CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.No. 473/94 to 487/94

(5)

New Delhi this the 2nd Day of June 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

1. Shri Pappu Satyaharayana
R/o Sector III/601, R.K. Puram,
New Delhi. (O.A. No. 473/94)

2. Shri Rajendra Prasad Bansal,
Resident of A 5/8 M.S. Flats,
Gole Market, Peshwa Road,
New Delhi. (O.A. No. 474/94)

3. Shri Somnath Maity,
R/o 702 Asia House,
K.G. Marg,
New Delhi. (O.A.No. 475/94)

4. Shri Ashok Kumar
R/o FB 200 Lajpat Nagar, Sector IV,
Sahibabad. (O.A. No. 476/94)

5. Shri Manjit Singh,
R/o 7 Nehru Apartment,
Nehru Nagar,
Ghaziabad. (O.A. No. 477/94)

6. Shri Anil Kumar Purwar,
R/o E-2 Jhandewalan Extension,
New Delhi. (OA No. 478/94)

7. Shri Dinesh Chandra Jain
R/o 813 Asia House,
K.G. Marg,
New Delhi. (O.A. No. 479/94)

8. Shri Sundera Raman,
R/o V/5, Kosi Block,
ALTTC, Ghaziabad. (O.A. No. 480/94)

9. Shri Pritindu Chaudhuri
R/o V/3 ALT Centre,
Ghaziabad. (O.A. No. 481/94)

10. Shri Gopas Kumar Sen,
R/o 304 Asia House,
K.G. Marg,
New Delhi. (O.A. No. 482/94)

11. Shri Arun Kumar Dube,
R/o Q.No. 11, Type V, (O.A. No. 483/94)
A.L.T. Centre, Ghaziabad.

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12. Shri Harish Kumar Gupta,
C/o A-31 Duplex Sanjay Nagar,
Sector 23, Ghaziabad (O.A.No. 484/92)

13. Shri Bhag Mal Bhardwaj,
R/o D-2/98 Kidwai Nagar (West),
New Delhi. (O.A. No. 485/94)

13. Shri Jeet Singh Ohabra,
R/o V/7 Kosi Block,
ALTTC Complex,
Ghaziabad. (O.A. No. 486/94)

14. Shri Vinod Kumar,
R/o F-214 Pragati Vihar,
New Delhi-110 003. (O.A.No. 487/94) ... Applicants

(By Advocate : Shri J.K. Bali)

Versus

1. Union of India
through
Secretary, Ministry of Communication
2. Director General,
Dept. of Telecommunications,

3. Member (Secretary),
Telecom. Commission,
New Delhi.

(By Advocate : Shri M.M. Sudan) ... Respondents

ORDER

Hon'ble Member Shri J.P. Sharma, Member J

The applicants are Members of the Indian Telecom Service. The recruitment to Telecom Service is regulated by the Telecom Service Recruitment Rules. Under Schedule III to the Recruitment Rules for ITS Group 'A' framed under Rule 9 of the Rules, the Junior Administrative Grade is given to the incumbent by promotion of the Senior Time Scale Officers with five years regular service in the grade. The mode of promotion is by selection. The officers of the Junior Administrative grade who have entered the

14th year of the service on the 1st July of the year calculated from the year following the year of selection for appointment to the Junior Time Scale. The recruitment rules stipulates only that the officers should be in the Junior Administrative Grade. By the order dated 6.10.1989 (Annexure A-I) by an order passed in the name of the President 40 Sr. Time Scale Officers of ITS Group 'A' were promoted purely on temporary and ad hoc basis to officiate in Jr. Administrative Grade of ITS Group A and they have also been given posting mentioned in the Annexure to the aforesaid order. This promotion was effective from the date they assumed charge of the post until further orders. However, by an order dated May 9, 1993 another order was issued in the name of the President where 92 officers has mentioned in Annexure alongwith this order were promoted to non functional selection grade in Jr. Administrative Grade of ITS Group 'A' in the pay scale of Rs. 4500-5700 with effect from 17.11.1992.

2. The grievance of the applicants is that they should have been granted NFSG from 1st July to 14th year following the year of recruitment i.e. July 1, 1989. The delay in holding the regular DPC cannot be attributed to any fault of the applicants. The applicants besides suffering in the payment of their salary NFSG have also to suffer a regular increment which shall fall due in the years to come. The respondents by the Memo dated November 9, 1993 rejected the representations on the ground that the basic factor which is to be taken into consideration for grant of NFSG of Jr. Administrative Grade is that a person should be found fit by the DPC for appointment to the basic grade of Jr. Administrative Grade before he can be considered for the appointment of the selection grade. The DPC to consider appointment to the Jr. Administrative Grade was holdin association with the Union Public Service Commission on 17.11.1992. The

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said DPC found the officer fit for appointment to the Jr. Administrative Group of the ITS Group 'A' and based on the recommendation of the DPC order dated 8th December, 1992 issued regarding appointment of the Officer to JAG of ITS Group 'A' with effect from 17.11.1992. The selection grade cannot be granted from a data prior to 17.11.1992 as the officers has been regularly appointed from 17.11.1992. Being aggrieved by this order the applicants have separately filed thse applications and prayed for the grant of the relief that the respondents be directed to treat the applicants as entitled to grant of NFSG grade in Jr. Administrative Grade with effect from 5th June 1990 with all consequential benefits including seniority, Annual increments, payment of arrears etc.

3. The cases of all these 15 applicants fall in four categories. Applicants Shri Pappu Satyanarayana; Shri Som Nath Maity; Shri Arun Kumar Dubey; Shri Jeet Singh, Shri Tapas Kumar Sen and Shri N. Sundara Raman, Shri Dinesh Chandra Jain, Shri A.K. Purwar, Shri Manjit Singh were given ad hoc promotion, JAG of ITS Group 'A' on 6.10.1989 alongwith 40 STS Officers of ITS Group 'A' on purely and temporary ad hoc basis and wereallowed to officiate in JAG and were given posting at different places throughout India. The applicant Shri Bhag Mal Bhardwaj, Harish Kumar Gupta, and Shri Vinod Kumar were given promotion alongwith 31 officers of STS of ITS Group 'A' on purely and temporary ad hoc basis on 28.12.1989 and were transferred and posted at different places in India. Applicant Shri Atanu Chaudhuri was given promotion on return from deputation to TCIL on 30.11.90 purely and temporary ad hoc basis in JAG of ITS Group 'A' and was posted at ALTTC, Ghaziabad against a newly upgraded post. The applicant Shri R.P. Singhal and Shri Ashok Kumar Sharma were given promotion posting on ad-hoc and temporary basis in JAG of ITS Group 'A' on their return from deputation to TCIL by the order dated 14.11.1990. Thus, these 15 applicants

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were appointed purely on temporary ad hoc basis on different dates as referred to above. Subsequently by the order dated 8.12. 1992 they were appointed on regular basis to officiate in the Jr. Administrative Grade. Subsequently, by the order dated 7.5.1993 these officers officiating on regular basis in JAG of ITS Group 'A' were given N.F.S.G. in JAG with effect from 17.11.1992.

4. The respondents in their reply have stated that the applicants were not eligible for grantof selection grade prior to 17.11.1992. As per the provisions contained in DOP&T instructions dated 6.1.1989 the applicants became eligible for placement in N.F.S.G. only on 17.11.1992 when they were adjudged fit by the Union Public Service Commission to hold a post in JAG. In the aforesaid instructions of DOP&T dated 6.1.1989 is that the N.F.S.G. in the scale of Rs. 4500-5700 is a selection grade of JAG. Thus, a person should be first adjudged fit for promotion to the basic grade of JAG before he can be considered in appointment in the selection grade. In addition to the conditions of 14 years of service, overall the performance, experience and any other related matter has to be taken into account for the purpose of granting N.F.S.G. In the interest of service and to keep the stagnation in service minimum as ITS is basically a service oriented Department, jobs cannot afford to keep the posts at higher level vacant for inordinarily long spells. The posts, therefore, were filled up on ad hoc basis on the recommendation of the departmental screening committee without associating U.P.S.C. in any manner pending regular appointment by the U.P.S.C. by holding a D.P.C. Thus, the applicants cannot claim the grant of N.F.S.G. prior to 17.11.1992

5. We have heard the learned counsel for the parties and perused the record. Here the question is not of the seniority of the applicants counting of ad hoc service but the main issue is whether their ad hoc appointment to JAG in ITS

Group 'A' can be considered as regular appointment from the time they were made to officiate on ad hoc and temporary basis in the exigency of service. We have seen the copy of the recruitment rules and unless the process of selection is undergone the officers cannot claim a regular appointment. Nature of the appointment also goes to show that promotions were made on ad hoc basis at different periods irrespective of the seniority. These orders have been passed on 6.10.1989, 28.12.1989, 30.11.1990 and 14.11.1990. This goes to show that the question of seniority was not taken into account as well as all eligible persons were not considered by the department when initial ad hoc promotion was made. A person cannot become member of the service unless he is appointed to the post in accordance with the extant recruitment rules. Reference here can be made to the authority of the Direct recruit Class I Engineering Officers' Association Vs. State of Maharashtra reported in Judgement Today 1990 (2) SC p 264. The Hon'ble Supreme Court in the concluding para in sub-para A and B has observed as follows:

(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 confirmation.

The corollary of the above rule is that where 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 pointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

The learned counsel for the applicant has interpretted Para B in the manner that the applicants were given ad hoc promotion when the vacancies were already existing and they

should not be put to lose financially as well as in their service career on account of non holding DPC at the proper time. In this connection the learned counsel has referred to the observations of the Hon'ble Supreme Court in the case of West Bengal Vs. Aghore Nath Dey reported in 1993(2) SLR P 537. The learned counsel highlighted para 22 which is reproduced below:

> "There can be no doubt that these two conditions have to be read harmoniously and conclusion(B) cannot cover cases which are expressly excluded by conclusion (A). We may, therefore, first refer to conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed 'according to rules'. The corollary set out in conclusion (A), then is, that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement ~~to only ad hoc and not according to rules and~~ no- the officiation in such posts cannot be taken into account for considering the seniority. Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stop-gap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority."

However, the case of the applicant is not covered by the case of Aghore Nath Dey (Supra) because at the time when ad hoc promotion was made all the eligible persons were not given promotion on ad hoc basis taking into account all India seniority and as is evident from the orders 6.10.1989, 14.11.1990, 6.12.1989 and 30.11.1990 the order of ad hoc promotion were issued four times of different officers including those who were on deputation. The case of the applicant can be judged from the ratio of the case of Keshav Chand Joshi and ors. Vs. Union of India & Ors. reported in 1991 SC P-284 where the Hon'ble Supreme Court has harmoniously interpretted Para (A) and (B) of the concluding para of the Direct Recruitment Class II Engineering Officers' Association case (Supra). The

relevant extract is quoted below:

AIR 1991 SC 284

Keshav Chandra Joshi & Ors. Vs. U.O.I. & Anr.

"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. The quietessence of the propositions is that the appointment to a post must be according to rules and not by way of ad hoc or stop-gap arrangement made due to administrative exigencies. If the initial appointment thus made was de hors the rules, the entire length of such service cannot be counted for seniority. In other words, appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date. Propositions 'A' and 'B' cover different aspects of the 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's case was held to have considerable force. The latter postulated that if the initial appointment to a substantive post or vacancy was made deliberately, indisregard 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 regularization of the service in accordance with the rules, the period of officiating service has to be counted towards seniority. This Court in Narendra Chanda's case was cognizant of the fact that the rules empower the Government to relax the rule of appointment. Without reading paragraph 13 and proposition 'B' and Narendra Chadha's ratio together the true import of the proposition would not be appreciated. We would deal with the exercise of power of relaxing the rule later. After giving anxious consideration, we are of the view that the latter half of Proposition 'A' would apply to the facts of the case and the rule laid down in that behalf is to be followed. If the concerned rules provide the procedure to fix inter se seniority between direct recruits and promotees, the seniority has to be determined in that matter."

The circumstance that the posts are classified as selection grade posts itself suggest that promotion to these posts is not automatic being made only on the place of ranking in the gradation list. But the question of merit enters in

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promotion to selection posts. It is a well established rule that promotion to the selection grade or selection post is to be based primarily on merit and not on seniority alone. The promotion is to be made according to rules and if the rules are silent on any particular point, Government can fill up the gap and supplement the rules and issue instructions in consistent with the rules already framed. The OM of 6.1.1989 in no way is contrary to the rules of promotion to JAG selection grade applicable to the applicants. A person, therefore, should be found fit for appointment to the basic grade of JAG before he can be considered for appointment in the selection grade. In the present case the applicants service were regularised with effect from 17.11.1992, the date on which theywere ad-judged fit to hold the post in JAG by the Union Public Service Commission. The ad hoc promotions were ordered only on the recommendation of the Departmental Screening Committee which is an internal matter of the department and the Union Public Service Commission was not associated with the saidm Screening Committee. Taking into consideration all the facts in the account, there is no inprdinate delay on the part of the respondents for calling the D.P.C. The applicants have annexed a copy of Schedule III under Rule 8 of the recruitment rules for ITS Group 'A' and the method of promotion is by selection. This fact is not denied by the learned counsel for the applicants.

6. The respondents have already considered the representation of the applicants and rejected the same by the impugned order of November 9, 1993 stating that DPC to consider appointment to JAG was held in association with the Union Public Service Commission on 17.11.1992. On the recommendation of the DPC, the applicants were regularly appointed in JAG of ITS Group 'A' with effect from 17.11.1992.

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The selection grade cannot be granted to them from a date prior to 17.11.1992. The contention of the learned counsel that ad hoc promotion was almost a regular promotion cannot be accepted as eligible persons have to be considered on all India Seniority basis including those who had gone on deputation on ex cadre posts. At the time of promotion an ad hoc basis it was specifically mentioned that the promotion is only a stop gap arrangement being purely on temporary basis. In view of this fact the period between ad hoc promotion or temporary basis till the regularization of the applicant on 17.11.1992 cannot be counted for the purpose of seniority or grant of financial benefits. Only because the applicants were eligible or that the vacancies existed or that certain eligible persons were considered and also that the applicants continued uninterruptedly till regularization of their services in JAG with effect from 17.11.1992 will not give them any benefit. The appointment was not according to the rules and from 1990 till 1992 the period is so short as to give them benefit as has been given in the case of Narender Chadha Vs. Union of India.

7. The learned counsel has also referred to the case of P.V.T. Phillip Vs. Narasimha Reddy and Ors reported in 1993 Vol. 25, ATC P 629. This authority is totally on different footing where even adhoc service was counted for eligibility to the post of Deputy Superintendent of Jails.

8. In view of the above facts and circumstances of the case the applicabions are devoid of merit and are dismissed leaving the parties to bear their own costs.

(B.K. Singh)
Member(A)

(J.P. Sharma)
Member(J)

Mittal

(एच. सी. मित्तल)
(H. C. MITTAL)
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