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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.748/88

New Delhi, this 16th day of March, 1994.

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

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

Dr.Suresh Kumar Lahri,
Sr.Scientific Officer (Grade II)
Lie Detector Division,
Central Forensic Science Lab.,
Central Bureau of Investigation,
Ministry of Home Affairs, New Delhi. ..Applicant
(By Shri SC Gupta, Advocate)
with Gyan Prakash,

Vs.

Union of India: through
Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. Director, CBI, Lodhi Road,
New Delhi.

3. Director, CFSL/CBI/Lodhi Road,
New Delhi.

4. Secretary, UPSC,
Shahjahan Road, New Delhi. ..Respondents
(By Shri P.P.Khurana, Advocate)

5. Dr. Bibha Rani
Sr.Scientific Officer(Lie Detector)
Central Forensic Science Lab.,
Madhuban (Karnal). ..Intervener
(By Shri S.S.Tiwari, Advocate)

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER(A).

The applicant was appointed as Senior Scientific Assistant (Lie Detector) in Forensic Laboratory) Central Bureau of Investigation on regular basis on 2-7-1973. A post of Senior Scientific Officer (Grade II) in the grade of Rs.700-1300 was created in Lie Detector Division in 1981. The applicant was appointed to this post on ad hoc basis on 19-2-1982. He continued on the same post on ad hoc basis for nearly five years and was regularised on 28-1-87. This late regularisation was consequent to the holding of OPC only in the year 1987.

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2. The applicant vide his representation dated 21-4-87 requested that the ad hoc period of appointment from 19-2-82 to 27-1-87 may be regularised for the purpose of promotion. However, this request was turned down vide respondent No.3's ~~vide~~ Memorandum dated 20-8-87 stating that the persons appointed on ad hoc basis are not entitled to any seniority and ad hoc appointment does not entitle him to any claim for promotion, confirmation, etc.

3. The Lie Detector Division also carried one higher post above that of the Senior Scientific Officer (Grade II). This higher post, namely, Senior Scientific Officer Grade I had been lying vacant since 1985 and the recruitment rules provide for filling up of this post by promotion failing which by direct recruitment. For being eligible for promotion, the candidate should be a Senior Scientific Officer Gr.II with a minimum of 5 years regular service in the grade.

4. The respondents took action for filling up the post of Senior Scientific Officer Grade I (Lie Detector) in August 1986 and ~~was~~ at that stage the applicant though fully qualified was ineligible for direct recruitment because of over-age. The recruitment process commenced in August 1986 but the Union Public Service Commission ^{any candidate} did not certify/and an advertisement was given by the Union Public Service Commission again on 6-2-88 for direct recruitment. The applicant was not eligible due to being over-age but by this time the applicant had completed more than 5 years of service as Senior Scientific Officer in Grade II and but for his service having been

declared as ad hoc from 19-2-82 to 27-1-87, he would have become eligible for consideration for filling up the post of Senior Scientific Officer Grade I by promotion. The applicant is aggrieved that because of the delayed holding of the DPC for his promotion as Senior Scientific Officer Grade II he was denied the chance of being considered for the solitary post of Senior Scientific Officer Grade I and filling up that post from open market would permanently close the door for his advancement.

5. This O.A. has been filed with a prayer for treating his service as Senior Scientific Officer Grade II as regular w.e.f. 19-2-1982, quashing the Memorandum dated 20-8-87 by which the request for treating the ad hoc service as regular was turned down and for consideration of the applicant for the next higher post of Senior Scientific Officer Grade I.

6. There is also a prayer for direction to stop all actions for filling up the post of Senior Scientific Officer Grade I by direct recruitment. On 28-11-88 this Bench had issued an interim order in this regard directing that the offer of appointment to the direct recruit may be made with a clear stipulation that the appointment will be subject to the outcome of this application. As a result of the proceedings relating to the direct recruitment, one Dr. Bibha Rani was appointed to the post of Senior Scientific Officer Grade I and in the offer of appointment dated 22-5-89 it was stated that the appointment of the intervener is provisional and ^{purely} ~~probably~~ temporary subject to the final outcome of the

writ petition. It is also added that in case the writ petition filed by the applicant is accepted, the appointment of the intervener will be terminated and her services will be placed at the disposal of Government of Haryana.

7. Before we take up the arguments advanced by the various counsels, it would be advantageous to refer to the recruitment rules for filling up the post of Senior Scientific Officer Grade II and Grade I:

Senior Scientific Officer Grade II
Notification dated 13-8-1975:

This notification provides for filling up of the post of Senior Scientific Officer (Chemistry, Physics/Documents/Ballaistic/Finger Print/Foot Print/Biology Division). These posts are to be filled 60% by direct recruitment and 40% by promotion failing which by direct recruitment.

For promotion, six years regular service as Senior Scientific Assistant in the grade in the respective divisions (excepting for Biology Division where there are different specifications) has been stipulated.

Notification dated 31-7-1982:

The posts of Senior Scientific Officers Grade II are to be filled 40% by promotion failing which by direct recruitment and 60% by direct recruitment.

For promotion, Senior Scientific Assistants with 5 years regular service in the grade are eligible to be considered.

Notification dated 31-7-86:

The posts of Senior Scientific Officer Grade II are to be filled $66\frac{2}{3}\%$ by promotion failing which

by direct recruitment and remaining $33\frac{1}{3}\%$ by direct recruitment.

For consideration by promotion, a person must have worked as Senior Scientific Officer for five years on regular basis in the respective discipline e.g. Chemistry and Toxicology/Finger Print/Documents/Physics/Serology/Biology/Photo/Lie Detector.

Senior Scientific Officer Grade I.
Notification dated 31-7-82. (These provisions were not changed in the subsequent Notification dated 31-7-86).

These posts are to be filled by promotion failing which by direct recruitment.

For promotion, Senior Scientific Officers Grade II with five years regular service in the grade are eligible to be considered.

From the recruitment rules it is clear that at the time of creation of the post of Senior Scientific Officer Grade II (Lie Detector Division) in the year 1981 as well as at the time the applicant was posted to this post on ad hoc basis on 19-2-82, there were no recruitment rules relating to the filling up of this post, since the extant rules catered only for the specified disciplines of Senior Scientific Officer Grade II and Lie Detection was not one of the specified disciplines. By the notification dated 31-7-82, rules were available for filling up the post of Senior Scientific Officer Grade II (Lie Detection). Since a common recruitment rule was made for filling up the posts of Senior Scientific Officer Grade II stage without splitting out these posts discipline-wise. But again vide notification dated 31-7-86, filling up of the posts of the Senior Scientific Officer Grade II was made on discipline basis.

8. Apart from the above, the notification dated 31-7-82 provided for filling up of the posts of Senior Staff Officer Grade II only to the extent of 40% by promotion and by ^{no} a later notification increased the percentage to $66\frac{2}{3}\%$.

8. Before we discuss the various citations relied upon by the different parties, we would like to deal with the general grounds advanced. The applicant has stated that his ad hoc appointment in 1982 should be deemed regular since he was fully qualified to hold the post from 1982 itself, ^{he} is the only person having the specialised experience in the field, the vacancy is not a short time vacancy but a continuous vacancy lasting for years, the orders posting him as ad hoc did not say that the ad hoc service would not count for seniority and the respondents have failed in holding the Departmental Promotion Committees annually as stipulated by the Department of Personnel.

9. The respondents in their reply affidavit have brought out that the 1982 recruitment rules did not provide for discipline-wise promotion to the posts of Senior Scientific Officer Grade II. Holding of Departmental Promotion Committee, according to these rules, would have operated against the interest of the Department because of a different Division/Discipline would have had to be considered for promotion/promoted and such a promotee would have miserably failed to discharge the functions of the higher posts in the particular Discipline/Division due to lack of experience/expertise in that field. In order to overcome this serious drawback, action was immediately initiated to go in for operation of recruitment rules so as

to permit filling up of the post from amongst the officers in the feeder cadre from the particular discipline only. Besides, amendment to the recruitment rules was notified on 31-7-86 and after convening the DPC in January 1987 the petitioner was appointed as Senior Scientific Officer Grade II with effect from 28th January, 1987. No DPC could be held on the basis of 1982 recruitment rules and the petitioner was posted on ad hoc basis in February 1982 for the first time. The ad hoc posting order clearly stated that the petitioner was being posted only for a period of six months in the first instance or till the post is filled on a regular basis, whichever is earlier. The officiating period of six months was periodically extended and on every such notification it was mentioned that the posting on ad hoc basis is for the further specified period (generally six months or one year in some cases) or till the post is filled up on regular basis, whichever is earlier. For the purpose of promotion as Senior Scientific Officer Grade I the recruitment rules stipulate a minimum period of five years regular service as Senior Scientific Officer Grade II and this specific provision in the notifications regarding ad hoc postings that such ad hoc postings would last only till the post is filled up on regular basis would indicate that the ad hoc service does not qualify for consideration for further promotion.

10. During arguments the respondents produced the seniority list of Senior Scientific Assistants (page 67 of departmental file No.49/2/88 on the subject of EEP No.748/88) wherein the applicant figures at serial No.5 and one Shri HK Prasad belonging to Chemistry Division figures at serial No.2. The ld. counsel for the applicant stated

that Shri HK Prasad was promoted on ad hoc basis only on 19-7-84 and on regular basis as Senior Scientific Officer Grade II with effect from 18-11-88.

11. As regards the filling up of the post of Senior Scientific Officer Grade I is concerned, it is the case of the respondent that as per recruitment rules, this post had ^{to be} ~~been~~ filled by promotion failing which by direct recruitment. For promotion, Senior Scientific Officers Grade II with five years regular service in that grade will be eligible to be considered. At the relevant point of time the direct recruitment had to be resorted to under the failing clause because none in the feeder group with requisite length of service on regular basis was available for being considered for promotion. In any case the applicant had not completed the stipulated five years regular service as Senior Scientific Officer Grade II when the UPSC was approached for filling up the post of Senior Scientific Officer Grade I (Lie Detector) in August 1986 or even at the time of advertisement of the UPSC on 6-2-88, since the applicant was appointed as Senior Scientific Officer Grade II on regular basis only on 28-1-87.

12. We shall now proceed to discuss the various citations relied upon. The first decision which was heavily relied upon by the ld. counsel for the petitioner is the one reported in AIR 1990 SC 1607 between THE DIRECT RECRUIT CLASS-II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS VS. STATE OF MAHARASHTRA AND OTHERS. This is the decision of a Constitution Bench which after an exhaustive examination of the relevant decisions summed up the settled principles of law. It is not necessary for us to extract all the principles enunciated therein, the party having placed reliance only on

principles 'A' and 'B'. For the sake of convenience, we shall, extract those principles enunciated in paragraph 44 of this judgement:

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

13. In the matter of understanding the scope of principles 'A' and 'B' some doubts having been raised, the Supreme Court explained the precise scope of principles 'A' and 'B' laid down by the Constitution Bench in AIR 1991 SC 284 between Keshav Chandra Joshi and other Vs. Union of India & Ors. The Supreme Court after a thorough examination of the principles laid down in the Direct Recruit's case laid down the law paragraphs 24 and 25 as follows:

"24. In Direct Recruits' case (1990(2)SCC 715: AIR 1990 SC 1607) the Constitution Bench of this Court in which one of us (K. Ramaswamy, J.) was a member, in propositions 'A' and 'B' in paragraph 47 at page 745 (of SCC): stated:-

"(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 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."

M/s Mukhoty and Garg repeatedly asked us to apply the ratio in the cases of Narendra Chadha (AIR 1986 SC 638), Baleshwar Das (AIR 1981 SC 41) and Chauhan (AIR 1977 SC 251) contending that the promotees were appointed to the same post, are discharging the same duties, drawing the same salary, therefore, they should be deemed to be given promotion from their initial dates of appointment. We express our inability to travel beyond the ratio in Direct Recruits' case. While reiterating insistence upon adherence to the rule that seniority between direct recruits and the promotees has to be from the respective dates of appointment, this Court noticed that in certain cases, Government by deliberate disregard of the rules promotions were made and allowed the promotees to continue for well over 15 to 20 years

without reversion and thereafter seniority is sought to be fixed from the date of ad hoc appointment. In order to obviate unjust and inequitable results, this Court was constrained to evolve "rule of deemed relaxation of the relevant rules" and directed to regularise the service giving the entire length of temporary service from the date of initial appointment for seniority. To lay down binding precedent the cases were referred to a Constitution Bench. In the Direct Recruits' case, this Court has laid down clear propositions of general application in items A to K. Therefore, to keep the law clear and certain and to avoid any slant, we are of the considered view that it is not expedient to hark back into the past precedents and we prefer to adhere to the ratio laid down in the Direct Recruits' case.

25. ... The proposition 'A' lays down that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The latter part thereof amplifies postulating that where the initial appointment is only ad hoc and not according to rules and is made as a stop-gap arrangement, the period of officiation in such post cannot be taken into account for reckoning seniority.... Propositions 'A' and 'B' cover different aspects of one situation. One must discern the difference critically. Proposition 'B' must, therefore, be read along with para 13 of the judgment wherein the ratio decidendi of Narendra Chadha was held to have considerable force. The latter postulated that

if the initial appointment to a substantive post for well over 15 to 20 years without reversal and still the date of regularisation of the service in accordance with the rules, the period of officiating service has to be counted towards seniority. This Court in Narendra Chadha's case was cognizent of the fact that the rules empower the Government to relax the rule of appointment".

That was a case in which the petitioners had continued temporarily on ad hoc basis for period varying from 5 to 12 years. They had claimed the benefit that their ad hoc service should count for seniority. The conclusion arrived at on the facts of that case in paragraph 33 reads as follows:-

"Accordingly, we have no hesitation to hold that the promotees have admittedly been appointed on ad hoc basis as a stop-gap arrangement, though in substantive posts, and till the regular recruits are appointed in accordance with the rules. Their appointments are de hors the rules and until they are appointed by the Governor according to rules, they do not become the members of the service in a substantive capacity. Continuous length of ad hoc service from the date of initial appointment cannot be counted towards seniority..."

14. A Full Bench of the Principal Bench of the Central Administrative Tribunal had occasion to consider the principles laid down in the Direct Recruits' case as explained in Keshav Chandra Joshi's case in TA 43/87 (CWP 2172/85) between Shri Ashok Mehta and Ors. Vs. Regional Provident Fund Commissioner and Ors. decided on 5-2-92. The Full Bench following the decisions of the Supreme Court held as follows:-

"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 Officer' 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*.

15. Our attention was drawn by the learned counsel for the petitioners on another judgment of the Supreme Court, reported in JT 1993(2)SC 598 between State of West Bengal & Ors. Vs. Aghore Nath Day and Ors. That is also a decision of the Bench consisting of three judges as is the case with the judgment rendered in Keshav Chandra Joshi's case. In this judgment also, the Supreme Court examined the scope of principles 'A' and 'B' laid down in the Direct Recruits' case. As the petitioners have laid considerable stress on this decision, we consider it appropriate to extract the relevant paragraphs of this judgement:

"18. The admitted facts, which are the foundation of the claim of the writ petitioners are sufficient to negative their claim.

It is obvious that prior to the steps taken by the State Government on 26-2-80 for their regularisation in this manner, there was no basis on which the writ petitioners could claim to be regularly appointed as Assistant Engineers; and, therefore, the manner in which they were regularised, including the mode of fixation of their seniority with effect from 26-2-80, is decisive of the nature of their regular appointment. This alone is sufficient to negative their further claim. They can make no grievance to any part of that exercise, made only for their benefit.

19. The constitution bench in Maharashtra

Engineers' case, while dealing with Narendra Chadha, emphasised the unusual fact that the promotees in question had worked continuously for long periods of nearly fifteen to twenty years on the posts without being reverted; and then proceeded to state the principle thus:

"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".

20. The constitution Bench having dealt with Narendra Chadha in this manner, to indicate the above principle, that decision cannot be construed to apply to cases where the initial appointment was not according to rules.

21. We shall now deal with conclusions (A) and (B) of the constitution bench in the Maharashtra Engineers' case, quoted above.

22. There can be no doubt that these two conclusions have to be read harmoniously, and conclusion (B) cannot cover cases which are expressly excluded by conclusion 'A'. We may, therefore, first refer to conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed 'according to rules'. The corollary set out in conclusion (A), then 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 posts cannot be taken into account for considering the seniority.' Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stop-gap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion 'A', which says that the officiation in such posts cannot be taken into account for counting the seniority.

23. This being the obvious inference from conclusion (A), the question is whether the present case can also fall within conclusion (B) which deals with cases in which period of officiating service will be counted for seniority. We have no doubt that conclusion (B) cannot include, within its ambit, those cases which are expressly covered by the corollary in conclusion (A), since the two conclusions cannot be read in conflict with each other.

24. The question, therefore, is of the category which would be covered by conclusion (B) excluding the cases covered by the corollary in conclusion (A).

25. In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the later expression till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural

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requirement under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not blamed. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stop-gap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."

16. It is the case of the ld. counsel for the applicant that principle (B) should apply to the facts of the case. We, however, note that about five years ad hoc service is being claimed for seniority invoking the principle (B). As per the principles and ratios discussed in the previous paragraphs we are convinced that the case of the applicant gets covered only by corollary to principle (A) since it is not a question of 15 to 20 years of ad hoc service at the time of regularisation and there was an express provision for relaxation of rules. Also, the question of curing procedural deficiencies which had occurred at the time of initial posting on ad hoc basis cannot be said to have arisen in this case.

17. In O.A. 727/87 decided by the Principal Bench on 13/14-9-93 some elaboration on what would constitute procedural deficiencies has been made.

It has been mentioned as under:-

"The order of appointment itself should normally indicate that the appointment

is made subject to the satisfaction of certain procedural requirements. Such procedural requirements will be like verification etc which cannot be done immediately and are therefore deferred. In the absence of express stipulation in the order of appointment itself there must at least be material to indicate that that was a clear intendment."

18. The ld. counsel for the applicant then referred to AIR 1967 SC 1910 wherein it has been held as under:-

"It is true that there is no specific provisions in the rules laying down the principles of promotion. But that does not mean that till statutory rules framed in this behalf, the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue necessary instructions not inconsistent with the rules already framed."

At the time the applicant was posted on ad hoc basis as Senior Scientific Officer Grade II, admittedly there were no recruitment rules provided for such posting but neither party produced any administrative instructions relating to filling up of the post of Senior Scientific Officer Grade II ^(Lie Detzner) pending the issue of recruitment rules by July 1982. Thus the above citation is not of much assistance in this case.

19. It was then argued that at the time the applicant was posted on ad hoc basis in February 1982 there was no recruitment rule applicable to the post of Senior Scientific Officer (Lie

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Detector). The applicant was regularised in January 1987 after the formulation of the recruitment rules in 1986 and that continuous officiating service should be taken into account for seniority purpose as per various citations, as under:-

(1991)16 ATC 255 (Dev Raj Anand Vs. UOI & Ors.).

In this OA ad hoc service followed by regular service was allowed to be counted for seniority since at the time of ad hoc posting there were no recruitment rules and regularisation took place after the framing of recruitment rules subsequently.

The relief was granted by referring to principle (B) ~~announced~~ by the Constitution Bench referred to supra. We have however noted ^{only in} a specific situation ~~where~~ principle (B) can be invoked. We also note that the facts of this case are even otherwise on a different footing. In that ^{is} case there were no recruitment rules at the time the ad hoc promotion was ordered in February 1982. Within a few months recruitment rules were made to cover all posts of Senior Scientific Officer Grade II including Senior Scientific Officer Grade II (Lie Detector). Only in July 1986 recruitment rules were modified to allow promotions on discipline basis. Thus between 1982 and 1986 it cannot be contended that there were no recruitment rules and it has also been observed that on general seniority there was at least one candidate (Shri HK Prasad) (referred to in para 10) who was in the field and yet was not promoted as Senior Scientific Officer Grade II (Lie Detector). ^{but} Be as it may,

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between February 1982 and July 1982 there were no rules and from July 1982 till July 1986 the ad hoc promotion of the applicant was not according to rules since the promotion was not made by considering on an all-discipline basis or by constituting a DPC. ^{Thus} Just corollary to principle (A) would be relevant to this case since the initial appointment was only ad hoc and not according to rules and made as a stop gap arrangement pending regular promotion by following the rules.

20. The other citations, ATR 1986(2) CAT 46 (SC Jain Vs. UOI & Ors.), 1978(2)SLR (Kuldip Chand Vs. Delhi Administration) and AIR 1984 SC 1527 (GP Goval & Ors. Vs. Chief Secretary, Govt. of U.P. & Ors.) provide for ad hoc service being taken into account if followed by regularisation and the recruitment rules have been framed in between. In the citation of G.P.Goval and Ors. Vs. Chief Secretary, Govt. of U.P., it has been upheld that officiating service rendered prior to approval cannot be ignored unless there are rules to the contrary. On this aspect, the ld. counsel for the intervener argued that for promotion to the post of Senior Scientific Officer Grade I, there are specific rules requiring a minimum of five years regular service as Senior Scientific Officer Grade II and hence no specific benefit could be claimed because of ratio in Goval's case. Apart from this in the previous paragraph we have noted the availability of the recruitment rules between 1982 and 1986. Thus these citations are not of help in this case. We also note the

the citations mentioned in this paragraph relate to the period prior to the postulations laid down by the Constitution Bench in 1990. We further note the observations/orders of Hon'ble Supreme Court in Excise Commissioner, Karnataka and another Versus V Sreekanta reported in (1993) 25 ATC 83. The facts of this case have a bearing on this DA.

Para 14. After giving our anxious consideration to the respective contentions of the parties it appears to us that the writ petitioner/respondent, Sri V. Sreekanta was appointed as a local candidate through Employment Exchange in view of the specific sanction of the Govt for such adhoc appointment. The terms of appointment in the context of sanction of the said posts by the Govt in our view, clearly demonstrates that such appointment of the said Respondent and other employees in 1968 as ad hoc appointment given to local candidates being sponsored by the local Employment Exchange. It was only on Oct 26, 1971 the said respondent became eligible to be recruited in the said Class III post, and such appointment/or regularisation of his ad hoc appointment was made possible because of the framing of the said Special Rules of Recruitment in 1970. In our view, Mr. Narasimha Murthy is justified in his submission that the respondent was not entitled to claim seniority from the date of his initial appointment on adhoc basis but he was only entitled to claim seniority from the date of his subsequent appointment or regularisation under the said special Rules of Recruitment in 1970. It appears to us that under Rule 3 of the Said Special Rules of Recruitment of 1970, the

respondent, having possessed the minimum qualifications prescribed by the said Special Rules for recruitment to Class III posts, and the said respondent having been appointed on a continuous service of one year prior to Oct 1, 1970, was eligible to be appointed under the said Special Rules of Recruitment and the respondent was given such appointment with effect from October 26, 1971 under the said Special Rules of Recruitment of 1970. The said respondent was entitled to be treated as direct recruit properly made under the said Special Rules of 1970 only from Oct 26, 1971 and the service rendered by him prior to the said date was only on the basis of adhoc employment not made in accordance with the rules of recruitment. In the aforesaid circumstances, the decision of the Division Bench of Karnataka High Court appears to be clearly erroneous and we have no hesitation in setting aside the same. Learned Single Bench of the Karnataka High Court. in our view, has rightly dismissed the writ petition and we affirm the said decision. The appeal is accordingly allowed without any order as to costs."

21. The learned counsel for the intervener referred to the following citations in support of the argument that seniority can count only after regularisation:

- (a) Masood Akhtar Khan & Others V.
The State of M.P. & Others
(1990) 4 SCC 24 = JT 1990(3) SC 295
- (b) D.N. Agarwal & Another Vrs.
State of M.P. P.W.D. (Gazetted)
Recruitment Rules, 1969, (1990)
1 Scale 540.
- (c) Keshav Chandra Joshi Vrs. U.O.I .
AIR 1991 SC 284
- (d) Ashok Gulati & Others Vs. B.S.
Jain & Others, I (1987) AIR 11- 353
- (e) A.P.M. Mayakutty Etc. Vrs, Secretary
Public Service Commission etc,
(1977) 2 SCR 937.

We do not propose to go into details of these citations since we have already held that the applicant's case is covered by corollary to principle (A) in the circumstances in which he is situated.

22. In the background as above, the O.A. is dismissed. The interim order passed by this Bench on 28.11.1988 as referred to in para 6 of this order stands vacated. No costs.

P. T. Thiruvengadam
(P.T. THIRUVENGADAM)
Member(A)

C. J. Roy
(C.J. ROY)
Member(J)

Malick