be read along with para 13 of the judgement wherein the ratio decidendi of Narendra Chadha was held to have considerable force. The latter postulated that if the initial appointment to a substantive post or vacancy was made deliberately, in disregard of the rule and allowed the incumbent to continue on the post for well over 15 to 20 years without reversion and till the date of regularisation of the service in accordance with the rules, the period of officiating service has to be counted towards seniority. This Court in Narender Chadha's case was cognizant of the fact that the rules empower the Government to relax the rule of appointment".

(Emphasis added)

In Keshav Chandra Joshi's case (supra), the applicants had continued purely on ad hoc basis for periods from 5 to 12 years and they had claimed the benefit of their ad hoc service for seniority purposes. On the facts of the case, the Supreme Court came to the conclusion that the promotees have been appointed on ad hoc basis as a stop gap arrangement though on substantive post and as their appointments were de hors the rules, they could not become members in a substantive capacity. Therefore, it was held that the continuous length of ad hoc service cannot

88/

be counted towards seniority. Ashok Mehta's case (supra) is a Full Bench decision of the Tribunal in which the principles laid down in Maharashtra Direct Recruit's case (supra) have been considered. In this case, the Tribunal has held as follows:

"Promotion by way of ad hoc or stop-gap arrangement made due to administrative exigencies and not in accordance with rules cannot count for seniority."

Principle 'B' laid down by the Supreme Court in Direct Recruit....will apply as explained by the Supreme Court in Keshav Chandra Joshi....only to cases where the initial appointment is made deliberately in disregard of the rules and the incumbent allowed to continue in the post for long periods of about 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the authority to relax the rules".

The same principles have been examined by the Tribunal in a bunch of cases in I.K. Sukhija & Anr. Vs. Union of India & Ors. (O.A. 727/87) with connected cases, decided on 14.9.1993.

13. The applicants have urged that they have put in more than 15/17 years of ad hoc service from the time they were appointed as Executive Engineers on ad hoc basis from 1977 and 1979 respectively till the time when the impugned seniority list of 1994 has been issued. Therefore, the learned counsel since submitted that/they have got more than 15 to 17 years ad hoc service as Executive Engineers till the time the seniority list was published, applying either Principle 'A' or 'B' laid down in the Maharashtra Direct Recruit's case, they would be entitled to have their seniority fixed from the date of initial appointment in the grade of Executive Engineers. Mrs. Shyamla Pappu, learned

18.

Sr. Counsel, strongly urged that the respondents cannot deny the fact that the applicants have put in more than 15 years ad hoc service and, therefore, they would be entitled to count this service for the purpose of seniority. It was also urged that they have been appointed in 1979 by the Screening Committee/DPC after due selection in accordance with the rules and there is no reason to deny them seniority from that date. However, it was also submitted that even if it is considered that the appointments have not been made in accordance with the rules, the fact that they had continued more than 15 years on ad hoc basis would mean that under proposition 'B' above, the period of ad hoc and officiating service should be counted towards their seniority.

14. The respondents have submitted the copies of the minutes of the meeting of the Screening Committee held on 6th and 7th July, 1979 to draw a select list of Engineers (Civil) for promotion to the grade of Executive Engineers (Civil) on ad hoc basis. They have submitted that the relevant file is, however, not readily traceable, but Mrs Shyamla Pappu states that her recollection is that they had earlier produced it to the Tribunal. From the minutes, it is seen that the regular process of selection had been adopted by the Screening Committee, who are stated to be the members of the DPC for drawing up the select list from among the eligible candidates, and two of the applicants here were among the persons selected by the Screening Committee/DPC for promotion as Executive Engineers (Civil) on ad hoc basis. The respondents have contended that the promotions to the posts of Executive Engineers (Civil) as well as (Elect) have been made on ad hoc basis in view of the pending litigations.

18

The DPC in the meeting has also stated that it was to draw up a select list of Assistant Engineers for promotion to the post of Executive Engineers on ad hoc basis, although the estimate of actual vacancies has been worked out on the basis of retirement/deputation, etc. which works out to about 17 vacancies which were required to be filled then. It is, however, relevant to note that although the DPC itself did not refer to any pending cases, it selected the candidates only on adhoc basis. The seniority list of Executive Engineers was ultimately finalised and issued in 1994 in compliance with the directions of the Hon'ble Supreme Court and the Tribunal in the cases, referred to above. In other words, till the time of finalisation of the impugned seniority list, the applicants had continued on ad hoc basis only, but the respondents had no doubt to follow the directions of the Apex Court in P.S. Mahal's case and R.L. Bansal's case (Supra) in fixing their seniority. The proceedings of the earlier DPC of 1977 have not been placed on record and, therefore, we are not able to make any comment thereon.

15. In Keshav Chandra Joshi's case (supra), the Supreme Court has held that the ad hoc service would count for seniority when the initial appointment is made deliberately in disregard of the rules and the incumbent allowed to continue in the post for long periods of about 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the authority to relax the rules. We have, therefore, to examine whether these conditions are made out in these cases. In the impugned seniority list, the applicants are shown to have been regularised/absorbed in their quota between 8 to 10 years from the date of their initial appointment.

P.S.

Therefore, none of the applicants would appear to have ad hoc service continuously till the date of regularisation for 15 to 20 years so as to count that service for seniority. The submissions of Mrs Shyamla Pappu, learned Senior counsel that the ad hoc service upto 1994 should be counted when the seniority list was issued giving them over 15 years of ad hoc service would not appear to be within the principles as laid down by the Supreme Court in Maharashtra Direct Recruit's case and further explained in Keshav Chandra Joshi's case (supra). Therefore, although the applicants have not been reverted, we are of the view that they do not have the requisite number of years of ad hoc service till the date of regularisation to allow the claims in these cases.

16. In the impugned seniority list of 1994 there is a column under the heading of date of 'absorption in quota'/appointment on regular basis which principle is in accordance with particular directions of the Supreme Court. In P.S. Mahal's case (supra), decided on 23.5.1985, the Supreme Court has held that the length of continuous officiation shall be reckoned from the date when their promotion is regularised by absorption within their lawful quota. The judgement of the Supreme Court in Keshav Chandra Joshi's case (supra) is also relevant. The appointment to a post must be according to the rules and not by way of ad hoc or stop gap arrangement and, therefore, the appointment should be within the quota which has to be strictly implemented. In State of Maharashtra Vs. Sanjay Thakre (supra), it was held that the decision in Maharashtra Direct Recruit's case (supra) would not apply because to get the benefit of what was said in sub-para (B) of Para 47 which is strongly pressed into service by the learned counsel for the opposite parties, the appointment has to be made in accordance with the rules so far as the promotees are concerned. For these reasons, the impugned seniority list

18/

which has been prepared in accordance with the directions of the Supreme Court in the relevant cases cannot, therefore, give them the benefit of their ad hoc service from the date of initial appointment, which was not in accordance with the relevant rules. It can only be from the date of their absorption in their quota.

17. The additional arguments put forward by Shri G.K. Aggarwal, learned counsel for the applicant in A.K. Bagga's case (O.A. 1611/95) cannot be accepted. In State of Maharashtra Vs. Sanjay Thakre (supra), the Supreme Court also observed:

"The State having made the rules, should implement them in letter and spirit; any justification for dereliction in implementation should not be countenanced; it should really be snubbed".

(emphasis added)

One important reason why in these cases the applicants have been appointed on ad hoc basis as Executive Engineers (Civil) or (Elect) was that there were a number of litigations pending in the courts. Finally, the seniority list has been prepared in 1994, again on the directions of the courts showing the applicants to have been regularised from a later date in their quota. This action cannot be held to be contrary to the rules or the principles of law laid down in Maharashtra Direct Recruit's case and Keshav Chandra Joshi's case (supra) to warrant any interference in the matter. In each of these landmark cases, it is also relevant to note that the Supreme Court, after taking note of a number of earlier decisions, laid down binding precedents which are relevant in the present case. In such cases of perpetual rivalry between Direct Recruits and promotees it is also not in the interest of service to unsettle a settled position.

18/

18. In the facts and circumstances of the cases whichever way one looks at the problem, the applications cannot succeed. The applicants have been appointed as Executive Engineers on ad hoc basis and have been regularised by the respondents subsequently in accordance with the relevant rules. As the ad hoc service rendered by the applicants before their regular appointment in their quota is less than 15 years, none of them would be entitled to count their ad hoc service from the date of their initial appointment for seniority. We have also carefully considered the other arguments of the applicants but are unable to agree that this is a case where the respondents are deemed to have relaxed the rules or that the applicants have entered the service on the date of their initial appointment. These are not only contrary to the terms of the ad hoc appointment, but the other facts and rules mentioned above. Apart from this, the respondents cannot be faulted in implementing the directions of the Supreme Court in Mahal's case and Bansal's case (supra) and there is need to give a "quietus to this dispute".

19. In the result, we find no good ground warranting interference with the impugned Seniority List of Executive Engineers (Civil) and (Elect) issued in the year 1994. Hence, all the above five applications are dismissed. No order as to costs.

(R.K. Ahooja)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'