

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A.No.579 OF 1988

DATE OF DECISION: 6-8-1991.

Shri S.S.Kanwar and others.

.. Applicants.

Vs.

Union of India and others.

.. Respondents.

CORAM:

Hon'ble Mr.G.Sreedharan Nair,

.. Vice-Chairman.

Hon'ble Mr.S.Gurusankaran,

.. Member(A).

Shri R.P.Oberoi, Counsel for the applicants.

Shri. P.P. Khurana, Counsel for Rs 1 and 2.

Mrs. Shyamla Pappu, Counsel for Rs.4 to 11, 13 to 16
22 to 27 and 29.

Shri K.L.Ahuja, Respondent-12 in person.

S.GURUSANKARAN, MEMBER (A):

J U D G M E N T

The applicants are at present employed as civilians in the Joint Cipher Bureau (for short 'JCB') in the Ministry of Defence. In response to the circular dated 11-7-1968 (Annexure-A1), the applicants who were working in different establishments of the Ministry of Defence on different posts applied for the post of Technical Assistant (GD) in the JCB and in the circular it was clearly mentioned that the posts were being filled up on stop gap basis and the selected individuals will have to revert as soon as regular incumbents of the posts become available. After holding a written test and interview, the applicants were appointed in October/November, 1968 as officiating Technical Assistants (GD) purely on ad hoc basis with a condition that they will not have any claim for appointment as Technical Assistant (GD) on regular basis nor will the service rendered by them as Technical Assistants (GD) on ad hoc basis be reckoned for seniority in that grade. In

April, 1978, the applicants were appointed as Technical Assistants on regular basis with immediate effect as per Annexure-A8. Under the terms of appointment, the applicants were also placed on probation for two years and the applicants' request for waiver of the probation period was turned down. Subsequently, the applicants were confirmed on the expiry of the probation period. A seniority roll of the Technical Assistants was published in 1981 and in that it was noticed that the seniority of the applicants in the grade was shown from the date of regular appointment in April, 1978 ignoring their continuous service of about 10 years from the date of their initial appointment on ad hoc basis in 1968. The applicants were also placed below the direct recruits of 1978 exam. The applicants made a representation regarding their seniority and the same was turned down. A further seniority list was published ^{in 1985} and the applicants again made a representation on ¹⁰⁻⁷⁻~~28-12-~~1987 (Annexure-A14) drawing the attention to their earlier representation dated 4-10-1978, April, 1981, May, 1982, 1-5-1986 and 1-7-1986 and requested the authorities to take into account their ad hoc service for the purpose of seniority. This representation was also turned down by the respondents vide letter dated 6-10-1987 (Annexure-A15). Aggrieved by the same, the applicants have filed the present application praying for quashing the order dated 6-10-1987 and the seniority Rolls published in 1981 and 1984; directing the respondents to prepare revised seniority lists by showing the date of seniority of the applicants as the date of their initial appointment in 1968; re-fix their seniority and give them consequential benefits including arrears of pay, allowances, retrospective promotions etc. from the date from which respondents 4 to 35 who were otherwise juniors to them, were promoted to such grades.

R J

2. The respondents have raised a preliminary objection regarding limitation. They have stated that the request of the applicants for giving them seniority taking their ad hoc service into account was turned down as early as on 12-11-1982 as admitted by the applicants themselves vide Appendix-D to the application and hence their subsequent repeated representations cannot extend the period of limitation. They have also stressed the fact that the seniority list published in 1985 was based on the seniority list of 1981 and did not disturb the inter-se position of the applicants and the respondents as indicated in 1981 list. Hence, they have stated that the requests of the applicants for quashing the seniority lists of 1981 and 1985 are also barred by limitation.

3. The learned counsel for the applicants vehemently argued that the application is not barred by limitation. He contended that even though the request for revising the seniority list of 1981 was turned down in 1982, a fresh cause of action arose when the seniority list was published in 1985. He also pointed out that since the further representation has again been considered by the respondents and they having been given a reply on 6-10-1987 this application filed in April, 1988 is within the period of limitation. We are unable to agree with the contention of the applicants regarding the period of limitation. The reply given by the respondents on 6-10-1987 does not amount to any re-consideration and has only ^{reiterated} ~~repeated~~ their earlier orders stating that the ad hoc service rendered in the grade cannot be reckoned for the purpose of seniority. Hence, this case is distinguishable from that of B. KUMAR v. UNION OF INDIA AND OTHERS [ATR 1988 (1) CAT 1] referred to by the counsel for the applicant. Similarly their request for revising the seniority list of 1981 has been turned down on 12th November, 1982 and the seniority list published in 1985 does not in any way change the seniority position of the applicants given in 1981 seniority

list. In P.S. SADASIVASWAMY v. STATE OF TAMILNADU (AIR 1974 SC 2271) the Hon'ble Supreme Court has held that "it would be a sound and wise exercise of discretion for the Courts to refuse extraordinary powers under Article 226 in case of persons who do not approach expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward claims and try to unsettle settled matters". In S.S.RATHORE v. STATE OF MADHYA PRADESH [AIR 1989(2) S.C. 3357] the Hon'ble Supreme Court has again ruled that the cause of action arose when the higher authority makes its order on appeal and that subsequent representations to the head of establishment shall not be taken into account in the matter of fixing limitation. In view of this, we find that this application is hopelessly barred by limitation and is liable to be rejected on that ground alone. Mrs. Shyamla Pappu, counsel for private respondents 4 to 11, 13 to 16, 22 to 27 and 29 also pointed out the case of respondent-12 who appeared in person and even though he was appointed to the JCB on ad hoc basis he applied for the direct recruitment advertisement by the Union Public Service Commission and got himself selected on regular basis. Hence, it was equally open to the other applicants to have done so. She also stressed the fact that the fifth applicant Sri B.B.Marwah regularised in 1978 went back to his parent cadre on 1-10-1982 being duly relieved by the JCB and after serving more than a year in his parent department, he has been taken back in the JCB on 1-11-1983. She strongly argued that the applicants were appointed purely on ad hoc basis and they had the lien in their parent department and were also given proforma promotions in their parent cadre. In view of this they cannot claim seniority from the date of their ad hoc appointment in JCB. She further stressed that their ad hoc appointment was not according to the Recruitment Rules.

Hence, as per the Supreme Court decision in DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION v. STATE OF MAHARASHTRA AND OTHERS [(1990) 2 S.C.C. 715] the applicants cannot claim seniority from the date of their ad hoc appointment in JCB. Para 47(A) of the decision in the aforesaid case on which stress was made reads as follows:

"(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".

4. On the other hand the learned counsel for the applicants maintained that since the applicants have been appointed through a selection process and even regularised subsequently, their cases will be covered by para 47(B) of Direct Recruit Class II Engineering Officers' Association's case (supra). It has been clearly established that as per the Recruitment Rules of 1966, which were in force when the applicants were appointed in the JCB on ad hoc basis, 90 per cent of the posts had to be filled in by direct recruitment. Hence, their appointment on ad hoc capacity was clearly against the Rules and no relaxation has been obtained from the UPSC for relaxing the Recruitment Rules at the time of their ad hoc appointment, as was done in 1978 when they were regularised as a special case after obtaining necessary relaxation from the UPSC. Hence, the case of the applicants will be squarely governed by para 47(A) of the judgment of the Supreme Court in Direct Recruit Class II Engineering Officers' Association's case

2 *

(supra) In KESHAV CHANDRA JOSHI AND OTHERS v. UNION OF INDIA AND OTHERS [(1991) 2 SLJ 43] the Supreme Court has again held that since the Government never abandoned the recruitment procedure, promotions made de hors the Rules on ad hoc basis for 5 to 12 years till direct recruits become available cannot count for seniority. In that case the promotions were made from departmental cadre officers, whereas in this case the appointment of the applicants on ad hoc basis was made from other cadres against the Rules purely as a stop gap arrangement and the applicants had also the opportunity to get themselves selected on regular basis by the UPSC, provided they had the necessary qualifications and they actually appeared for the selection. In view of this, the applicants have to fail in their request for counting their seniority from the date of their initial appointment on ad hoc basis.

5. The counsel for the applicants also pointed out that the respondents have failed to get the relaxation of the UPSC for regularising the appointment of the applicants in 1968 itself and atleast in 1978 when they approached the UPSC for their regularisation, they should have considered giving relaxation to the Rules with retrospective effect from the date of their appointment on ad hoc basis. The counsel for the private respondents pointed out that such relaxation cannot be given with retrospective effect as it would affect the service conditions of a number of other employees who had been recruited as per Rules with necessary qualifications. In our opinion, in the peculiar circumstances of this case, no such relaxation could have been given with retrospective effect. Further in Keshav Chandra Joshi's case (supra), the Supreme Court held that regarding the rule of deemed relaxation of the Rules, Governor cannot do it without consulting the service commission and the Court cannot substitute its satisfaction for the satisfaction of Governor.

4

6. In the result, the applicants have to fail and
the application is accordingly dismissed.

Handwritten signature
6/8/1991
MEMBER (A)

Handwritten signature
6-8-1991
VICE-CHAIRMAN