

19

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No. 727/87

199

~~xxxxxx~~ with
other C.As

DATE OF DECISION 13/14.9.1993

I.K. Sukhija & Ors.

Applicant(s)


Versus.

Union of India

Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? 47
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(V.S. Marimath)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

20

O.A. 727/87

Date of decision: 13/14.9.1993

I.K. Sukhija & Anr.

... Petitioners.

Versus

Union of India through
The Secretary,
Ministry of Communications,
Department of Telecommunications,
New Delhi & Ors.

... Respondents.

✓ O.A. 1781/87

J.K. Puri & Ors.

... Petitioners.

Versus

Union of India through The Secretary,
Ministry of Telecommunication,
Government of India,
New Delhi & Ors.

.... Respondents.

O.A. 1596/92

R.C. Sharma

... Petitioner.

Versus

Union of India through
The Secretary,
Ministry of Communication,
Department of Telecommunication,
New Delhi & Ors.

... Respondents.

O.A. 304/88

R.P. Rajbanshi

... Petitioner.

Versus

Union of India through
The Secretary,
Ministry of Communications,
Department of Telecommunications,
New Delhi & Ors.

... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

✓ For the petitioners
(in OAs 727/87 and 304/88)

... Shri D.C. Vohra, Counsel
with Shri K.L. Bhandula
and Ms Kiran Singh,
Counsel.

(2)

For the petitioners (in O.A. 1781/87)	... Shri B.S. Charya, Counsel with Shri D.C. Vohra, Counsel.
For the petitioner (in O.A. 1596/92)	... Shri S.K. Bisaria, Counsel with Shri Sarvesh Bisaria, Counsel.
For Respondents 1 and 2. (in O.As 727/87 & 1781/87)	... Shri M.L. Verma, Counsel.
For Respondents 1 and 2. (in O.A.1596/92)	... Shri Jog Singh, Counsel.
For Respondents 1 and 2. (in O.A.304/88)	... None.
For private respondents. (in O.A.1781/87)	... Shri S.C. Gupta, Sr.Counsel with Shri L.R. Goel and M.K. Gupta, Counsel.
For private respondents. (in OA 1596/92)	... Shri G.D. Gupta, Counsel with Shri S.M. Ratanpal, Counsel.
For Respondent No.11. (in O.A.727/87)	... Shri R.P. Oberoi, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

As common questions of law and facts have arisen for consideration in these four cases, they were heard together and are being disposed of by a common judgement.

2. In O.A. 727/87, the petitioners are Sarvashri I.K. Sukhija and S.N. Paracer. They were diploma holders. They started their career as Junior Engineers. Shri Sukhija became Junior Engineer on 7.5.1962 and Shri Paracer became Junior Engineer on 11.4.1966. Shri Sukhija was promoted on ad hoc basis as Assistant Engineer (Elect.) by order dated 20.8.1970 which post he joined on 18.9.1970. Shri Paracer was promoted on ad hoc basis as Assistant Engineer(Elect.) on 4.2.1972. Both of them

22
were regularly promoted by order dated 29.3.1978 w.e.f. 20.3.1978.

3. In O.A. 1781/87, there are seven petitioners. Petitioner No.1 Shri J.K. Puri commenced his career as Junior Engineer (Elect.) on 27.9.1962 and was promoted as Assistant Engineer (Elect.) on ad hoc basis on 20.9.1970. Shri J.S. Baidwan, Petitioner No.2, was appointed as Junior Engineer on 11.4.1966 and promoted on ad hoc basis as Assistant Engineer (Elect.) on 28.1.1972. Shri Karam Singh, Petitioner No.3, was appointed as Junior Engineer on 11.4.1966 and promoted on ad hoc basis as Assistant Engineer (Elect.) on 18.1.1972. Shri D.S. Kohli, Petitioner No.4, was appointed as Junior Engineer on 11.4.1966 and promoted on ad hoc basis as Assistant Engineer (Elect.) on 28.1.1972. Shri S.K. Batra, Petitioner No.5, was appointed as Junior Engineer on 7.4.1966 and promoted as Assistant Engineer (Elect.) on 12.9.1973. Shri Rajeshwar Saran, Petitioner No.6, was appointed as Junior Engineer on 26.7.1967 and promoted on ad hoc basis as Assistant Engineer (Elect.) on 18.12.1976. Shri K.K. Jain, Petitioner No.7, was appointed as Junior Engineer on 6.9.1968 and promoted on ad hoc basis as Assistant Engineer (Elect.) on 18.12.1976. All the seven petitioners were promoted on regular basis as Assistant Engineers(Elect.) by order dated 29.3.1978 w.e.f. 20.3.1978.

4. In O.A. 1596/92, there is only one petitioner Shri R.C. Sharma. He was appointed as Junior Engineer on 21.1.1969 and promoted as Assistant Engineer (Elect.) on 30.4.1977. He was regularly promoted as Assistant Engineer (Elect.) by order dated 29.3.1978 w.e.f. 20.3.1978.

(23)

5. In O.A.304/88, there is only one petitioner Shri R.P. Rajbanshi. He was appointed as Junior Engineer on 18.12.1964 and promoted as Assistant Engineer (Elect.) on ad hoc basis on 28.8.1970. He was also promoted on regular basis as Assistant Engineer(Elect.) by order dated 29.3.1978 w.e.f. 20.3.1978.

6. For the sake of convenience, we shall extract the preamble portion of the order dated 29.3.1978 which reads as follows:

"The P&T Board is pleased to appoint the following officers who are working as AE(Elec) on ad hoc basis, to officiate as AE(Elect) in G.C.S. Group 'B' on temporary basis and until further orders with effect from 20.3.78".

The list consists of 38 names. It includes all the petitioners except Shri R.C. Sharma. In the concluding part of this order adverting to the copies being sent to the officers concerned, this is what is recorded:

"The above names are arranged in order of seniority in grade of A.E.(Elect.). The inter se seniority vis-a-vis direct recruit A.E.(Elect.) will be fixed and circulated subsequently".

By order dated 4.4.1978, four persons who were working as Assistant Engineers (Elect.) on ad hoc basis were appointed to officiate as Assistant Engineers (Elect.) on temporary basis.

✓ The concluding part of this order reads:

(2A)

"The above-mentioned officers will be placed en block junior to the officers mentioned in this office Notification of even No. dated, the 29th March, 1978. The above names are arranged in order of seniority in grade of A.E.(Elec.). The inter-se seniority vis-a-vis direct recruit A.E.(Elect.) will be fixed and circulated subsequently".

Shri R.C. Sharma, petitioner in O.A. 1566/92 is placed at serial No.1 in this order.

7. It is necessary to point out that the statutory rules regulating promotion to the cadre of Assistant Engineers (Elec.) entitled 'The Posts and Telegraphs Civil Engineering (Electrical Gazetted Officers) Recruitment Rules, 1975' (hereinafter referred to as 'the Rules') came into force on 5.4.1975. They were, however, amended in the year 1984 with retrospective effect which inter alia provides for the constitution of the initial service. Before these statutory rules came into force, there were no statutory rules regulating promotion to the cadre of Assistant Engineers (Elect.). The case of the petitioners, however, is that there were draft recruitment rules called 'The Communications Electrical Engineering Service(Class-II) Rules, 1969'. Though these rules had not been promulgated under the proviso to Article 309 of the Constitution, it is the case of the petitioners that the respondents had decided to follow these rules pending promulgation and regular statutory rules.

8. A provisional seniority list of Assistant Engineers(Elect.) was circulated sometime in the year 1986. It appears to have

25

been finalised in the year 1987. One Shri R.K. Jain, Assistant Engineer (Elect.) had approached the Bombay Bench of the Central Administrative Tribunal in O.A. No.373/87. That case was heard and disposed of on merits on 3.5.1991. The operative portion of the said judgement may be extracted as follows:

"In view of what has been said above this application deserves to be allowed to the extent that the seniority list, if any, prepared by the respondents between the direct recruits and promotee Assistant Engineers shall stand quashed. The respondents are directed to prepare a fresh seniority list in accordance with the Memo No.9/11/55/RPS dated 22.12.1959 of Ministry of Home Affairs as per observations in this judgement within a period of three months. In these circumstances of this case parties will bear their own costs".

In paragraph 9 of the said judgement, a finding has been recorded to the effect that the quota rota system has not broken down ^{fixing} justifying/seniority not on the principle of quota and rota but on the principle of continuous officiation. It is in obedience to these directions that a revised seniority list in the grade of Assistant Engineers (Elect.) was notified by an official memo dated 22.5.1992. The names of the petitioners are found entered therein by following the principle of quota and rota prescribed by the memo of the Ministry of Home Affairs dated 22.12.1959 which incorporates the general principles regarding quota and rota between the promotees and direct recruits. So far as the petitioners are concerned, the date of regular appointment shown against their names is 20.3.1978. So far as some of the petitioners are concerned, they are placed above direct recruits regularly appointed earlier than their dates of promotion. As far as some other petitioners are concerned, they are placed below the direct recruits who have been appointed on dates later than the regular

promotions of such petitioners. (26)

9. It is also necessary to advert to another litigation initiated by similarly situate persons namely Shri M.P. Vital Prasad and Ors. It is also necessary to state that Shri K.K. Jain, Petitioner No.7 in O.A. 1781/87, was one of the petitioners in that case. The said case was disposed of by the Calcutta Bench on 30.8.1991 in which the following directions were issued:

"TA 20 of 1987 is accordingly disposed of with the following directions:

- (i) The challenge against the Recruitment Rules, 1975 and the Amendment Recruitment Rules, 1984 over the quota rule is rejected.
- (ii) The cases of the applicants 3,4,6 and 8 regarding refixation of their seniority as AE are rejected.
- (iii) No case for refixation of seniority has been made out by applicant No.7 about whom there is no information about his promotion to the rank of AE.
- (iv) The seniority of applicants 1,2 and 5 in the rank of AE shall be fixed by the respondents with effect from 15.1.69 or 27.1.69 as the case may be, 4.12.78 and 26.12.78 respectively and the seniority list shall be revised accordingly and they shall be considered for promotion to the next higher rank of Executive Engineer on that basis.
- (v) The reliefs prayed for by the Association (applicant No.9) in a representative capacity are rejected.
- (vi) There will be no order as to costs.

10. The claim of Shri K.K. Jain was rejected so also the claim of several others. The relief came to be granted in favour of three persons, namely, Shri M.P. Vital Prasad, Shri B. Dass and Shri A.P. Mandal who had been promoted on ad hoc basis as

(27) Assistant Engineers(Elect.) in January, 1969, 4.12.1978 and 26.12.1978 respectively. They were regularly promoted as Assistant Engineers (Elect.) on 20.3.1978, 19.7.1989 and 19.7.1989 respectively. The Calcutta Bench decision had, therefore, the effect of directing modification of the ranking given in the seniority list prepared in accordance with the directions of the Bombay Bench of the Tribunal. So far as the aforesaid three persons are concerned, the said Bench has ^{the} ^{as} taken/view that/they had continued in service on ad hoc basis for sufficiently long periods varying from nine to eleven years, **their ad hoc service should count for seniority.**

11. The judgement of the Bombay Bench in O.A.373/87 was not challenged by way of appeal before the Supreme Court nor was it got reviewed by any aggrieved parties. The said ^{so} judgement has, therefore, become final and conclusive and/the respondents are bound to act in accordance with the directions issued therein. So far as the judgement of the Calcutta Bench in T.A.20/87 is concerned, the same was challenged before the Supreme Court by filing Special Leave Petitions Nos 15553, 15554 and 15555/92. SLP No.15555/92 was dismissed as barred by time holding that there is no cogent explanation for the delay. So far as other two SLPs 15553 & 15554/92 are concerned, they were dismissed in the light of the submissions made by their counsel who said that he would like to withdraw the same as they proposed to approach the Tribunal for seeking remedy of their grievance.

12. It is not stated by any of the petitioners before us that any application to review the judgement of the Calcutta

✓ Bench in T.A.20/1987 was filed by the aggrieved persons, The

28

result is that the judgement of the Calcutta Bench which granted certain benefit to those three petitioners which we have noted earlier has also become final and conclusive. It is in the light of these developments that we are required to examine the various reliefs sought by the petitioners in these cases.

13. The principal relief claimed in all these cases is for a direction to determine the seniority of all the petitioners by giving full credit and taking into account uninterrupted and continuous ad hoc service rendered by them until they came to be regularly appointed. They urged that this should be done notwithstanding the quota rota rule. The petitioners have also prayed for consequential reliefs flowing from such re-fixation of their seniority in the matter of promotion and emoluments etc.

14. Before examining the relevant facts and the contentions raised by the learned counsel for the parties in these cases, it is necessary to summarise the law bearing on the question.

15. The first decision which was heavily relied upon by the learned counsel for the petitioners 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 parties having placed reliance only on principles

29

'A', 'B' and 'F'. 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.

F. Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule."

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:

30

In
"24. 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' & '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

services 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 Recruit's 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 Recruit's 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 judgement 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 or vacancy was made deliberately, in disregard of the rule and allowed the incumbent to continue on the post for well over 15 to 20 years without reversion 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 cognizant 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 periods varying from 3 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

32

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 dehors 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..."

16. A Full Bench of the Principal Bench of the Central Administrative Tribunal had occasion to consider the principles laid down in the Direct Recruit's 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 5.2.1992. 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 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".

17. Our attention was drawn by the learned counsel for the petitioners on another judgement of the Supreme Court reported in JT 1993(2)SC 598 between STATE OF WEST BENGAL & ORS. VS. AGHORE NATH DEY AND ORS. That is also a decision of the Bench consisting of three judges as is the case with the judgement rendered in KESHAV CHANDRA JOSHI'S case. In this judgement also, the Supreme Court examined the scope of principles 'A' and 'B' laid down in the Direct Recruit's 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 26.2.1980 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 26.2.1980, 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 Narender 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".

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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) can not 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 therefrom the cases covered by the corollary in conclusion (A).

35

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 requirements 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 to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to

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36

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). "

18. From the facts of this case, it would appear that about eight years of ad hoc temporary service was claimed as counting for seniority invoking the principle 'B'. The Supreme Court held that the case was clearly covered by the corollary to principle 'A'; the initial appointment having been made on ad hoc basis and not in accordance with the rules. Hence, it was held that the question of invoking the principle 'B' does not arise. It is necessary to note that the earlier judgement of the Supreme Court of a Bench of three judges in Keshav Chandra Joshi's case was not placed for consideration in the Aghore Nath's case. It would not be right to say that the law laid down in Keshav Chandra Joshi's case is in any way affected or diluted by the subsequent judgement of the Supreme Court in Aghore Nath's case. Having regard to the law laid down in the aforesaid cases, we shall now proceed to examine the facts in these cases.

19. We must at the outset say that the decision of the Bombay Bench of the Tribunal in O.A.373/87 in the case of R.K. Jain has become final and conclusive, it not having been reversed or modified either in appeal by the Supreme Court or by review by the Tribunal. No attempt has been made by any of the ^{aggrieved} parties to seek review of the judgement of the Bombay Bench. If the petitioners who were not parties to the said case are affected or aggrieved by the directions issued

37

by the Bombay Bench of the Tribunal, the proper course open to them was to seek review of the said decision, to get themselves impleaded in the said case and seek a fresh decision on considering their objections. This principle is well settled. As the respondents are bound to obey the directions issued in O.A.373/87 of the Bombay Bench, in regard to preparation of the seniority list of Assistant Engineers (Elect) the petitioners cannot in these cases seek from us orders or directions clearly in conflict with the directions issued in O.A.373/87 by the Bombay Bench of the Tribunal. The reason is obvious. The authority which is required to obey the directions of the Bombay Bench cannot be directed to obey orders to the contrary at the instance of the petitioners in these cases. The Tribunal cannot bring about a situation where the authority would become liable to be punished for contempt for obeying either of the conflicting directions. Hence the proper remedy for the aggrieved parties is to get that judgement which hurts their interest reviewed or reversed by invoking appropriate remedies in accordance with law. If no such remedies are invoked, the decision becomes final and conclusive. Hence we cannot be called upon to issue directions which are clearly in conflict with the directions issued in O.A.373/87 by the Bombay Bench. Unfortunately, for the petitioners that is the position in this case. We have, therefore, to proceed on the basis that the ^{respondents / authorities} are bound to follow the

38
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directions issued by the Bombay Bench in O.A.373/87. This takes us to the examination by the precise directions issued by the Bombay Bench in the case of Shri R.K. Jain. Though in the preamble of the judgement, it is stated that the Bench is required to examine the question of seniority among Executive Engineers (Elect.), the entire discussion in the judgement as also the ultimate directions issued make it clear that the main question examined therein was about seniority in the cadre of Assistant Engineers (Elect.). We are concerned in this case also with the same question of seniority of Assistant Engineers (Elect.). On examining the relevant facts the Bombay Bench has recorded a positive finding to the effect that there was no breaking down of the quota and rota rules. It is further held that the seniority in the cadre of Assistant Engineers (Elect.) should be determined in accordance with the memo No.9/11/55/RPS dated 22.12.1959 issued by the Ministry of Home Affairs. That prescribes the quota rule between the promotees and the Direct Recruits. The relevant paragraphs in the said judgement may be extracted as follows:

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"Merely because for definite reasons in one year, there is no direct recruitment and in the third year promotion quota could not be filled, that could not be taken to mean that the rota system had broken down, what to say of making breaking down of the rota system. Accordingly, the contention which has been raised on behalf of the respondents based on the additional written statement

(39)

that due to breaking down of this rota system, the seniority could not be fixed or given effect to in accordance with Memorandum no.9/11/55/RPS dated 22.12.1959 has no leg to stand and this plea is expelled.

In view of what has been said above this application deserves to be allowed to the extent that the seniority list, if any, prepared by the respondents between the Direct Recruits and Promotee Assistant Engineers shall stand quashed. The respondents are directed to prepare a fresh seniority list in accordance with the memo No. 9/11/55/RPS dated 22.12.1959 of Ministry of Home Affairs as per observations in this judgment within a period of three months. In the circumstances of this case parties will bear their own costs."

It is thus clear that the department is obliged to prepare a seniority list of Assistant Engineers (Elect.) following the rota system prescribed by the memo dated 22.12.1959 and on the basis that the quota rule has not broken down. The seniority list that was holding the field on the date of the judgement has been quashed. The seniority list that held the field at that time was the one made in the year 1987 without following the quota rota principle. Hence the petitioners are not not entitled to seek a direction to follow the quota rota principle in preparing the seniority list of Asst. Engineers (Elect.). The learned counsel for the petitioners submitted that in some other decisions which have nothing to do with determination of seniority of Assistant

Engineers (Elect.) of the department, in question, it has been held that the official memo dated 22.12.1959 which has been directed by the Bombay Bench of the Tribunal to be followed is not valid and enforceable. So far as the parties to these proceedings are concerned, having regard to the decision of the Bombay Bench, we have to proceed on the basis that the authorities are under a legal obligation to prepare the seniority list of Assistant Engineers (Elect.) following the quota and rota rule prescribed by the memo dated 22.12.1959.

20. We have to examine for the applicability of principle 'A' laid down in Direct Recruits' case as to whether the petitioners were initially appointed in accordance with the rules. Admittedly all the petitioners were initially appointed on ad hoc basis between 1970 and 1977 & regularly appointed by the common order made on 29.3.1978 w.e.f. 20.3.1978. Some of the petitioners have asserted in their petitions that though they were appointed on ad hoc basis, in regular vacancies on their being found fit and suitable by a Departmental Promotion Committee, others have merely asserted that they were appointed in accordance with the rules. Whereas some of the petitioners have produced their orders of ad hoc appointment others have not. What is clear, however, is that all the petitioner-s were originally appointed on ad hoc basis between 1970 & 1977 and appointed regularly w.e.f. 20.3.1978. It is urged that

41

though the original appointment was made on ad hoc basis, it cannot be regarded as a stop-gap arrangement when regular vacancies existed and their appointments were not limited to any specific period. The respondents, however, assert that the appointment of the petitioners was made on ad hoc basis only as a stop-gap arrangement pending framing of recruitment rules and that regular recruitment was made only after the rules were promulgated w.e.f. 5.4.1975. It was submitted on behalf of the petitioners that there were some draft rules which were treated as holding the field until statutory rules came into force and that their cases were duly considered in accordance with the said draft rules. This according to them shows that they were initially appointed regularly in accordance with ^{the} provisions that were in force when orders of ad hoc appointment were issued. The respondents, however, assert that consideration of the petitioners' cases was for making ad hoc appointments as a stop gap arrangement till the statutory rules are made. We shall, therefore, examine the process that was gone through when they were initially appointed on ad hoc basis. As there is word against word so far as the method adopted in making the ad hoc appointment of the petitioners is concerned, we asked the respondents to place before us the relevant records in this behalf bearing on selection and appointment on ad hoc basis. The counsel for the respondents has placed before us only the proceedings of the DPC held in Feb-March 1978 on the basis of which the regular appointments were made on 20.3.1978. It was submitted that in spite of their best efforts they were not able to find the records pertaining to

the appointment of the petitioners made between 1970 and 1977. (42)

We directed copies of the D.P.C. proceedings of Feb-Mar, 1978

to be furnished and they were duly furnished to all the parties. Submissions were made before us

after examining the same. The committee^{has} in the first paragraph narrated the background in the following words:

"The Departmental Promotion Committee has been asked to prepare a panel of 46 Assistant Engineers (Electrical) for regular promotion. There are 43 eligible officers whose names have been placed before this Committee. It has been brought to the notice of the Committee that the P&T Civil Wing was formed on 1.7.1963 by taking over construction/maintenance works of P&T buildings from the C.P.W.D. with the taking over of this work from the PWD some Junior Engineers(E) came on deputation to the P&T alongwith the works. It was, however, decided in 1969 to absorb some of the Junior Engineers (E) who had opted for absorption in the P&T. The P&T also started its own recruitment in the cadre from 1964 onwards. The Recruitment Rules for the posts of A.E.(E) were, however, not finalised till 1975. In order to meet the immediate requirements of the P&T Civil Wing on account of heavy constructional activity in the P&T, it was decided to make some ad-hoc promotions to the grade of AE(E). These promotions were made from 1969 onwards. On the finalisation of the Recruitment Rules the question of making regular promotions to this grade was taken up. The Recruitment rules provide that those J.Es.(E) who have put in not less than 8 years and who have qualified in the departmental examination are eligible for promotion to the grade of A.E.(E) working on ad hoc basis, it has been decided in consultation with the D.O.P. and U.P.S.C. that only for one time the Junior Engineers who have put in 8 years service may be exempted from taking the departmental qualifying examination and instead may be subjected to oral test. All the Junior Engineers(E) who are in the zone of consideration have passed the departmental qualifying examination excepting Shri P.J. Mathakutty".

43

-24-

Before we discuss the findings of the Departmental Promotion Committee, it is necessary to advert to the fact that after the 1975 rules came into force which prescribed that the promotion to the cadre of Assistant Engineers (Elect.) should be done on the basis of a competitive examination held for that purpose, attempts were made to hold such an examination. The first examination was fixed on 23.9.1975. That examination could not be held as asserted in the affidavit filed by the authorities because the petitioners were insisting that they should be promoted without any competitive test. This was not possible for the reasons that the rules prescribed promotion being made only on the basis of a competitive examination. The respondents have stated that once again an attempt was made to hold a competitive examination in the year 1977 and that also could not be held because the persons concerned protested against taking the examination. It is in this background that the power of relaxation was exercised and that it was decided to hold an oral examination instead of a written examination. The DPC proceedings which we have extracted above advert to these facts. In the context it is reasonable to infer that the Departmental Promotion Committee had examined the reasons for making ad hoc appointments and the procedure followed for that purpose. The DPC has stated that in order to meet the immediate requirements of P&T Civil Wing on account of heavy constructional activity in the P&T, it was decided to make some ad hoc promotions to the grade of Assistant Engineers (Elect.) and that such promotions were made from 1969 onwards. It is further stated that on

44

finalisation of the recruitment rules, the question of making regular promotions to this grade was taken up. These findings of the DPC make it clear that from 1969 onwards having regard to the exigencies of service there being heavy constructional activity, it was decided to make some ad hoc promotions. In this context, it is obvious that ad hoc promotions were made as a stop-gap arrangement. If it was the intention to make regular appointment the expression ad hoc would not have been ordinarily used. Having regard to the statements in the proceedings of the DPC held in Feb/Mar, 1978, we are inclined to accept the stand of the respondents that the appointments of the petitioners on ad hoc basis were made as a stop-gap arrangement and consideration of the cases of the petitioners was for making ad hoc appointments and not regular appointments. Another circumstance which supports the case of the respondents is that all the petitioners ultimately offered themselves for the test held for making regular promotions according to the 1975 rules. Though the test was, on relaxation, an oral test and not a written test was held, it was necessary to point out that the 1975 rules prescribed promotion by selection meaning thereby that the more meritorious juniors could supersede less meritorious seniors. The petitioners thus took the chance when they appeared in the oral test held in accordance with the 1975 rules, of not being selected for regular promotion or if selected of being placed in the order of merit below their juniors. This would not have been their conduct if they had already gone through the process for regular selection and promotion before their ad hoc appointment.

What is interesting to note is that even the 1986 Seniority list was prepared by taking into consideration 20.3.1978 the date of regular appointment of the petitioners for counting their seniority and not the dates from which they were appointed on ad hoc basis. Having regard to all these circumstances and the proceedings of the DPC held in February/March, 1978 we hold that the petitioners were appointed on ad hoc basis as a stop-gap arrangement. We further hold that the cases were considered between 1970 and 1977 for ad hoc promotion as a stop-gap arrangement and not by resorting to procedure prescribed by the draft rules for selection and appointment on regular basis. We have, therefore, no hesitation in recording a finding to the effect that the initial appointment of the petitioners was only ad hoc and not according to rules and was made as a stop-gap arrangement. The corollary to principle 'A' laid down in the Direct Recruit's case clearly governs the case of the petitioners and hence, the service rendered by them in the cadre of Assistant Engineers (Elect.) on ad hoc basis cannot count for seniority. The Supreme Court has in Keshav Chandra Joshi's case as also in Aghore Nath's case, held that if the case is governed by principle 'A' or its corollary the question as invoking principle 'B' does not at all arise. We shall however examine the case of the petitioners with reference to principle 'B' also.

21. None of the three decisions of the Supreme Court in Direct Recruit's case, Keshav Chandra Joshi's case and Aghore Nath's case, have laid down that in every case where a person

46

is appointed on ad hoc basis which is continued uninterruptedly until regularisation the ad hoc service would always count for seniority. Any such inference would be inconsistent with the clear pronouncement of the Supreme Court in all the three cases, that is, only in special circumstances that the period of service rendered on ad hoc basis would count for seniority. The Supreme Court further elucidating principle 'B' laid down in Direct Recruit's case has identified such special circumstances, in Keshave Chandra Joshi's case and Aghore Nath's case. We have no hesitation in holding that it is only when special circumstances indicated either in Keshave Chandra Joshi's case or Aghore Nath's case are satisfied the ad hoc service would count for seniority.

22. In Keshav Chandra Josh's case the Supreme Court held that ad hoc service would count for seniority where the initial ad hoc appointment is made de-hors or in disregard of the rules and the incumbent is allowed to continue in the post for long period such as 15 to 20 years without reversion till the date of regularisation of service in accordance with the rules, there being power in the authority to relax the rules. Ad hoc service to count for seniority must be rendered continuously till the date of regularisation for 15 to 20 years. We shall examine whether this main condition is satisfied in these cases. We have already summarised the facts from which it is clear that the petitioners were appointed on ad hoc basis between 1970 and 1977. They

were regularly appointed in accordance with the rules w.e.f. 20.3.1978. Thus, the period of service rendered by the petitioners as ad hoc Assistant Engineers (Elect.) varies from 1 to 8 years. This is not at all comparable with 15 to 20 years service which is required for invoking principle 'B' as explained in Keshave Chandra Joshi's case. This circumstance alone is sufficient to hold on the application of the principle laid down in Keshav Chandra Joshi's case that the petitioners have not made out a case for invoking principle 'B' to count their ad hoc service for seniority. Though, in fact, the petitioner's ad hoc service varies from 1 to 8 years, it may not be quite right to treat that period as qualifying for application of principle 'B'. We say so for the reason that after the new rules came into force when attempt was made to hold the written test in accordance with the rules to make regular appointment and, dates for examination were also fixed firstly in the year 1975 and thereafter in the year 1977, the persons concerned including the petitioners boycotted the tests and rendered them infructuous. They insisted on being regularly promoted without being subjected to any test. Ultimately, the impasse was ^{cleared} when the administration agreed to hold an oral competitive test in place of written test. Such a test could be held only in the year January, 1978 which all the petitioners took. Thus, it is clear that from the date of coming into force of the rules 1975 until an oral test was held in January, 1978 the continuance of the petitioners as ad hoc employee was attributable to their own conduct in refusing to appear in the test fixed in accordance with the

statutory rules. We would therefore, be justified in excluding from consideration altogether the ad hoc service rendered by the petitioners between 1970 and 1975. If this period is excluded, the actual period of ad hoc service which can be taken into consideration would be between 1 to 5 years. This has no comparison to the period of 15 to 20 years indicated by the Supreme Court. In the circumstances, we have no hesitation in holding that the petitioners having regard to the law laid down in Direct Recruit's case as explained in Keshav Chandra Joshi's case are not entitled to count ad hoc service rendered by them for seniority in the case of Assistant Engineers (Elect.).

23. We shall now examine if the petitioners' case is covered by Aghore Nath's case. What has been laid down in Aghore's case is that where there are regular vacancies and the employee who is duly qualified and is appointed without any limit of time or purpose after following the procedure laid down for regular recruitment, the mere fact that the appointment is made subject to fulfilment of some procedural requirements, cannot deprive him the benefit of the service rendered by him from the date of his appointment until the remaining procedural requirements are satisfied. This is subject to the condition that the delay is caused not by the employee but the administration. Whether these conditions are satisfied or not has to be decided by examining the terms of the order of appointment and the rules governing appointment. What is, therefore of essence of the matter is that the process for regular appointment as per rules should have

49
been undertaken. If in the process of making such appointment some procedural requirements are not immediately satisfied and the appointment is made subject to fulfilling of such requirement, the delay in fulfilling the remaining procedural requirements should not have the effect of denying the benefit of service rendered from the date of initial appointment till the remaining procedural requirements are satisfied. The order of appointment itself should normally indicate that the appointment is made subject to the satisfaction of certain procedural requirements. Such procedural requirements may 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 materials to indicate ^{that} that was the clear intendment.

On the basis of this decision, it was maintained that in these cases ad hoc appointments were made in regular vacancies without any limit of time. It was submitted that the procedural requirement which was deferred was of holding a competitive test for making a proper selection. If there is delay in holding the test the petitioners cannot be denied the benefit of ad hoc service. The decision of the Supreme Court cannot be understood as contemplating deferment of the principal requirement of selection. What is contemplated is

only fulfilment of minor procedural requirements. (50)

Firstly, it is necessary to point out that the petitioners have not been able to demonstrate from the orders of ad hoc appointment that they were appointed against regular vacancies subject to fulfilment of certain procedural requirements.

All the petitioners have not produced the orders of ad hoc appointment. Only a few of them have produced. Even those orders do not contain any such stipulations. We shall, therefore, look into the surrounding circumstances. We have on consideration of the proceedings of the D.P.C. held in Feb/March, 1978 and other materials recorded a finding that all the petitioners were appointed only on ad hoc basis as a stop-gap arrangement pending framing of regular recruitment rules and regular selection in accordance with the same. We have negatived the contentions of the petitioners that when the appointments were made on ad hoc basis, they were so appointed after fulfilling the requirements for regular promotion by selection. We have, therefore, no hesitation in holding on the facts and circumstances of these cases that when the petitioners were appointed on ad hoc basis, it was not by following the procedure that was required to be followed at the relevant point of time for filling up the posts on regular basis by promotion by selection. For this purpose, we proceed on the assumption

that the draft rules were regarded as holding the field which also prescribed promotion by selection. As the initial appointment was not at all for regular appointment the question of deferring some procedural requirement did not arise. As the main condition is not satisfied decision in Aghore Nath's case does not help the petitioners.

24. As the petitioners have failed to make out a case for invoking the principle 'B' as explained by the Supreme Court in Keshav Chandra Joshi's case or Aghore Nath's case, they cannot count their ad hoc service for seniority in the cadre of Assistant Engineers (Elect.).

25. Our attention was drawn to the judgement of the Calcutta Bench of the Tribunal in TA 20/1987 filed by M.P. Vital Prasad and Ors. In that case directions have been issued to count the ad hoc service for the purpose of seniority in respect of only three petitioners, namely, M. P.

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52

Vital Prasad, Shri B. Dass and Shri A.P. Mandal. Shri K.K. Jain, petitioner No.7 in the present O.A. 1781/87 was also one of the petitioners in that case and his prayer for counting his ad-hoc service from 18-12-76 was rejected. He cannot, therefore, claim the same relief in the present proceedings. Shri Rajeshwar Saran, petitioner No. 6 in O.A. 1781/87 was also appointed on ad hoc basis on the same date, i.e. 18.12.1976. If Shri K.K. Jain cannot get the benefit of ad hoc service, Shri Rajeshwar Saran, who was also appointed on the same date, also cannot get the same relief. The position of Shri R.C. Sharma in O.A. 1596/92 is still worse as he was promoted on ad hoc basis as Assistant Engineer (Elect.) much later i.e. on 30.4.1977. The other petitioners in these cases, Sarvashri Sukhija, Paracer, J.K. Puri, J.S. Baidwan, Karim Singh, D.S. Kohli, S.K. Batra and R.P. Rajbanshi were appointed as Assistant Engineers (Elect.) on ad hoc basis between 1970 and 1973. All of them were regularly promoted w.e.f. 20.3.1978. As the ad hoc service rendered by the petitioners before the regular appointment is between 5 and 8 years, we have held in the light of law laid down by the Supreme Court in Keshav Chandra Joshi's case that none of them is entitled to count this ad hoc service for seniority. The Calcutta Bench has directed that ad hoc service of 9 to 11 years of the three petitioners before them should count for seniority. This is

by the Supreme Court

✓ Inconsistent with the law laid down/which requires the continuous

service of the order of 15 to 20 years. But the decision of the Calcutta Bench having become final and conclusive, there is nothing that we can do in these cases. Even otherwise, it is necessary to point out that none of the petitioners before us have ad hoc service equal to or higher than the ad hoc service of the three persons who were given relief by the Calcutta Bench. The Calcutta Bench gave relief to those persons whose ad hoc service varied from 9 to 11 years. We have before us actual ad hoc service varying from 1 to 8 year. But we have held that ad hoc service from 1975 to 1978 should not be counted as that is the period during which the petitioners refused to take the examination which was fixed for making promotion in accordance with the relevant statutory rules. That period of three years has to be excluded. It is not possible for us to grant any relief to the petitioners for counting their ad hoc service in these cases even on equitable considerations in the light of the decision of the Calcutta Bench.

26. We fail to see how the petitioners can invoke principle 'F' of Direct Recruits in these cases. What is laid down is that a presumption should ordinarily be raised when

54

there is a deviation from the quota rule that the authorities must have done so by relaxing the provisions relating to quota. The petitioners have not placed materials to show that they were regularly promoted as Assistant Engineers (Elect.) in excess of the quota for promotees. Besides, the Bombay Bench has held that there is no breaking down of the quota rule. Hence, the petitioners cannot claim relief invoking principle'

27. One of the arguments advanced on behalf of some of the petitioners is that some of them had a higher ranking in the 1986 list and that they have been given lower ranks in the 1992 list. This, it was stated, was made without giving them an opportunity of showing cause in the matter. If the petitioners had any contention to urge other than those used before us we would have been inclined to afford such an opportunity even at this stage to put forward their cases in the matter of assigning proper ranking in the seniority list. All the contentions raised before us have been repelled by us. They have no other facts or contention to put forward. Hence, it would be an idle formality to afford an opportunity of showing cause in the matter at this stage. It is of paramount importance that the matters

regarding seniority should be settled without delay and not allowed to linger on for years to come. Finality is of the essence of the matter. Hence, it is not possible to accept this contention.

28. For the reasons stated above, we hold that none of the petitioners are entitled to count for seniority the ad hoc service rendered by them before their regular appointment on 20.3.1978 and that the seniority list of Assistant Engineers (Elect.) made in the year 1992 is not liable to be interfered with. Hence, all these petitions fail and are dismissed. Parties shall bear their own costs.

(S.R. ADIGE)
MEMBER(A)

(V.S. MALIMATH)
CHAIRMAN

SRD
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Attested
28/5/93
S. Suresh Kumar
Secretary
Central Adm. & Finance
Department
Honnai,
Chennai
600 001