

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1783
T.A. No.

198 B.

DATE OF DECISION 5.9.1990.

Shri Harpal Singh and Another Applicant(s)

Shri M.R.Bhardwaj, Advocate for the Applicant (s)

Versus

Union of India and Ors. Respondent(s)

Shri M.L.Verma, 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? *No*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

(AMITAV BANERJI)
CHAIRMAN
5.9.1990.

TRW
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

R 4

O.A. No. 1783/1988. Date of decision: September 5, 1990.

Shri Harpal Singh and Another ... Applicants.

Vs.

Union of India and Ors. ... Respondents.

CORAM

Hon'ble Mr. Justice Amitav Banerji, Chairman.

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

For the applicants ... Shri M.R.Bhardwaj, counsel.

For the respondents ... Shri M.L.Verma, counsel.

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

The two applicants have joined to file the present Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act'). A short question for consideration is that the applicants who had been appointed on ad-hoc basis and were subsequently regularised after a number of years are entitled to the benefit of ad hoc period for calculation of their seniority. They have relied on the decision of the Supreme Court in the case of NARENDER CHADHA Vs. UNION OF INDIA (AIR 1986 SC 638).

A few relevant facts are as under:

Shri Harpal Singh, applicant No.1 was appointed on 1.9.1974 and Shri Sital Dass, applicant No.2 was appointed on 3.9.1977 as Research Assistant (Statistics) in the Ministry of Water Resources, New Delhi. on ad hoc basis.

Both of them were appointed to the post of Research Assistant (Statistics) on regular basis with effect from 5.1.1985 and 11.1.1985 respectively on the recommendations of the D.P.C. of the Central Water Commission. Both relying on the judgment in NARENDER CHADHA's case, of them/made identical representations to the respondent No.2 for extending them the benefit of ad hoc service for purpose of seniority in the post of Research Assistant from 1.9.1974 to 4.1.1985 (in respect of applicant No.1) and from 3.9.1977 to 10.1.1985 (in respect of applicant No.2). Representations of the applicants were rejected by an order dated 14.7.1988 forwarding therewith a letter dated 7.7.1988 (Annexure A I to the OA). This letter indicated that the Department of Personnel & Training has opined that judgment in a case is applicable only in the case of the petitioners and cannot be uniformly applied to other similarly placed persons. This letter also indicated that the applicants may be informed accordingly.

The applicants case was that they belong to the Scheduled Caste category and the plea taken against them was that the reservation does not apply in ad hoc service.

In the reply, the respondents took the stand that the applicants are not entitled to any relief as the principle laid down in NARENDER CHADHA's case (supra) has no application to the facts of the case. It was stated that/first applicant, Shri Harpal Singh was appointed

6

as Research Assistant, purely on ad hoc basis w.e.f. 1.9.1974 by the Ministry of Irrigation and Power against the newly created post of Research Assistant on the recommendations of the S.I.U. This post was, however, required to be filled in under the direct recruitment quota as per the provisions of the Recruitment Rules. The applicant was appointed as a stop gap arrangement in the interest of work. Simultaneously, action was also initiated by the Ministry to fill up the post of Research Assistant by direct recruitment. Shri Tapas Kumar Mandal was ultimately appointed as Research Assistant with effect from 13.3.1978 on the recommendations of the Staff Selection Commission against direct recruitment quota. As there was no other vacancy in the grade of Research Assistant, the applicant was reverted to the post of Senior Computer w.e.f. 13.3.1978. This reversion of the applicant was not arbitrary or in an illegal and unjustified manner. Shri Tapas Kumar Mandal resigned consequent upon his selection elsewhere and the applicant was again promoted as Research Assistant purely on ad hoc basis with effect from 23.4.1978. In the case of Shri Sital Dass, applicant No.2, he was not reverted but his appointment was made and continued under separate cadre. In regard to reservation of SC/ST, it is stated that w.e.f. 27.11.1972, reservation orders were made applicable to the post filled by promotion, where the element of direct recruitment does not exceed $66\frac{1}{3}\%$ and reservation

roster was required to be maintained. However, after the issuance of the reservation order on 27.11.1972, no post of Research Assistant was filled up by promotion on regular basis by the Ministry. There was one regular vacancy existing on 7.10.1972 when a decision to fill up this post came up, the Ministry treated it as unreserved one. Consequently, it was not available for a candidate from the reserved category.

Learned counsel for the applicants relied on the following cases:

1. S.K. NAYYAR & ORS Vs. U.O.I. & ORS.
(ATR 1988 (1) CAT 107).
2. A.K. KHANNA AND OTHERS Vs. U.O.I. & ORS.
(ATR 1988 (2) CAT 518).
3. S.C. JAIN Vs. U.O.I. & ORS.
(ATR 1986 (2) CAT (Delhi) 346).
4. RAM LAL THAKUR & ORS. Vs. UNION TERRITORY CHANDIGARH & ORS.
(SLJ 1990(2) CAT 133).

In the case of DELHI WATER SUPPLY AND SEWAGE DISPOSAL COMMITTEE AND OTHERS Vs. SHRI R.K. KASHYAP AND ORS (1988 (6)SLR 33) the Supreme Court held that in the absence of any rule to the contrary, length of service should be the basis for determining the seniority and that even period spent on ad hoc appointment is to be counted towards determining seniority. Same view is expressed in the case of S.C. JAIN Vs. U.O.I. & ORS (supra) and in RAM LAL THAKUR & ORS Vs. UNION TERRITORY CHANDIGARH & ORS. (supra). This view is crystallised in the

case of NARENDER CHADHA (supra) and in a recent decision of the Supreme Court in the case of THE DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS Vs. STATE OF MAHARASHTRA AND OTHERS (J.T. 1990 (2) SC 264).

On behalf of the respondents Shri M.L.Verma, learned counsel cited the following three cases:

1. R. PRABHA DEVI AND OTHERS Vs. GOVT. OF INDIA
(1988 (7) ATC SC 63)
2. UNION PUBLIC SERVICE COMMISSION Vs. HIRANYALAL DEV AND OTHERS.
(1988 (7) ATC SC 72)
3. K.SIVA REDDY AND OTHERS Vs. STATE OF ANDHRA PRADESH AND OTHERS.
(1988 (7) ATC 445).

In the case of R.PRABHA DEVI & OTHERS (supra), their Lordships held that seniority cannot be substituted for eligibility nor can it override in the matter of promotion to the next higher post. When an eligibility condition for promotion has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority.

The case of U.P.S.C. Vs. HIRANYALAL DEV & ORS (supra) pertains to promotion, seniority and selection for I.P.S. cadre. This case has no relevancy to the questions in issue in this O.A.

In the case of K.SIVA REDDY AND OTHERS (supra) the matter pertains to seniority and promotion between

direct recruits and promotees. This case also has no relevancy to the present D.A.

It was, however, argued by the learned counsel for the respondents that Shri Harpal Singh was appointed as Research Assistant purely on ad hoc basis as a stop gap arrangement in the interest of work. Therefore, no right accrued in favour of the applicant.

We have heard learned counsel for the parties and considered the matter. There can be no dispute in the fact that the applicant 1 was originally appointed ad hoc basis on on/1.9.1974 but was reverted on 13.3.1978 and reappointed after 40 days on 23.4.1978. Shri Sital Dass applicant No.2 was appointed on 3.9.1977. His continuous appointment will, therefore, be considered from 3.9.1977 and appointment of applicant No.1, Shri Harpal Singh will be considered from 23.4.1978. Applicant No.1 was appointed on regular post from 5.1.1985 and applicant No.2 was appointed on 11.1.1985. They have claimed that their previous service as ad hoc should be taken into consideration for counting their seniority. According to the law laid down by the Supreme Court as mentioned above in the case of NARENDER CHADHA (supra), DELHI WATER SUPPLY AND SEWAGE DISPOSAL COMMITTEE AND ORS (supra) and THE DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS (supra), the legal position is clear. The uninterrupted ad hoc service in respect of applicant No.2 will be from 3.9.1977 until his regularisation on 11.1.1985. His service should,

therefore, count for seniority from 3.9.1977. In the case of applicant No.1, there was a break of 40 days and as such, his service cannot be considered as uninterrupted service from 1.9.1974. He was reappointed on 23.4.1978 on ad hoc basis. The uninterrupted ad hoc service in respect of applicant No.1 will be from 23.4.1978 until his regularisation on 5.1.1985 and would be taken into consideration for determining the seniority.

The view taken by the respondents in letter dated 7.7.1988 is to the effect that the department would only implement the orders which have been passed by the court or the Tribunal in their case and not in the case of similarly placed persons. Whether the decision given by the Tribunal is to be applied to the cases of the similarly placed employees who have not come before the Tribunal is still uncertain. While in some cases the Benches of the Tribunal have passed orders that it would be applicable to similarly placed employees in the same cadre but other Benches have taken the view that it would be applicable to those who have come before the Tribunal. Since the matter has not been filed in a representative capacity on behalf of a number of persons, the question of applying the same to all and sundry in the cadre is not quite correct.

There is another aspect of the matter. The powers of the Tribunal are analogous to that of the High Court in the exercise of the extraordinary jurisdiction

viz. Article 226 of the Constitution. The High Court is a Court of record. The Tribunal will be deemed to be exercising judicial powers while hearing Applications under Section 19 of the Act. The same principle as that of a Court of record would be applicable. The orders passed in a proceeding before a Court of record pertain to those who are arrayed before it and not to others. In this view of the matter, the order passed by the Tribunal would only be effective in respect of persons who have come before it seeking the relief. The powers of the Tribunal cannot be equated with the powers of the Supreme Court. The extraordinary power that the Supreme Court has under Art. 136 of the Constitution and even wider powers under Art. 142 of the Constitution are not enjoyed by any other court. Even the High Court have no such power. While it is open to the Supreme Court to give a direction that the order would be applicable to all similarly placed employees in a cadre, this Tribunal cannot do so except to the limited extent as indicated above.

We are, therefore, of the view that applying the principle laid down in the case of NARENDER CHADHA (supra) and other cases cited above, the seniority of the two applicants be computed from the dates of their uninterrupted ad hoc service leading to regularisation. We hold that in the case of applicant No.1, it will be from 23.4.1978 and in the case of applicant No.2, it will be from 3.9.1977.

The Original Application is accordingly allowed.

There will be no order as to costs.

I.K.Rasgotra
(I.K.RASGOTRA)
MEMBER (A)

5.9.1990.

Amitav
(AMITAV BANERJI)
CHAIRMAN

5.9.1990.

SKS