

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 1206/89

Date of decision: 10/4/92

Sh.Sri Chand & others

.. Applicants.

Versus

Union of India & another .. Respondents

Sh.D.C.Vohra .. Counsel for the applicant.

Mrs.Raj Kumari Chopra .. Counsel for the respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J).

The Hon'ble Sh.I.P.Gupta, Member(A).

JUDGEMENT

(Delivered by Hon'ble Sh.I.P.Gupta, Member(A)).

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The applicants joined the service of the Union of India during 1973 to 1978 and were issued appointment letters which said that the appointment was purely temporary and until further orders. The letter further stated that the appointment was to temporary posts of clerical grade II in the office of the Registrar of Newspaper for India at Simla. This office is under the Ministry of Information and Broadcasting. The applicants were serving at the Simla Office of the Registrar of Newspaper for India when they were ordered to report at New Delhi office of the Registrar.

2. The appointment, seniority, promotion and other conditions of the applicants are governed by the Central Secretariat Clerical Service (C.S.C.S.) Rules, 1962. The cadre authority of the applicants was the Ministry of Information and Broadcasting.

3. *APPLICANTS NO.1 AND 2* according to *ld. counsel for applicants* were even promoted as U.D.Cs. during 1978 to 1981 and have continued to work as such without interruptions.

4. Since 1980 the question of encadrement and fixation and seniority of the applicants in the C.S.C.S. remained

the subject matter of correspondence between the Ministry of Information & Broadcasting and the Department of Personnel & Training and the Staff Selection Commission. In its communication dated 18th March, 1980 the Staff Selection Commission said in respect of the applicants and some of their similarly placed colleagues that:-

"...the Commission have decided after careful consideration to allow the Registrar of Newspapers for India to regularise the services of all the eleven persons appointed in their subordinate office on ad-hoc basis with effect from the date from which regular vacancies are available..."

5. The grievance of the applicants is that in the matter of fixation of their seniority in the grade of L.D.Cs. of the C.S.C.S., they are being discriminated since continuous officiation from the date they were appointed as L.D.Cs. has not been taken as the criterion for determining the seniority.

6. The contents of the learned counsel for the applicants are:-

i) The applicants have been continuously working as U.D.Cs. L.D.Cs. since the date of their appointment and their induction into the C.S.C.S. was the matter to be decided within the C.S.C.S. Rules, 1962 which should entitle them the seniority from the date their approved service commenced in terms of Rule 2(c) of the C.S.C.S. Rules, 1962 which says that "approved service in relation to any grade means the period or periods of service in that grade rendered after selection, according

to procedure, for long term appointment to the grade.

ii) The applicants acquired a status after their appointment and have to be governed by rules and regulations of C.S.C.S. and not by any contractual obligations.

iii) The applicants made representations on 10.4.88 requesting the Ministry of Information and Broadcastings to allot proper seniority to them and the representation was rejected vide O.M. dated 27.7.88 and O.M. dated 1.1.88. Identical representations were also made by the applicants on 28.2.89 challenging the seniority list of 29.12.88, but there was no reply.

iv) The applicants were appointed in a temporary capacity until further orders and this appointment was not stop gap or ad-hoc in nature. As is evident from office order dated 17th March, 1988, 12 posts of clerk grade II of the Office of Registrar. of Newspapers of India, New Delhi were inducted into the Central Secretariat Clerical Services of the Ministry of Information and Broadcasting and the applicants were also inducted into the C.S.C.S. cadre. The applicants figure at S.No.8 to 15 of the ~~Order~~ ^{Order} ~~cadre~~ and it was said that they would be assigned seniority by placing them below the L.D.Cs. appointed on the basis of the result of the L.D. grade examination, 1986. However, the same office order would indicate that the applicants have been shown as substantively appointed between 1975 and 1979 except for applicant No.15 who was shown as temporary.

v) The provisions of Rule 12(b) of the C.S.C.S. Rules, stipulates ^{that} to the extent a sufficient number of qualified candidates of the competitive examination are not available

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for appointment on the result of such examination the vacancies may be filled provisionally or on regular basis or such manner as may be prescribed by the Central Government. Learned counsel for the applicant contended that the appointment of the applicants was on long term basis and infact they were substantively appointed from various dates as indicated above. Further the Staff Selection Committee had also directed regularisation of the applicants w.e.f. the dates when regular vacancies were available.

v) Rule 17 of the C.S.C.S. Rules provides that the seniority of an officer shall be determined by taking into account the continuous length of regular service rendered before the appointed date by such officer in the grade of L.D.C. or any higher grade. Since the applicants have been rendering continuous service prior to the appointed date, referred to in clause 2(b) of the C.S.C.S. Rules 1962, their services should be counted from the date they were inducted into the cadre of L.D.C.

7. The relief sought is that the seniority list dated 29.12.88 (annexure 'H') alongwith O.M. dated 17.3.88 be quashed and the respondents be directed to assign seniority to the applicants in the grade of L.D.Cs. of the C.S.C.S., according to the principle of continuous officiation.

8. The learned counsel for the respondents argued that:-

i) The office of the Registrar of Newspaper for India is an attached office under the Ministry of Information & Broadcasting. It has some posts of L.D.C. and U.D.C. belonging to the Central Secretariat Clerical Service (C.S.C.S.) which are controlled by the Ministry of Information & Broadcasting. There were some other

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posts called C.G. I and C.G. II which did not belong to C.S.C.S. These posts were non-cadre posts. The applicants were working as Clerks Grade II (C.G. II) in the office of R.N.I. against these non-cadre posts. C.S.C.S. Rules, 1962 were not applicable to those non-cadre posts. The applicants requested the respondents that they might be encadred in the C.S.C.S. as they had less promotional avenue than those in the C.S.C.S. The C.S.C.S. Rules, do not provide for induction of C.G.II in the cadre. However, on the basis of request from applicants their induction was done in the cadre in relaxation of C.S.C.S. Rules, 1962. The applicants accepted the induction on the condition that general orders on seniority relating to appointments in Central Services on transfer basis would be followed. Twelve officials holding permanent posts of C.G.II including the applicants were inducted as L.D.Cs.

- ii) The seniority of the applicants was fixed below the regular L.D.Cs. appointed to the C.S.C.S. cadre of the Ministry of Information and Broadcasting on the basis of ^{Clerks} ~~class~~ grade examination 1986 because appointments through this exam were almost over by the date these officials were inducted into the C.S.C.S. namely, 17.3.88.
- iii) The applicants 1 and 2 were all along getting the salary of L.D.Cs. and not of U.D.Cs.
- iv) The applicants have not impleaded the affected parties and thus the application is defective.

9. At the outset we will take up the question of impleading all necessary parties. The applicants have requested for counting of their continuous service as L.D.Cs. towards seniority. The relief sought is only against Union of India and the concerned

Ministry/office of the Government of India. No relief has been claimed against any individual as such. No seniority has been claimed by any one individual against another particular individual. In the circumstances, as observed in the case of A.Janardhana Vs. Union of India (A.I.R. 1983 S.C. 771) the petition cannot be dismissed merely on the ground of non-impleading of those affected by any order regarding counting of certain service by the applicant towards seniority.

10. Analysing the facts and circumstances of the case we find that the applicants were appointed as C.G.II in the office of the R.N.I. The appointments were purely temporary and until further orders. It did not say whether the appointments were against cadre posts in the office of R.N.I. or against ex-cadre posts. The applicants fulfilled the eligibility conditions, but their appointment was not done on the recommendations of the Staff Selection Commission(S.S.C.). It was in this context that the office of R.N.I. had taken up the question of their regularisation with the S.S.C. The S.S.C. conveyed to the respondents ^{by} ~~of~~ their letter dated 18.3.80 that after careful consideration, the R.N.I. was allowed to regularise the services of the applicants appointed on ad-hoc basis w.e.f. dates from which regular vacancies were available. Thus, though initially the appointments of the applicants was de hors the rules, yet ^{the} deficiency was met when the S.S.C. agreed to regularise from the dates regular vacancies were available. The letter of Ministry of Information & Broadcasting of 17.3.88 showed that all the applicants except the last one namely, Sh.Deepak Pawar, were permanent and were holding substantive appointments from the dates indicated in the letter. The second proviso to Rule 19(1) of the C.S.C.S. Rules, 1962 , which came into force from 1.11.62 provides that the seniority of an officer shall be determined by the Department of Personnel

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and Administrative Reforms by taking into account the continuous length of regular service rendered before the appointed date by such an officer in the grade of lower division or in higher grade in the offices of the Central Government. The offices of the Central Government included the office of Registrar of Newspapers for India vide S.No.15(v) of first schedule to the said rules. Continuous service, which is not de hors the rules, followed by regular induction into the C.S.C.S. should be counted towards seniority, according to the settled law on the subject. The learned counsel for the applicants have in this connection referred to the case of Shyam Sunder and Others Vs. Union of India (**CW 969/74 T.136/85 decided on 8.6.88**) decided by the Principal Bench wherein it was observed

"In view of the above discussion the petition is allowed with the direction that the entire ad hoc service rendered by the applicants from the respective dates of their appointment till 20th August, 1971, when they were absorbed in Grade VI of the I.P.S. Branch(B) shall also count as approved and regular service in the said cadre and their seniority shall also be reckoned from the dates of their initial appointment".

11. In the conspectus of the aforesaid facts and in the above view of the matter, we direct that continuous service of the applicants in the grade of Clerk Grade II, equivalent to the pay scales of L.D.C. would count towards L.D. Grade of Clerk of C.S.C.S. from the dates they were regularly appointed as C.G.II in the office of R.N.I. Such dates would be the dates of substantive appointment of the first seven applicants indicated in the letter of 17th March, 1988, unless there were regular vacancies earlier and they were regularised earlier, *in which case only, the date could be earlier than those referred above.* In the case of the eighth applicant, namely, Deepak Pawar, his continuous service can be counted only from the date he was regularised against a regular vacancy in the office of

R.N.I. since the letter of 17.3.88 shows that he is still not holding a substantive vacancy and the requirements of S.S.C. as laid down in their letter of 18.3.88 have not been met in his case. No relief can be granted to the 8th applicant, namely, Deepak Pawar, if he has not been regularised against regular vacancy so far. These directions are given in this case in absence of any rule or order to the contrary in the C.S.C.S. Rules relating to the inductions of the applicants and consistent with the principles laid down by the Courts - **Delhi Water Supply and Disposal Committee Versus R.K.Kashyap (JT 1988 (4) S.C. 421); Direct Recruits Class II Engineering Officers Association Versus Union of India (JT 1990 (2) S.C. 264).**

12. With the above direction and order the case is disposed of with no order as to costs.

I.P.Gupta
(I.P.GUPTA)
MEMBER(A)

10/4/92

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN(J)