

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 47/88
T.A. No.

199

DATE OF DECISION 21.05.93

K.C. Jain & Ors. Petitioner
Sh. E.X. Joseph Advocate for the Petitioner(s)
Versus
Union of India Respondent
Sh. P.P. Khurana Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. A.B. GORTHI, MEMBER (A)

The Hon'ble Mr. C.J. ROY MEMBER (J)

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

(C.J. ROY)
MEMBER (J)

(A.B. GORTHI)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 47/88

Date of decision: 21.05.93.

Sh. K.C. Jain & Ors.

.. Applicants

Versus

Union of India

.. Respondents

CORAM

Hon`ble Sh. A.B. Gorthi, Member (A)

Hon`ble Sh. C.J. Roy, Member (J)

For the applicant

.. Sh. E.X. Joseph, Counsel

For the respondents

.. Sh. P.P.Khurana, Counsel.

J U D G E M E N T

(Delivered by Hon`ble Sh. A.B. Gorthi, Member (A))

The claim of the applicants is that their seniority in the grade of Estimators should be reckoned from the date of their adhoc promotion to that grade for the purpose of their promotion to the next higher post of Assistant Director.

2. The applicants joined Directorate General of Supplies and Disposals as Technical Assistants in the pay scale of Rs. 425-700 on 14.2.69, 9.11.72 and 22.12.72 respectively. They were confirmed in that post on 22.9.78, 16.6.82 and 1.10.82 respectively. They were given adhoc promotions to the post of Estimators in the pay scale of Rs. 550-750 on 1.10.72, 12.2.80 and 25.9.80 respectively. They continued to perform

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their duties as Estimators till they were promoted as Junior Filed Officers (JFOs) in the pay scale of Rs. 550-900, on adhoc basis on 22.10.81, 24.10.82 and 29.9.82 respectively. In the provisional seniority list of Estimators as on 31.10.87 and in the Combined Seniority List of Superintendents (LII), Inspectors, JPOs and JFOs as on 1.1.81, the names of the applicants did not figure. Their plea that their promotion be regularised with effect from the dates on which they were promoted on adhoc basis was turned down by the respondents.

3. The above facts are not in dispute. The main argument advanced by Mr. E.X. Joseph, learned counsel for the applicants is that the applicants are entitled to be regularised as Estimators with effect from the dates on which they were initially promoted as Estimators, though the said promotion was described by the respondents as adhoc. The applicants were eligible in all respects, in accordance with Rules, to be promoted as Estimators and their promotions were made against regular vacancies and not as a stop-gap arrangement. Mr. Joseph, learned counsel for the applicants further contended that the applicants worked continuously and satisfactorily as Estimators till they were promoted as J.F.Os. Some other employees were given regular promotion from the dates of their adhoc promotion and the applicants were unfairly discriminated by the respondents. Some Assistant Directors who were similarly affected approached the Calcutta Bench of this Tribunal and received relief by way of regularisation of their adhoc service from the date of their initial promotion. The learned counsel for the applicants asserted that the applicants in this case are also entitled to similar relief.

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4. The respondents have stated, in their counter affidavit, that the applicants were promoted initially on an adhoc basis only. The promotion order in each case made it explicit that it would not confirm any right to claim either regularisation or seniority on the basis of such promotion. Promotion to the post of Estimators as also to that of JFOs is contingent upon selection by a duly constituted Departmental Promotion Committee and none of the applicants were either considered or approved by any DPC prior to their promotion as adhoc Estimators. There were only 6 regular vacancies of Estimators and the applicants were not held against any of the said vacancies. They were promoted as JFOs on adhoc basis and were regularised in those posts with effect from 13.8.87 when regular vacancies in the post of JFOs became available. The respondents, thus, contended that the applicants' claim for regularisation and consequential seniority with effect from the dates of their initial promotion as adhoc Estimators cannot be accepted.

5. Mr. Joseph assailed the respondents decision on three grounds. Firstly, he contended that the promotion of the applicants was on a regular basis though shown as adhoc. The services rendered in the promotional post of Estimators should, therefore, reckon for the purpose of seniority and further promotion. Secondly, he drew our attention to the promotion given to some other employees who were shown as having been regularly promoted with effect from the dates on which they were initially promoted on adhoc basis. Thirdly, he pleaded that in view of the judgement in the case of

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Narendra Chadda V/s U.O.I. (1986 (1) SCR 211) and the decisions of the Calcutta Bench of the Tribunal in similar cases, the adhoc service rendered by the applicants also should be counted for the purpose of determining their seniority.

6. As regards the question whether the promotion of the applicants was on adhoc or on a regular basis, the learned counsel for the respondents, Mr. P.P. Khurana drew our attention to the promotion order in respect of each applicant. The said order made it clear that the promotion was adhoc and would not confirm any right on the promotee to claim seniority or regularisation. It has been explained in the counter affidavit that there were only 6 regular vacancies in the post of Estimators and as such, quite a few others were promoted only on adhoc basis. Moreover,, such promotion was granted without first subjecting the candidates for consideration by a duly constituted Departmental Promotion Committee. The recruitment rules for the post of Estimators laid down that it is a post to be filled by promotion and that a D.P.C. comprising the Senior-most Deputy Director General as the Chairman, with a Director and an Under Secretary as Members shall have to be constituted. There can, therefore, be no doubt that the applicants' initial promotion to the post of Estimators was on adhoc basis. Similarly, the promotion of the applicants to the post of JFOs also was purely on an adhoc basis.

7. The question that now arises for consideration is whether the applicants would be entitled to claim seniority

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and regularisation with effect from the dates of their adhoc promotion. Mr. Joseph vehemently contended that the promotion of the applicants though shown as adhoc was neither fortuitous nor was a stop-gap arrangement. In fact, the applicants worked continuously as Estimators till they were further promoted as JFOs. They continued as adhoc JFOs till they were finally regularised in the said post. Mr. Joseph contended that as decided by the Hon`ble Supreme Court in Narendra Chadda`s case (Supra), the applicants` entire adhoc service as Estimators/ JFOs deserves to be regularised. In Narendra Chadda`s case, a large number of persons were allowed to officiate in higher post for 15 to 20 years. The Hon`ble Supreme Court, therefore, held that it would certainly be unjust to hold that they had no right of claim to such posts particularly when the Government had the power to relax the rules. It will, however, be pertinent to note the following observations of the judgement :

"It is not our view that whenever a person is appointed without following the rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post".

8. From the above, it would be evident that in Narendra Chadda`s case, the Hon`ble Supreme Court did not lay down any such proposition that in each and every case of appointment of adhoc promotion, the same must be regularised and the entire adhoc service in such promotional post shall be taken into consideration for the purpose of seniority. We are,

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therefore, of the considered opinion that the applicants who were promoted purely on adhoc basis without following the relevant recruitment rules cannot claim the same relief as was granted to the petitioners in Narendra Chadda's case.

9. As regards the contention that some other employees were regularised from the dates of their initial adhoc promotion, the applicants's counsel drew our attention to DGSD Office Order dated 19.08.87, which is Annexure -A8 to the application. In that order, 6 JFOs were shown as regularised retrospectively w.e.f. the dates on which they were promoted on an adhoc basis. In this context, the respondents gave a detailed explanation in their counter affidavit. Consequent to some judgement of the Calcutta Bench of the Tribunal, the respondents had to regularise 45 Assistant Directors with retrospective effect vide order dated 29.6.87. As a result thereof, 25 regular posts of JFOs and 12 posts of Estimators became available. Against the 25 regular posts of JFOs, 11 adhoc JFOs who were appointed on adhoc basis through DPC, were regularised with retrospective effect and the promotions were regularised w.e.f. 13.8.87 i.e. the date of the meeting of the DPC. In the grade of Estimators, 6 adhoc promotees who were initially promoted on adhoc basis after having been selected by the DPC, were regularised with retrospective effect while the remaining 6 adhoc Estimators were made regular only w.e.f. 13.8.87, which was the date when the DPC met. Those JFOs and Estimators who were regularised with retrospective effect have been shown as Senior in the Combined Eligibility List for promotion to the Grade of Assistant Director, Grade-II. The applicants were not subjected to

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selection through DPC before they were appointed as adhoc Estimators. They were, therefore, not regularised retrospectively but were given regular promotion w.e.f. 13.8.87 in the grade of JFOs which is a higher grade than the Estimators. In view of the detailed explanation offered by the respondents, we do find that it cannot be said that the applicants were unfairly discriminated.

10. Finally, Mr. Joseph placed reliance on some judgements of the Calcutta Bench of the Tribunal and drew our specific attention to the judgement in Khageswar Dass V/s U.O.I. (TA No. 807/86) and Dilip Kumar Goswami V/s U.O.I. (TA No. 808/86). In both these cases, the applicants who were promoted as Assistant Directors Grade-II on adhoc basis were directed to the regularised retrospectively from the dates on which they were so promoted. In giving such direction, the Tribunal relied mainly on the judgement of the Hon'ble Supreme Court in Narendra Chadda's case (supra). A careful examination of the judgements of the Calcutta Bench would at once show that the applicants were those who had been found suitable for promotion by a DPC before they were actually promoted as Assistant Directors, Grade-II. The respondents took the plea that although the applicants were duly selected by the DPC, they could be promoted only on adhoc basis because there were no regular vacancies. Consequently, both the applicants continued to be adhoc Assistant Directors, Grade-II for long periods. In such a factual matrix, the Calcutta Bench rightly followed the Narendra Chadda's case and directed that the applicants' adhoc promotion be regularised

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with retrospective effect. In the case now before us, the applicants were not put through any DPC before they were promoted on adhoc basis. In other words, their adhoc promotions were not in accordance with the relevant recruitment rules. The applicant cannot, therefore, claim similar relief as was given by the Calcutta Bench of the Tribunal in the aforestated case.

11. Mr. P.P. Khurana, learned counsel for the respondents contended that the judgements of the Calcutta Bench were delivered in 1986 i.e. much prior to the decision in the Direct Recruit Class-II Engineering Officers Association V/s State of Maharashtra (1990 (2) SCC 715) which now holds the field. Mr. Khurana drew our specific attention to the observation made by the Hon'ble Supreme Court in Para 47 (A), which reads 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 adhoc 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."

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12. The contention of the learned counsel for the respondents is that as the initial appointment of the applicants was only adhoc and not made according to the relevant recruitment rules, the same cannot be taken into consideration for seniority. As the promotions made were not against regular vacancies, they can be said to be in the nature of fortuituous promotions made as a stop-gap arrangement, as can be seen from the fact that the adhoc panels were extended from time to time. Refuting the respondents' contention, Mr. Joseph has relied on Para 47 (B) of the Direct Recruits case (supra), which reads as follows :

"(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 til the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

13. As regards the rival contentions advanced by the learned counsel for both the parties, we find that the corollary to the proposition at para 47 (A) is relevant to the case in hand. As regards proposition at para 47 (B), the scope of the same came to be considered by a Full Bench of this Tribunal in a group of cases, the leading case being Sh. Ashok Mehta & Ors. V/s Regional Provident Fund Commissioner (T. 43/87). In the judgement dated 5.2.93, the Full Bench inter-alia observed as under :

"Promotion by way of ad hoc or stop-gap arrangement made due to administrative exigencies and not in accordance with rules cannot count for seniority.

Principle 'B' laid down by the Supreme Court in The Direct Recruit Class II Engineering Officers' Association and Others Vs. State of Maharashtra and Others will apply as explained by the Supreme Court in Keshav Chandra Joshi and others etc. Vs. Union of India and Others. only to cases where the initial appointment is made deliberately in disregard of the rules and the incumbent allowed to continue in the post for long periods of about 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the authority to relax the rules."

13. They can, therefore, be no doubt that the promotions made on an adhoc basis to meet administrative exigencies and not in accordance with the relevant recruitment rules cannot form the basis for determination of seniority or regularisation with retrospective effect. The respondents have given benefit of retrospective regularisation to only those adhoc promotees who were found suitable by a DPC prior to their adhoc promotion. In the case of the applicants, they happen to be promoted on an adhoc basis, even when they were not considered by the DPC for promotion. In view of this, the respondents have rightly regularised the promotion of the applicants from a date on which the DPC met and found them fit for promotion.

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In view of the above, we find that there is no merit
in the application and the same is hereby dismissed.

There will be no order as to costs.

[Signature]
21-5-93
(C.J. Roy)

Member (J)

[Signature]
(A.B. Gorthi)

Member (A)

24 May 93