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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No. 299/1988.

Date of decision: September 17, 1990.

Dr. B.G. Matapurkar Applicant.

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 applicant .. Shri B.K. Aggarwal, counsel

For the respondent No.1 Shri K.C. Mittal, counsel

For respondents 2,3 and 4 None.

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

The applicant, Dr. B.G. Matapurkar, has filed this Application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act') praying for the reliefs that the respondent be directed to fix the seniority of the applicant in the seniority list of Specialists Grade II according to his initial and actual date of appointment to the post viz. 10.10.1973 taking into account the period spent as ad-hoc and, secondly, the respondent should consider the claim of the applicant for promotion to the higher post of Specialist Grade I on the basis of his seniority from the initial appointment.

This prayer is opposed by respondent No.1, Union of India and also by other respondents 2,3 and 4. An

order was passed on 6.4.1988 directing the applicant to implead Dr. R.L.Gupta, Dr. A.K.Sinha and Dr. N.C. Bose shown at Sl.Nos. 7 to 9 of the Seniority List of Specialists Grade II (Non Teaching Sub-Cadre) as respondents 2,3 and 4. This was done and they have also filed counters.

A short question that arises for consideration is the effect of officiation and the mode of determining the seniority. Whether the period of officiation will be taken into consideration for calculating seniority. There is no dearth of authorities on this point. In the case of NARENDER CHADHA AND OTHERS Vs. U.O.I. AND ORS. (1986(1) SCR 211) and subsequently in the case of THE DIRECT RECRUIT CLASS ENGINEERING OFFICERS' ASSOCIATION AND OTHERS Vs. STATE OF MAHARASHTRA AND OTHERS (JT 1990(2)SC 264) it has been held that the period of continuous officiation or uninterrupted appointment as ad hoc for a length of time is to be taken into consideration for calculation of seniority.

In the present case, it will be necessary to state a few facts. The applicant was appointed on ad hoc basis to the post of Surgical Specialist (scale Rs.600-1300 revised to Rs.1100-1800) under C.H.S. Rules by an order dated 28.10.1972. The applicant continued to work as Specialist Grade II without any break and after a period of about three years, he was appointed to the post of Specialist Grade II post on regular basis on the recommendation of the U.P.S.C. vide O.M. dated 6.5.1976. His case was that his service in an ad hoc capacity was also to be calculated

towards determining his seniority but that was denied to him. The applicant's case was that he has worked continuously as ad hoc and without a break upto 27.5.1976 and thereafter on a regular basis. Dr. R.L.Gupta, respondent No.2, was shown at Serial No.7 of the seniority list, his date of appointment being 6.11.1975. Similarly, Dr. N.C. Bose, respondent No.4 was shown at Serial No.9 his date of appointment being 31.12.1975. Both of them were junior to the applicant and yet the applicant has been placed below the aforementioned respondents 2 and 4.

The applicant's further case was that vacancies on the higher posts of Specialists Grade I have now occurred and these are to be filled by promotion from amongst the Specialists Grade II in accordance with the Recruitment Rules. 25% will be by direct recruitment and 75% will be by promotion from amongst the cadre of Specialists Grade II with 7 years regular service failing which by direct recruitment. The applicant has now 15 years of service including 12 years as Specialist Grade II, yet his name was not considered on the ground that his seniority in this Grade would only reckon from 28.5.1976 without taking into consideration the earlier three years service in the same grade as ad hoc. His grievance was that persons junior to him were being considered for promotion. The respondent No.1 has also decided that the Specialists Grade II of the non-teaching sub-cadre who have completed

9 years of service in that grade will be placed in the higher scale of Rs.4500-5700 against the post of Specialist Grade I if they do not get promotion in the normal course of seven years. This decision is likely to be implemented soon and the applicant would suffer if his ad hoc service is not taken into consideration.

The respondent No.1 has taken the stand that the ad hoc service was not to be counted towards seniority and promotion and the seniority of the applicant has been fixed correctly with effect from 28.5.1976. A further plea was taken that ad hoc period has no relation with the regular appointment and both are independent to each other. Further, as regards the actual ad hoc period is concerned, the original records were not available and it was, therefore, not accepted. Reference was made to the Civil List where the applicant's date of first entry has been shown as 28.5.1976 and not 10.10.1973. The said Civil List also showed that both Dr.R.L.Gupta and Dr.N.C. Bose were selected by the U.P.S.C. for the posts of Surgeons earlier than the applicant and hence their seniority has been assigned correctly. The U.P.S.C. recommended the case of the applicant on 31.3.1976 and he joined the post only on 28.5.1976. Hence there was no mistake in fixing their place in the seniority list. In regard to appointment of the Specialists Grade II to be placed in the grade of Rs.4500-5700 after they have put in 9 years service in that Grade on the basis of seniority-cum-fitness, the

placement is not against any specific post. They would, however, be considered for promotion to Specialist Grade I post when a specific vacancy became available. The applicant's placement in the scale of Rs.4500-5700 was under active consideration. But it was reiterated that ad hoc service cannot be counted for seniority. This affidavit was sworn on 5.5.1988.

The applicant in rejoinder reiterated that he was appointed as Surgical Specialist on 10.10.1973, and that the legal position in respect of ad hoc service followed by regular appointment counts for the purpose of seniority. His latter selection by the U.P.S.C. in 1976 will not affect his seniority because he was working in an ad hoc capacity uninterruptedly before that. In respect of his matter being considered, the applicant stated that respondent No.1 should place the applicant in the scale of Rs.4500-5700 and accord him seniority according to his initial date of appointment.

Respondent No.2, Dr.R.L.Gupta filed a reply. The stand taken by respondent No.2 was that the applicant was assigned seniority correctly w.e.f. 28.5.1976. He having kept quiet for a period of 12 years cannot be allowed to agitate for a non-existing as well as a stale claim. It was then stated that applicant has not approached the Tribunal with clean hands and his Application deserves to be dismissed on this ground alone. It was stated that the applicant has concealed the fact

that the entry into the service is on the basis of direct recruitment by way of selection by the U.P.S.C. and the seniority in the service is assigned on the basis of the merits of the selected candidates. The applicant has suppressed the fact that the answering respondent was selected by the U.P.S.C. in the year 1973 and seniority was assigned to him from 15.6.1973. The Application was said to be frivolous and vexatious. The answering respondent further stated that he had been further promoted as Specialist Grade (Senior Surgeon) on the recommendations of the U.P.S.C. through D.P.C. w.e.f. 7.10.1986. The D.P.C. had considered five persons against one post and the applicant would have been within the zone of consideration. Consequently, the applicant was wrong to claim that his seniority had been wrongly fixed and his juniors had been promoted. It was urged that the ad hoc appointment of the applicant did not give him a right in the service and he did not become the member of the service. The appointment of the applicant was made on the basis of the recommendations of the U.P.S.C. in accordance with the rules and he came in the service for the first time on 6.5.1976. The main plea of the respondent was that the applicant could not claim any seniority in the service until he was inducted into the service after selection by the U.P.S.C. There was no question of taking into account his earlier service rendered on ad hoc basis.

Respondent No.3 also filed a reply that he was senior to the applicant.

Respondent No.4 had also filed a reply more or less

in the same lines as has been filed by Dr. R.L.Gupta, respondent No.2. It is pointed out in paragraph 9.6 that the applicant had many opportunities to apply and get selected, if found fit, for regular C.H.S. posts of the Ministry of Health(Union of India) in the various participating Organisations which posts were advertised through the U.P.S.C. in the years 1971, 1972, 1973 and 1974. But the applicant had either deliberately chosen not to apply for a regular post till the year 1975 or he had applied for a regular post earlier than in 1975 but was not selected for the same. It was an individual's responsibility to apply and get selected.

It was necessary to refer to the pleadings at some length for the respondents contended that the applicant was entitled to seniority only from the date of his joining the post after U.P.S.C. had selected him and the earlier ad hoc service would not be taken into account for calculating his seniority. The reason given was that the applicant did not become a member of the service until the U.P.S.C. selected him in 1976. Secondly, it was stated that the applicant was holding an ad hoc position and according to the terms and conditions of that service, he was not entitled to claim a berth in the C.H.S.

If a Govt. servant is officiating or holding a post in an ad hoc capacity for a number of years without a break in accordance with rules and is ultimately regularised in the service, then the entire period of officiation or ad hoc service is to be counted toward calculating his seniority. This position has been clarified in the recent

decision of the Supreme Court in the case of THE DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS in (supra), conclusions (A) and (B) held 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 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."

In this case the decision of the Supreme Court in the case of NARENDER CHADHA AND ORS (supra) was affirmed. In NARENDER CHADHA's case it was held that:

"the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would

be arbitrary and violative of articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service."

However, there is another aspect of the matter to be considered. Respondents contended that where the recruitment to a post by selection through the U.P.S.C. is provided, the benefit of previous service rendered as ad-hoc will not be entitled to calculate the said ad hoc service towards seniority. Ad hoc appointment did not entitle him a regular appointment as Specialist Grade II in the C.H.S. Regular appointment is made only after the vacancy has been notified for being filled up by the U.P.S.C. Eligible persons may apply to the U.P.S.C. whereafter such persons are interviewed and then, if approved, are regularised. From the very nature of the appointment, it is clear that it is a fresh service to which an applicant is appointed. Reference was made to a letter dated 15.4.1975 from the U.P.S.C. addressed to the applicant wherein it was stated "that steps are being taken to advertise the above post and you may take the opportunity to apply for it! Thus, before a person can be regularised in C.H.S. as Specialist Grade II, he had to apply to the U.P.S.C. in response to the advertisement for the said post. This was necessary and comes within the expression "in accordance with the rules".

In this view of the matter, it is incumbent on anyone who is desirous to join as a ^{regular} Specialist Grade II in the C.H.S. to apply to the U.P.S.C. when an advertisement appears for filling up the vacancies in the above grade. He has to appear in the interview. It is, therefore, clear that his seniority in the C.H.S. would depend from the date of his regular appointment in the C.H.S. The previous service including ad hoc service will not be taken into account. We may refer in this context to a decision of the Supreme Court. In the case of STATE OF GUJARAT Vs. C.G. DESAI (1974 2 SCR 255: (1974)1 SC 188: 1974 SCC (L&S 116), their Lordships laid down the following:

"Whether in the case of Deputy Engineers directly recruited through the Public Service Commission by competitive examination, the service, if any, rendered by them as officiating Deputy Engineers prior to their appointment to Class II service i.e. during the pre-selection period, could be taken into account for purposes of their eligibility for promotion as Executive Engineers under Rule 7 (2) of the Bombay Engineering Service Rules, 1960 which provided for a period of 7 years' experience in Class II service. The government's stand was that the service rendered by the direct recruits prior to their appointment to the Class II service could not be taken into account in computing their eligibility of 7 years' experience in that class of service and the court upheld the stand."

Their Lordships observed:

"If a person, like any of the respondents, to avoid the long tortuous wait leaves his position in the 'never ending' queue of Temporary/Officiating Deputy Engineers etc., looking for promotion, and takes a short cut

through the direct channel, to Class II service, he gives up once for all, the advantages and disadvantages that go with the channel of promotion and accepts all the handicaps and benefits which attach to the group of direct recruits. He cannot, after his direct recruitment, claim the benefit of his pre-selection service and thus have the best of both the worlds. It is well settled that so long as the classification is reasonable and the persons falling in the same class are treated alike, there can be no question of violation of the constitutional guarantee of equal treatment" (emphasis supplied).

The Supreme Court further observed:

"If the claim of the respondents to the counting of their pre-selection service is conceded, it will create serious complications in running the administration; it will result in inequality of treatment rather than in removing it. If the pre-selection service as Officiating Deputy Engineers of direct recruits having such service, is taken into account for the purpose of promotion, it would create two classes amongst the same group and result in discrimination against those direct recruits who had no such pre-selection service to their credit."

arises

The question whether benefit of continuous officiation could be given to a person who has appeared in a selection test and as a result of his success in the test is appointed regularly in the post. This matter was considered by the Central Administrative Tribunal in the case of DELHI INCOME TAX GAZETTED SERVICES ASSOCIATION (F.S.) Vs. U.O.I. & ORS decided on 18.9.1989. The Full Bench took the view that the matter had been considered in the case of ASHOK GULATI AND OTHERS Vs. B.S. JAIN AND OTHERS (1986 (Suppl) SCC 5971 (1987 (2) ATC 608) and in the case of STATE OF GUJRAT Vs. C.G. DESAI (supra).

The Full Bench was of the view that the applicant was selected on the basis of the Special Departmental Recruitment Rules, 1983 and appointed as Group 'A' Junior Scale on 6.4. 1984. The Full Bench considered whether he could get any benefit of officiation as ad hoc Group 'A' Officer. The answer of the Full Bench was in the negative for the reason that it was a fresh selection under the Special Departmental Recruitment Rules. The law on the subject is that the fresh selection after an advertisement is different from a D.P.C. and anybody who appears in response to the advertisement and is selected is in the same position as that of a direct recruit to the service and he cannot get the benefit of his past ad hoc service. In our opinion, the above view of law taken by the Full Bench is fully applicable to the facts of the present case. The applicant cannot get the benefit of past officiation towards his regularisation or counting his seniority where the rules lay down that one can be regularised only after a selection by the U.P.S.C. In the case of THE DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION & ORS, (supra), it is held 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. Consequently, the applicant can claim seniority only from the date he joined after being selected by the U.P.S.C. and appointed by the Government and he cannot get the benefit

of his past ad hoc service. We hold accordingly.

The contention that the applicant was prevented from applying earlier to the U.P.S.C. by the exigencies of his service and non-relief from duties in Andaman and Nicobar, Islands will not preclude the rules from being operative. We are unable to accept the contention as in our view the exigencies of the situation cannot bar the application of the rules for regularisation. The question is: which year's selection did he apply for the U.P.S.C.? If it was not for an earlier year than 1976, then he cannot get any benefit. Even where he had applied for and appeared in the selection test in the U.P.S.C. but was not selected, he cannot get any benefit of his appearance before the U.P.S.C. The relevant date is the date of his appointment after selection and approval by the U.P.S.C. In the present case, he has been appointed on a day, which was undisputedly, long after the selection and appointment of respondents 2,3 and 4 in the same service. Consequently, the applicant is not entitled to get a higher seniority than that of respondents 2,3 and 4.

We, therefore, find no merits in this case. The O.A., therefore, fails and is dismissed. There will be no order as to costs.

S. Chakraborty
(I.K. RASGUTRA)
MEMBER(A)
17.9.1990.

(AMITAV BANERJI)
CHAIRMAN.
17.9.1990.