

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 656 / 89
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DATE OF DECISION 7.12.90

Smt. Vinod Khullar	Petitioner
T.C. Aggarwal	Advocate for the Petitioner(s)
Versus	
Union of India and another	Respondent
M.L. Verma	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

ORDER

(Hon'ble Shri S.P. Mukerji, Vice Chairman)

In this application dated 29.3.89 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Stenographer Grade II under the Joint Chief Producer, Films Division has prayed that she should be regularised against the post of Stenographer Grade II and allowed seniority on the basis of the date of her original appointment to that grade with all consequential benefits. The brief facts of the case are as follows.

2. The applicant joined as Stenographer Grade III on 1.6.70 and was promoted as Stenographer Grade II with effect from 1.10.86 (Annexure-A.3) on a purely adhoc basis. In that

order it was indicated that "her promotion is without prejudice to the claims of her seniors". She has been continuing in that grade but she anticipated reversion because of the Department of Personnel O.M. of 30.3.88 (Annexure-A.1) where adhoc appointments have been proscribed. Her contention is that having officiated in Grade II for about three years, her reversion would be against the rule of natural justice and Articles 14 and 16 of the Constitution.

3. The respondents have stated that in accordance with the Recruitment Rules, posts of Stenographer Grade II are to be filled up hundred percent by promotion of Stenographer Grade III with five years of service on the basis of seniority. They have ascertained that the applicant's appointment on 1.10.86 as Stenographer Grade II was purely on adhoc basis. The clear vacancy of the post accrued on 5.8.87 but it was in the reserved category. Since no reserved category candidate was available the D.P.C. recommended some more names in the general category. The applicant was at Sl.No.8 in the Seniority List and accordingly she does not have any legal or vested right for promotion. They have cited a number of rulings to indicate that adhoc service cannot be counted for seniority. They have also raised the question of limitation.

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4. In the rejoinder the applicant has stated that her original appointment as on 1.10.86 was against a regular vacancy and there was no time limit indicated in the appointment order. She has also cited a number of rulings to substantiate her arguments that adhoc service also would count for seniority. She has also cited other rulings to argue that even adhoc appointments cannot be terminated in violation of Article 311(2) of the Constitution. She has argued that she was appointed to the post after appearing in the stenography test and performing at 120 w.p.m.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. During the course of the arguments, the learned counsel for the respondents pointed out that the applicant has since been regularised in Grade II with effect from 19.4.89. To that extent one of the reliefs claimed by the applicant has been met. The remaining point is whether she is entitled to reckon her adhoc service prior to regularisation from 1.10.86 to 18.4.89 for the purpose of seniority. The order of appointment dated 1.10.86 reads as follows:

"Smt. Vinod Khullar, Permanent Stenographer, Films Division, New Delhi is promoted to officiate as Personal Asstt. on purely adhoc basis w.e.f. 1st October, 1986 (afternoon) vice Shri A.S. Rayan, Personal Assistant, transferred to Bombay. Her promotion is without prejudice to the claims of her seniors." (emphasis added)

From the above it is clear that in her promotion the claims of her seniors had not been considered. If it were so ^{otherwise} the reference to the claims of her seniors would not have figured in the order of appointment. Her position was No.8 in the seniority list and there were a number of seniors who had not been promoted to Grade II the appointment to which was ^{admittedly} based on seniority. The question of counting of adhoc service for the purpose of seniority has been subject matter of protracted judicial pronouncements culminating in the rulings of the Constitution Bench of the Hon'ble Supreme Court in the Direct Recruit Class II Engineering Officers Association and Others Vs. State of Maharashtra and others, JT 1990(2) SC 264. While summing up their conclusion on the issue of adhoc service counting for seniority the Hon'ble Supreme Court observed as follows:

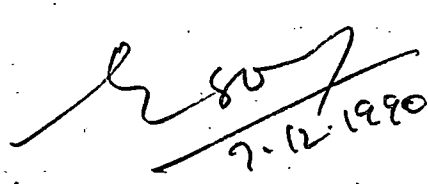
"Once an incumbent is appointed to a post according to rules, ^{/his} his seniority has to be counted from the date of ~~/~~ appointment and not according to the date of his confirmation.

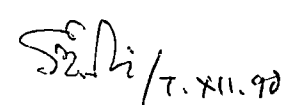
The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

In P.D. Aggarwal Vs. State of U.P., 1987(3) SCC 622, the Hon'ble Supreme Court held that ad hoc stop gap service does not count for seniority. In Masood Aktar Khan Vs. State of M.P. and others, JT 1990(3) SC 295 it was held

that where initial appointment was made not in accordance with the rules, subsequent regularisation will not render adhoc service admissible for seniority.

6. Since in the case before us the applicant was obviously appointed on adhoc basis while ^{the claims of} her seniors ^{uncovered} claims were remained, we see no force in the application and without prejudice to the applicant's having been regularised with effect from 19.4.89 dismiss the application without any order as to costs.


(G. SREEDHARAN NAIR)
VICE CHAIRMAN


(S.P. MUKERJI)
VICE CHAIRMAN

7.12.90

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