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Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.1295/89

New Delhi, This the Day of 19th May 1994

Hon'ble Shri C.J. Roy, Member(J)

Hon'ble Shri P.T. Thiruvengadam, Member(A)

Shri M C Sharma
s/o Shri B.P.Sharma
R/o C/o K K Sharma
E-17/11 Krishan Nagar, Delhi 51
Last employed as Income Tax Officer
in the office of Commissioner of Income Tax
Aaykar Bhawan, Meerut.

..Applicant

By None

Versus

Union of India Through

1. The Secretary to the Govt of India
Ministry of Finance
Department of Revenue
New Delhi.

2. The Chairman,
Central Board of Direct Taxes
New Delhi.

..Respondents

By Advocate: Shri R S Aggarwal

O R D E R (Oral)

Hon'ble Shri C.J. Roy, Member(J)

1. On 25.3.94 Shri B B Srivastava, the learned counsel for the applicant stated that he is no longer interested in this case and the applicant has appointed another counsel. He further prayed for a long adjournment on the ground that the applicant is not well. As a measure of indulgence two months time was allowed and the case came up for hearing to-day. None for the applicant and the applicant is also not present to-day. Therefore we have heard the learned counsel for the respondents Shri R S Aggarwal.

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2. The applicant was a Income Tax Officer Class II Group A when he filed this OA. The applicant claims that he was appointed as a result of examination and interview held by the Union Public Service Commission and joined service on 17.2.69 and also undergone training at Lucknow. Subsequently the service of the applicant was placed at the disposal of Commissioner of Income Tax Kanpur. The applicant was confirmed on 17.2.1971 in the Class II post of the Income Tax Officer.

3. The applicant was promoted to officiate as I.T.O. Group 'A' (Junior Scale) on ad hoc basis w.e.f 30.11.81 vide Notification No.32 F. No.A-32014/27/81-Ad.VI dated 30.11.81. The applicant claim that this adhoc appointment was continued uninterruptedly by subsequent orders of the Board until 6.4.84. i.e. when he was regularly promoted to Group A post. With this background the applicant claims the following reliefs:-

(a) direct the respondent to assign seniority to the Applicant in Group A I.T.O(Junior Scale) w.e.f 30.11.81, the date from which he started adhoc officiation in the grade subsequently regularised therein.

(b) direct the respondent to consider the applicant for Group A I.T.O(Senior Scale) w.e.f 30.11.85, on which he had completed 4 years service in the junior scale:

(c) Grant all consequential benefits arising out of reliefs at (a) and (b) above, including recomputation of applicant's pension and all other retirement benefits and grant all arrears by way of salary, allowances and pensionary benefits together with interest thereon at market rates.

9

4. The respondents have filed their counter and contested that the applicant is not entitled to get the seniority from the date of his officiating service i.e. from 30.11.81 till 6.4.84. His appointment is merely adhoc and it cannot be counted as regular service for the purpose of seniority. He also took objection as the case is barred by limitation. To this effect the applicant has also moved a Miscellaneous Petition for condonation of delay which is at page 23 of the paper book. The short point before us is whether the applicant is entitled for the said benefit as claimed in the OA cited supra. Incidentally the applicant is relied upon various decisions which are mentioned below:-

(a) Narendra Chadha Vs Union of India & others
ATR 1986 SC 638.

(b) Dhirendra Chomeli & others Vs State of
U.P. ATR 1986 SC 172

(c) Surendra Singh & Others Vs Engineer
in Chief, CPWD. ART 1986 SC 76.

(d) S.C. Jain Vs Union of India & others
ATR 1986 (2) CAT (Delhi) 346.

(e) Dinesh Chand Gupta Vs Union Of India & others
Judgement dated 27.7.87 in TA 155/86.

However the rules have been laid down by the Hon'ble Supreme Court in The Direct Recruit Class II Engineering Officers' Association Vs State of Maharashtra reported in JT 1990(2) SC 264. Further the same principle is amplified in Keshav Chandra Joshi & ers Vs U O I and Anr reported in AIR 1991 SC 284. In AgoreNath's case reported in JT 1993(6) SC 441 it is also further explained as to what are the procedural deficiencies. We are of the

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opinion that this ^{OA} is covered by the principle of
not B
A and ^{are} of the Direct Recruit Class II Engineering
Officers' Association Vs State of Maharashtra
which ^{are} given 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 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 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.

5. Under the circumstances the applicant

has not made out a case and we therefore dismiss

the OA. No costs. *On delay condonation petition is found to be and since it is disposed of that Mr. A. also follows suit.*
P. J. Thiruvengadam

(P.T. THIRUVENGADAM)
Member(A)

19/5/84
(C.J. ROY)
Member(J)

LCP