

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi.

D.A.1871/1988

New Delhi, This 11th Day of March 1994

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

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

1. Shri B K Ghosh
Asst Research Officer
CS&MRS
r/o Sector 9/551
RK Puram
New Delhi - 110022
2. Shri T.S. Godwani
Asst Research Officer
CS&MRS
r/o 24/19, Old Rajinder Nagar
New Delhi.

Applicants

By Advocate Shri Ashish Kalia

Versus

1. Secretary
Govt of India
Ministry of Water Resources
Shram Shakti Bhawan
New Delhi.

Respondents

By Advocate Shri P P Khurana

O R D E R

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

1. The two applicants in this DA joined as Research Assistants in Central Water Power Commission on 19.4.55 and 29.12.56. Their next channel of promotion is to the Class II Gazetted post of Assistant Research Officer and by order dated 23.8.88 Central Water Commission appointed the applicants as Asst Research Officers on a purely temporary and adhoc basis upto the end of Feb 1979. This order states that the promotion made is purely temporary and on adhoc basis and the applicants will have no right to claim seniority/regular promotion to the grade on account of services rendered by them in the grade of ARO on adhoc basis. The adhoc arrangement continued even beyond Feb 1979 and on 1.7.81 Central Soil and Material

(10)

Research Stations(CSMRS) was carved out of CWC. Vide Office memorandum 27.6.81 issued by Ministry of Irrigation ^{at which} ~~which~~ ^{it was} ~~was~~ decided that CSMRS cadres would continue to be controlled and operated by CWC till notifications ^{dealing} ~~dealing~~ ^{linking} the cadres and recruitment rules for separate cadres were issued. It is also stated therein that the vacancies in CSMRS will be filled on adhoc basis in accordance with the existing ^{rules till now} ~~rules~~ recruitment rules are notified. Accordingly the applicants continued to function as adhoc ARO's. Subsequently, CSMRS framed separate recruitment rules by Oct 1983. The applicants were promoted as AROs on regular basis with effect from 6.5.85 on the recommendations of the departmental promotion committee. The applicants represented that the services as AROs should count from the initial adhoc appointment on 23.8.78. But this representation was rejected by the respondents on 10.6.88 and hence this OA has been filed for a direction to regularise the applicants from the date of adhoc appointment.

2. In the application a number of citations have been relied upon to bring out that adhoc services followed by regular appointment should result in seniority being counted from the initial appointment on adhoc basis.

3. In Direct Recruits Class II Engineering Officers Association Vs State of Maharashtra (AIR 1990 SC 1607) the Constitution Bench of the Hon'ble Supreme Court has laid down propositions A & B as under:-

"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} ~~arrangement~~ ^{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."

In a later judgement in Kesheva Chandra Joshi Vs Union of India (AIR 1991 SC 284) the Hon'ble Supreme Court observed "we are of the of the considered view that it is not expedient to hark back into the past precedents and ^{prefer} ~~and~~ to adhere to the ratio laid down in the direct recruits case."

4. Thus what is required to be considered in this OA is whether the applicants have a case as per the principles laid down in AIR 1990 SC 1607). The learned counsel for the applicant argued that adhoc appointment even if not made by following the procedure laid down by the rules, the appointments continued in the past uninterruptedly till the regularisation of the service in accordance with rules and hence Principle B above should be invoked.

5. Scope of principle B has been gone into in Keshev Chander Joshi case referred supra and in State of Bengal Vs Agornath Dev cited in 1993(2) SLR 529. The Full Bench of this Tribunal in TA 43/87 decided on 5.2.93 has also discussed the applicability of principle B. From these it would emerge that principle B can be invoked only in special circumstances like adhoc appointment continued ^{ing} for well over to 15 to 20 years without reversion till the date of regularisation in accordance with the rules or where ~~we are~~ ^{there were} certain procedural deficiencies like verification of records (referred in OA 727/87 Shri I K. Sukhija Vs Union of India decided ^{by} the Principal Bench on 13/14-9.1993).

6. This is a case where adhoc appointment lasted for about 7 years. Also the contingencies of curing the deficiencies of certain procedural requirements did not arise. Accordingly

only corollary to principle A would be applicable in these circumstances of the grounds advanced.

7. In view of the above facts and circumstances, the DA is dismissed. No costs.

P. T. Thiruvengadam

(P.T. THIRUVENGADAM)
Member(A)

C. J. Roy 11/3/94
(C.J. ROY)
Member(B)