

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 372/88
T.A. No.

198

DATE OF DECISION January 24, 1989.

Shri Rajbir Singh & Ors.

Petitioner s

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent s.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ajay Johri, Member (A)

The Hon'ble Mr. G.S. Sharma, Member (J).

- ✓ 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?

RRND-12 CAT/86-3-12-86-15,000

(Ajay Johri)
Member (A)
24.1.1989.

Reserved

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI:

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REGISTRATION O.A. No. 372 of 1988

Shri Rajbir Singh & others Applicants

Versus

Union of India & others Respondents.

Hon. Ajay Johri -AM
Hon. G.S.Sharma- JM

(Delivered by Hon.Ajay Johri- AM)

By this application made under section 19 of the Administrative Tribunals Act no.XIII of 1985, the applicant and five others who are working as Power Recorders and Store Issuers under the General Foreman(Diesel) Shakurbasti have challenged an order dated 17.2.1988 issued by the DPO Delhi by which they have not been called for the suitability test for the post of Senior Clerks.They have prayed that they should be assigned proper seniority from the date they were promoted and should be given promotion to the higher grade from the date from which their juniors have been promoted and they should be considered for promotion to the post of Senior Clerks.

2. The facts of the case are that the applicants were promoted to class-III posts of Store Issuers,Power Recorders during 75 and 76 after a suitability test. They have continued to work in the higher grade since then. Their claim is that ad-hoc arrangements cannot be continued for such a long times and having officiated for more than 18 months, they cannot be reverted to the lower grade without following proper D & A procedure. The applicants have made a reference to a number of instructions issued by the Railway Board on these aspects. In May,1986, the applicants were asked to appear in a selection and they were declared successful. According to them a number of their juniors

have since been promoted to the post of senior clerks and another test has been now arranged for filling up further vacancies in the category of senior clerks. The applicants claim is that since they have been working in the grade of Store Issuers/power Recorder for long periods even in ad-hoc arrangements they are entitled to the seniority from the date from which they have been continuously working.

2. In their reply, the respondents have said that this application is barred by limitation as it is directed against the panel issued on 26.9.86 and ~~because~~^{3/4} it is bad for mis-joinder or non-joinder of parties. According to the respondents, ^{3/4} a persons whose seniority has been challenged have not been made parties to the petition and no judgment can be given behind their back ^{3/4} of their disadvantage. They have further said that the applicants were not regularised in their post as alleged by them because they could be only regularly promoted after due process of selection. The applicants were put to officiate in the higher grade purely on Ad-hoc basis as a temporary arrangement and it was made specific that their officiations will not confer upon them any right of seniority. The selection was held and when they qualified, in the written test ^{3/4} in vivo ^{3/4} in the test held in June, 1988 and August, 1988, they have been regularly promoted on the basis of divisional seniority. They could be only considered regularly promoted from the date they qualified in the selection. The respondents have denied that the persons who have been called for the written test for the post of senior clerk which was to be held on 9.3.88 were junior to the applicants. According to them, they were actually senior by virtue of the judgment given by this Tribunal in O.A. No. 1107 of 1987. They have further said that the claims of the petitioners are based on non existing grounds and are baseless. They were promoted purely on Ad-hoc basis on the basis of local seniority as a measure of stop gap arrangement liable to be reverted by replacement of duly selected persons according to their seniority.

3. In their rejoinder, the applicants have relied on a decision of this Tribunal reported in A.T.R. 1986 Vol.II page 346, which according to them puts a final seal on the question of determination of the seniority of adhoc promotees.

4. We have heard the learned counsel for the parties. The main emphasis of the learned counsel for the applicant was on the fact that having been promoted on A-hoc basis and having been regularised while officiating continuously in the Ad-hoc post, the applicants are eligible for having their seniority counted from the date of their adhoc promotions. This contention was opposed by the learned counsel for the respondents on the ground that the seniority can be only accounted from the date of regular promotion. The point for decision, therefore, before us is whether a person who is promoted on ad-hoc basis can be given benefit of seniority from the date of his Adhoc promotion or not.

5. In Ashok Gulati & Others Vs. B.S.Jain and others 1987(1) SLJ Page 169, the Hon'ble Supreme Court had observed thus in para 12 and 13 of their judgement:

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12. Issues raised in this appeal by special leave are of far reaching significance to the civil services. It involves a claim by persons who had been in employment in the Government service on a purely ad-hoc basis de hors the rules, that they were entitled upon their absorption to the post on a regular basis, to the benefit of the period of their continuous officiation as temporary employees on ad-hoc basis for determining their eligibility for promotion to the higher grade or post. The questions presented are whether the principles laid down in N.K. Chauhan and Others Vs. State of Gujarat and others and S.B. Patwardhan and Others Vs. State of Maharashtra and Others, reiterated in Baleshwar Dass and Others V. State of Uttar Pradesh and Others and subsequently followed in several decision, that ordinarily in the absence of any specific rule of seniority governing the cadre or service, the length of continuous officiation should be counted in reckoning seniority as between direct recruits and promotees, should also be extended in determining seniority of such ad hoc employees vis-a-vis direct recruits, and whether the failure on the part of the Government to count the entire period of officiation as such ad-hoc employees would be per se arbitrary and irrational and thus violative of Articles 14 and 16(I) of the Constitution inasmuch as the temporary service in the post in question was not for a short period intended to meet some

emergent or unforeseen circumstances, but to meet the exigencies of the service. It is asserted that the recent pronouncement of this Court in the case of Narendra Chadha and Others V. Union of India and Other supports this view. The argument at first blush appears to be plausible but on deeper consideration is not worthy of acceptance. We proceed to give reasons therefor.

13. We are not aware of any principle or rule which lays down that the length of continuous officiation/ service is the only relevant criterion in determining seniority in a particular cadre or grade, irrespective of any specific rule of seniority to the contrary. It is necessary to emphasise that the principles laid down in the two leading case of N.K.Chauhan and S.B.Patwardhan, reiterated in Baleshwar Dass' case and subsequently followed in several decisions are not an authority for any such proposition. These decisions particularly that in Baleshwar Dass' case clearly lay down that ordinarily and in the absence of any specific rule of seniority governing the cadre of service, the length of continuous officiation should be counted in reckoning seniority as between direct recruits and promotees. These authorities nowhere lay down that the same principle i.e. the length of continuous officiation must be the sole guiding factor and the only criterion in determining seniority of such ad-hoc employees vis-a-vis direct recruits.

Further in para 21 on this aspect, The Hon'ble Supreme Court had said that according to the accepted cannons of service jurisprudence seniority of a person appointed must be reckoned from the dates, they become member of service. According to the Hon'ble Supreme Court, the date from which, the seniority has to be reckoned must be laid down from which, the seniority has to be reckoned may be laid down by rules or instructions on the basis of the date of appointment or on the basis of confirmation or on the basis of regularisation of service, or on the basis of length of service or any other reasonable basis. The Hon'ble Supreme Court had gone on to observe that ad-hoc or fortuous appointments on ad-hoc basis or temporary basis cannot be taken into consideration for the purposes of seniority even if the appointee was qualified to hold the post on regular basis. So temporary tenures hardly count in service for the purpose of seniority. As far as, the applicants are concerned, they were promoted purely on local basis while in the selection held subsequently, the eligible candidates according

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to divisional seniority were considered for promotion. In terms of the observations made by the Hon'ble Supreme Court, such local ad-hoc arrangements (the fact which is not under dispute) cannot give^{3/} any right for counting seniority from the date of such promotion. The Seniority can only be counted from the date of regular promotion and once on divisional basis, the respondents had held a selection later^{3/} on, the seniority has to be determined on the basis of the results of such selection. The fact that the applicants who were officiating on local ad-hoc basis were selected and regularised cannot give them any benefit of seniority from the date of their Ad-hoc promotions.

6. The applicant has relied on ^{3/} ATR ~~in~~ ^{3/} 1986(2) CAT page 346 S.C.Jain .vs. Union of India, where an entire period of ad-hoc promotion followed by the regularisation was considered to be counted for seniority in the grade. In this case, reliance was placed on a Delhi High Court judgment in Kuldeep Chandra Sharma .vs. Delhi Administration 1978(2) SLR page-379 and Narendra Chaddha's case ATR 1986 Vol(i) SC.49. This case is easily distinguishable. ^{3/} ~~Here~~ ^{3/} the petitioners^{3/} wanted that he should be declared senior to the respondents no.4. The petitioner had started his career as Accountant and was promoted as Technical Assistant on Ad-hoc basis, ~~such~~ as the Recruitment Rules had not been finalised. When the Recruitment Rules were ~~not~~ ^{3/} finalised, the petitioners' appointment was regularised w.e.f. date of finalisation of the Recruitment Rules. What guides the petitioner's case is not S.C.Jain's case or Narendra Chanddha's case, but the case of Ashok Gulati. ~~We~~ therefore reject the contention of the learned counsel for the applicant that the law on the point is that Ad-hoc promotions followed by regularisation ~~are~~ ^{3/} given ^{3/} seniority from the date of Ad-hoc promotion. A promotion can only be regularised in terms of the rules and if the rules lay down that the regularisation has to be done after due selection, the seniority will only be considered from the date of such regularisation.

7. In the above view, we reject the contentions raised in the application and dismiss this application with costs on the parties.

^{3/} Sharma
MEMBER(J)

^{3/} ~~Sharma~~
MEMBER(A)

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Dt/24.1.1989/
Shahid.