

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

(S)

O.A. No. 847/89
XXXXXX

199

DATE OF DECISION 21-2-1991

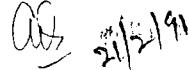
Gopi Chand	Petitioner	
Shri T.C. Agarwal	Advocate for the Petitioner(s)	
Union of India	Versus	Respondent
None		Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

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


AB 21/2/91
 (AMITAV BANERJI)
 CHAIRMAN

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 847/89.

DATE OF DECISION: 21-2-91

Shri Gopi Chand.

... Applicant.

Versus

Union of India.

... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant.

... Shri T.C. Agarwal,
Counsel.

For the Respondents.

... None.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

This Application has been filed by Shri Gopi Chand, the applicant, who claims to be the senior most Assistant Editor in the Films Division situated at 24-Dr. Deshmukh Road, Bombay. He has prayed that the respondents may be directed to treat the applicant's date of regular appointment as Assistant Editor w.e.f. 14th March, 1978 and he be given all consequential benefits.

The applicant has stated the following facts in his O.A.:

He joined the civil post of a peon in the Films Division on 28.11.1968. There is a provision in the

(P)

Recruitment Rules for promotion of Group 'D' employees, who have two years service with no condition of age etc.

A regular vacancy of Assistant Editor was available in 1978. The applicant was appointed after a test and selection by the Departmental Promotion Committee(D.P.C.) w.e.f. 14th March, 1978. The applicant states that the appointment was termed as ad hoc. His work had been highly appreciated. However, the applicant was made to sit in the departmental examination in 1986. He passed the departmental examination. He was declared as regular w.e.f. 15.9.1986 in the post of Assistant Editor, although he was holding the same post on regular basis selected through D.P.C. He was allowed to cross Efficiency Bar w.e.f. 1.3.1988, but his probation had not been terminated. The seniority list of Assistant Editors was circulated vide the order dated 28.9.1988 (Annexure A-5). An objection was filed by the applicant. The seniority list, according to the applicant, was against rules because he had been shown at a very junior position ignoring the service rendered by him from 14.3.1978. He claimed that he was the senior most Assistant Editor. He, therefore, approached the Tribunal and prayed for the reliefs, which have been mentioned above.

In reply by the respondents, it was stated that the seniority list of Assistant Editor (Grade II) as on 31.8.1988

was circulated by the office circular dated 28.9.1988 and was duly seen and accepted by the applicant on 24.10.88 without any objection. The allegations of the applicant that he was promoted through D.P.C. and that he was the senior most Asstt. Editor (Grade-II), were incorrect as being baseless. The correct fact was that the applicant was holding the post of Assistant Editor (Grade-II) on ad hoc basis from 14.3.78 to 14.9.86. He was also not the senior most Assistant Editor (Grade-II). The post of Assistant Editor (Grade-II) had to be filled 25% by promotion and 75% by direct recruitment. It was stated that the applicant was appointed to the post of Assistant Editor (Grade-II) on ad hoc basis w.e.f. 14.3.1978 against the promotion quota vacancy and not on regular basis on the recommendations of the D.P.C. He was appointed on ad hoc basis because as per the prescribed Recruitment Rules for the Assistant Editor (Grade-II) in vogue at that time. The applicant had the educational qualification and experience for the post, but had not passed the departmental test, as no such test was held for the eligible Group 'D' employees till that time. A simple departmental test was held in August, 1986. His appointment as Assistant Editor(Grade-II) was against the promotion quota vacancy and not on regular basis on the recommendations of the D.P.C. It was also stated that the applicant worked on ad hoc basis from 14.3.78 to 14.9.86 and the ad hoc service does not count for regular as

appointment, such a period cannot be taken into account while fixing his seniority. The prayer that the applicant's ad hoc service from 14.3.78 to 14.9.86 be treated as regular had no merits and was liable to be rejected.

Learned counsel for the applicant Shri T.C. Agarwal referred to two decisions STATE OF MAHARASHTRA VS. JAGANNATH ACHYUT KARANDIKAR(SC) (1989(10)ATC 593) and K. SIVA REDDY & ORS. VS. STATE OF A.P. & ORS. (1988(3)SLJ(SC)71).

He urged that the Recruitment Rules had not been followed in this case and the applicant had not been given place and direct recruit occupied his place. None appeared for the respondents.

In the case of STATE OF MAHARASHTRA VS. JAGANNATH ACHYUT KARANDIKAR(SUPRA); it appears that Respondents 1 to 8 were Assistant Secretaries/Section Officers/Superintendents in different departments of the Government of Maharashtra. The State Government prescribed departmental examinations as a condition precedent for promotion to the cadre of Superintendents. The examinations were required to be conducted every year, and the officials have to pass within the stipulated period. Those who could not do so would lose their seniority, but they would be promoted as and when they qualify themselves. The Government for some reason or the other could not hold the examinations every year and in particular in years

1968, 1969 and 1970. The Government, however, did not pass any order extending the period prescribed for passing the examinations, nor promoted the seniors subject to their passing the examination. In the cadre of Superintendents, however, the Government revised the seniority list so as to reflect the rankings in the lower cadre irrespective of the date of promotion. The validity of the revision of seniority was challenged before the High Court. The High Court conceded the power to the government to relax the rules relating to passing of the examination in case of hardship, but refused to recognise the power of the government to give seniority to those, who could not pass the examination within the time schedule. The High Court was of the opinion that without specific orders of the government relaxing the conditions of the rules, the persons could not be given seniority for 'Late Passing'. The decision referred to the 1955, 1962 and 1970 Rules. It was contended by the respondents that the proviso to Rule 3 did not entitle the candidate to get his legitimate seniority, if he did not pass the examination at the end of nine year's service. He relied upon Rule 2 of the 1962 Rules which stated that the candidate who did not pass the examination within nine years' service would lose his seniority to all those candidates who passed the examination earlier. It was urged that the proviso was

only to Rule 3 and not to Rule 2 and the government has no power to restore the seniority of a person who has lost it by the operation of Rule 2. Their Lordships held to construction of Rules that this amounted/which form part of the scheme prescribing a condition of promotion. The rules of promotion were well settled. These rules are to be harmoniously construed. It was observed that if an examination is not held in any year, Rule 2 cannot operate to the prejudice of a person, who has not exhausted all his chances. The person who has not exhausted the available chances to appear in the examination cannot be denied of his seniority. It would be unjust, unreasonable and arbitrary to penalise a person for the default of the government to hold the examination every year. That does not also appear to be the intent or purpose of the 1962 Rules.

Learned counsel relied on the above observation. Their Lordships also held that the power to relax the conditions of the rules to avoid undue hardship in any case or class of cases cannot now be gainsaid, and allowed the appeals.

We do not find the facts in the above case are at pari materia with the facts of the present case. There is no such Rule in the present case as in Rule 2 and 3 of the Maharashtra Government Subordinate Service Rules. The only point which was pressed is that if examination is not held in any year, Rule 2 cannot operate to the prejudice of a person, who has not exhausted all his chances. There was

no limit of chances in the present case. Consequently, the principles would not be applicable to the present case. Learned counsel for the applicant then contended that the decision in the case of K. SIVA REDDY & ORS. (Supra) is applicable to the facts of the present case. In this case, the question was in respect of recruitment and seniority, making of regularisation of promotees retrospectively appointed against the quota of direct recruit. The court held while examining the legality that when the State Government by rules duly framed prescribed the method of recruitment, it had the obligation to comply with it. The Court, however, directed to confine promotees with their quota at least from 1982 and the regularisation of promotees of the year 1972 to 1975 held not to be disturbed at this point of time. In other words, the point taken was that when the rules prescribed the method of recruitment, it had the obligation to comply with it.

In the present case, the applicant was promoted on ad hoc basis and not in a regular vacancy. He was made officiating in an ad hoc capacity in 1978. He continued as such till 1986 when he was regularised in officiating capacity as against a regular post. The respondents claimed that he would be deemed to be regular from 15.9.1986 and he was not entitled to claim his seniority from 1978. It would be relevant to refer to Clauses (A), its corollary and (B) of the case THE DIRECT RECRUIT CLASS II ENGINEERING

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OFFICERS' ASSOCIATION & ORS. VS. STATE OF MAHARASHTRA & ORS.

(J.T 1990(2) S.C. 264):

"(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 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".

The Supreme Court has clearly laid down that only such appointments would be taken into consideration which come under Clause 'A' and 'B' but not the corollary of Clause 'A'. The applicant's case falls in the category of corollary of Clause 'A'. His was an ad hoc appointment and in an officiating capacity made without following the rules.

The assertion of the applicant that he was selected by the D.P.C. after a test/stoutly denied by the respondents. The Annexure A-3 dated 15.9.1986 states:

"The following candidates have been declared successful in the departmental examination for promotion to the post of Asstt. Editor (Gr.II) held on 19th, 20th and 21st of August, 1986. Their names are indicated below in the order of merit secured by them:

1. x x x x x x x
2. xxxxxxxxxxxxx

3. Shri Gopichand, Asstt. Editor(Gr.II)(Ad-hoc)
Films Division, New Delhi.

4 to 9. x x x x x x x x x x x x x x x

Sd/- x x x x
(V.R. Peswani)
Asstt. Admn. Officer

(A)
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It is, therefore, evident from the above that he was selected for the post of Assistant Editor(Grade-II) after the departmental examination on 15.9.1986. That would be the material date for computing his seniority.

We are, therefore, of the view that the applicant has not been able to make out a case for the reliefs prayed for by him.

In view of the above, the O.A. fails and is dismissed and there will be no order as to costs.

I. K. Rasgotra
(I. K. RASGOTRA)

MEMBER (A)

Abd
21.2.91
(AMITAV BANERJI)
CHAIRMAN

SRD