

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 842/88
T.A. No.

198

DATE OF DECISION 5-9-1988

Shri Manbar Singh & Others Petitioner

Shri B.S. Mainee

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri Inderjit Sharma

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr.S.P. MUKERJI, ADMINISTRATIVE MEMBER

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?

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

S. P. Mukerji
5-9-88
(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

P. K. KARTHA
(P.K. KARTHA)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. No. 842/88

Date of decision 5-9-1988

Shri Manbar Singh & Others Petitioner

Vs.

Union of India & Others Respondent(s)

Shri B.S. Mainee Advocate for the petitioner

Shri Inderjit Sharma Advocate for the respondents.

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. S.P. MUKERJI, ADMINISTRATIVE MEMBER

(The judgment of the Bench delivered by
Hon'ble Mr. S.P. Mukerji, Administrative
Member)

In this application dated 4.5.88 filed under
Section 19 of the Administrative Tribunals Act Sh. Mambar
Singh and five others, who have been working in Class-IV
posts under the Northern Railways and were promoted on
an ad hoc basis as Jr. Clerks have prayed that the
impugned orders at Annexure-I giving them seniority
from a later date than the date of their ad hoc

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others promotion and the order at Annexure-II inviting to take suitability test for the higher post of Sr. Clerks and excluding them should be set aside and the respondents be directed to reckon their seniority from the date they were promoted as Jr. Clerks against substantive posts. They have further prayed that the respondents be directed to promote them as Sr. Clerks in accordance with their revised seniority.

2. The brief facts of the case are as follows. The applicants were appointed in Class-IV posts between 1978 and 1980 under the Northern Railways. They qualified in the written test held on 27.3.83 for promotion to the next post of Store Issuer, Jr. Clerks etc., and on the results of the written tests, they were promoted as Jr. Clerks etc. vide the order dated 2.6.83 on an ad hoc basis. They continued to work against these posts continuously contributing to the Group Insurance Scheme also as regular appointees. On the basis of their passing written test in 1983, they were asked to appear in viva-voce test fixed on 13-12-85, the results of which were declared on 6.5.86 and all the applicants were declared successful. The respondents through their letter dated 22.10.86 gave them seniority in the higher grade of Jr. Clerks etc., with effect from 6.5.86 ignoring their previous ad hoc officiation. The applicants' representation to get seniority revised on the basis of the date of their original promotion in 1983, were of no avail. Some of the

colleagues of the applicants moved the Central Administrative Tribunal in O.A.989/86 (Shri Chander Mohan Sharma & Others Vs. Union of India & Others) ^{ing} claim _{ing} their seniority from the date of their original promotion. This was accepted by the Tribunal vide their judgment dated 26.6.87 at Annexure-VIII. This judgment was given effect to by the respondents in March, 1988, but only with respect to those, who were a party to that case. The applicants before us claim that the benefit of that judgment should not be denied to them.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the respondents fairly conceded that the judgment passed by the Principal Bench in OA 989/86 dated 26.6.87 is in respect of the identical case of those who are colleagues of the applicants before us. He also conceded that another identical case of OA 144/88 Shri Birpal Singh and Others vs. Union of India has also been decided by the Tribunal on similar lines granting the benefit of ad hoc service in the higher grade for the purpose of seniority in that grade. On this basis, the learned counsel for the respondents fairly did not unnecessarily prolong the

adjudication of this case by submitting a counter affidavit followed by rejoinder by the applicants and so on.

4. The Principal Bench of this Tribunal in their judgment dated 26.6.87 in the aforesaid case No. CA 989/86 in identical circumstances observed as follows:-

" We have given careful thought to the contentions raised. In the case of Shri K.N. Mishra and Others Vs. Union of India & Others., it has been held as follows:

" In sum, the benefit of the long period of service would accrue to all promotees, who continuously officiated against long term vacancies and long term vacancies would be those that "are not for a few days or a few months or are otherwise adventitious". Irrespective of whether the posts were temporary or permanent, so long as the promotion was against long term or substantive vacancies and not against short term or fortuitous vacancies, the period of continuous officiation would have to be reckoned for determining seniority...."

Similar view has been taken by this Tribunal in the case of Shri S.C. Jain Vs. Union of India & Others that the entire period of ad-hoc officiation followed by regular appointment should count for the purpose of seniority. In view of these decisions, now it is well settled that where a civil servant works against a regular vacancy though on an adhoc basis and he is subsequently regularly appointed, he is entitled to count the ad-hoc officiation period towards the seniority. The argument that the selection process had not been completed because the viva voce was not held does not help the respondents because the applicants had not stayed from the viva voce on their own. It was the Department which was responsible for delay in completing the selection process. In the given facts and circumstances of the case, the application is allowed with no order as to costs".

5. In view of the clear ruling of the Tribunal in an identical case, we allow the application before us and direct that the seniority of the applicants

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in the grade of Jr. Clerks etc., should be reckoned on the basis of their continuous officiation from 1983. We also direct the respondents that on the basis of their revised seniority in that grade, they should be considered for promotion to the next higher grade of Sr. Clerks from the dates their next juniors were so considered. All consequential benefits also should accrue to them. There will be no order as to costs.

S.P.M.

5.9.88

(S.P. MUKERJI)
MEMBER (AM)

P.K.K.

5.9.88

(P.K. KARTHA)
VICE CHAIRMAN