

13/1

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL PENCH  
NEW DELHI.

O.A. No. 943 of 1989.

DATE OF DECISION 26.5.92

K.B.K.Jain & others .....Applicants.

Shri R.K.Kamal .....Counsel for the  
applicant.

Versus

Union of India & others .....Respondents.

Shri M.L.Verma .....Counsel for the  
respondents.

CORAM:

THE HON'BLE MR.JUSTICE RAM PAL SINGH, VICE CHAIRMAN.  
THE HON'BLE MR. A.B.GORTHI, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?

JUDGMENT

(Delivered by Hon'ble Mr.A.B.Gorthi, Member (A))

All the nine applicants in this case are the promotees to the posts of Research Investigators (R.I) (Grade-I) in the Directorate of Economics and Statistics. They assumed the said promotional posts on ad-hoc basis during 1977-82 and were regularised with effect from different dates during 1987-89, i.e., after they had continuously officiated as R.I. (Grade-I) for more than 5 to 10 years. Their claim in this application is that they be regularised from the dates on which they were initially appointed on ad-hoc basis as R.I. (Grade-I).

2. This case is a fall-out from the judgment of the Hon'ble Supreme Court in the case of Narendra Chadha & others Vs. Union of India

1986 S.C.C. (L & S) 226. In that case, the petitioners were those holding Grade IV posts in the Indian Economic Service and Indian Statistics Service. The relevant operative portion of the judgment reads as under:-

"Having given our anxious consideration to the submissions made on behalf of the parties and the peculiar facts present in this case we feel that the appropriate order that should be passed in this case is to direct the Union Government to treat all persons who are stated to have been promoted in this case to several posts in Grade IV in each of the two services contrary to the Rules till now as having been regularly appointed to the said posts in Grade IV under Rule 8(1)(a) (ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts!"

3. The cadre of R.I. (Grade-I) forms the feeder cadre for promotion to the Grade IV posts of I.E.S. and I.S.S. The applicants' contention is that because of the pendency of Narender Chadha's case, they were made to continuously officiate in the posts of R.I. (Grade-I) without being confirmed. After the finalisation of Narender Chadha's case, all those who were affected by the judgment in that case, were regularised in Grade IV posts retrospectively from the dates of their continuous officiation in the said posts. Consequently, the applicants, in the present case, claim that they too could have been similarly regularised in their posts of R.I. (Grade-I) from the dates on which they

were initially promoted to the said posts on ad-hoc basis. Admittedly, the applicants were all fully qualified and eligible to be promoted as R.I. (Grade I). There is also no dispute that the promotion to the said post from the lower feeder post of Technical Assistant was by selection. The applicants' contention is that their ad-hoc promotions could be treated as having been validly made, even though no regular D.P.C. was constituted for the said purpose. The applicants pray that the promotions be deemed to have been regularly made by the Government in exercise of its statutory power to relax the rules.

4. The respondents refute the claim of the applicants on the ground that the applicants were promoted purely on temporary and ad-hoc basis. It was a stop-gap arrangement made in the interest of functional efficiency of the Organization. Further the relevant rules envisage the regular promotions to be made with effect from the date of approval by the Departmental Promotion Committee or assumption of charge thereafter, whichever is later. As such, the respondents contend that retrospective regularisation of the applicants in the posts of R.I. (Grade-I) could not be made. The applicants have since been duly screened by a D.P.C and regularised in their posts during 1987-89, after the case of Narender Chadha & others was

finally decided by the Hon'ble Supreme Court. The respondents, however, contend that the benefit of the judgment in Narender Chadha's case relating to grant of promotion retrospectively from the date of continuous officiation cannot be extended to the applicants as they were not party to the said case.

5. We have heard the learned counsel for both the parties. They have drawn our attention to some select case law in support of their respective contentions. It will not be necessary to enter into a discussion of all the cases cited before us because we have the benefit of the judgment of the Hon'ble Supreme Court in the case of "Direct Recruits Class II Engineering Officers' Association Vs. State of Maharashtra", 1990 S.C.C. (L & S) 339. Relevant extract of some valuable guidelines laid down in the said judgment may be reproduced 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 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 uninterrupted till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

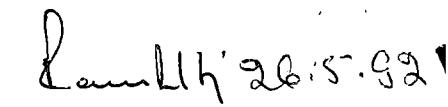
6. In the instant case, the applicant were promoted because they were fully qualified and were eligible for the posts of R.I. (Grade-I). There were also clear vacancies in the higher posts of R.I. (Grade-I) against which the applicants were promoted. There is no doubt that the promotion order states that the promotions were temporary and on ad-hoc basis. No D.P.C was held to screen the candidates before they were given the ad-hoc promotions. But a careful perusal of Narender Chadha's case would clearly reveal that they were made to officiate continuously for long period in Grade IV Posts. It was because of this arrangement that the applicants in the instant case also were promoted on ad-hoc basis only. With the regularisation of all those affected by the judgment in Narender Chadha's case and with the grant of regular promotions to them retrospectively from the date from which they officiated continuously, there does not seem to be any cogent reason for denying a similar benefit to the applicants. The case of the applicants is fully covered by Sub-para (B) above. Accordingly, the applicants will be entitled to count the period of officiating service in the promotional post of R.I. (Grade-I).

from the dates on which they were initially appointed to the said posts.

7. In the result, the application is allowed. The impugned order issued by the respondent no.2 rejecting the representation of the applicants is hereby quashed and the respondents are directed to treat the applicants as having been regularised from the dates on which they continuously officiated in the higher posts of R.I. (Grade-I). The applicants shall be entitled to all consequential benefits, monetary or otherwise. The respondents are further directed to comply with our orders within a period of three months from the date of communication of this judgment.

8. There shall be no order as to costs.

  
MEMBER A)

  
26.5.92  
VICE CHAIRMAN

(ug)