

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1785/
~~XXXXX~~

1997

DATE OF DECISION 07.06.1991

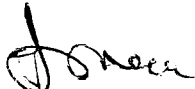
SHRI RAGHUBIR SINGH & ANR.	Petitioner s
SHRI B.S. CHARYA	Advocate for the Petitioner(s)
Versus	
GOVT. OF INDIA PRESS & ANR.	Respondents
SHRI P.P. KHURANA	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Hon'ble Member (A)

The Hon'ble Mr. J.P. Sharma, Hon'ble Member (J)

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


(J.P. SHARMA)
MEMBER (J)


(P.C. JAIN)
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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CA NO. 1785/1987

DATE OF DECISION : 07.06.1991

SHRI RAGHUBIR SINGH & ANR.
VS.

.....APPLICANTS

GOVT. OF INDIA PRESS & ANR.

.....RESPONDENTS

CORAM

SHRI P.C. JAIN, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANTS

.....SHRI B.S. CHARYA

FOR THE RESPONDENTS

.....SHRI P.P. KHURANA

J U D G E M E N T

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

Raghubir Singh and Ram Kishan both Machine Attendants in Government Press, Mayapuri jointly filed this application under Section 19 of the Administrative Tribunals Act, 1985 for getting a direction that their continuous ad-hoc period of service after their promotion as Machine Attendant from 12.6.1984 till their regular appointment or regularisation as Machine Attendant w.e.f. 1.4.1986 should be treated as regular and counted as such for the purposes of seniority and promotion.

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2. The applicant has claimed the following reliefs :-

- (a) That the respondents should be called upon to treat the period of service between 12.6.1984 to 31.3.1986 in respect of both the petitioners rendered against the post of Machine Attendant as regular for purposes of seniority, experience and for all other purposes;
- (b) Call upon the respondents to place the petitioners at the appropriate position in the seniority list of Machine Attendant while showing their date of promotion as 12.6.1984 and release the seniority list of Machine Attendant forthwith by placing the petitioners above all those who have been appointed or promoted after 12.6.1984;
- (c) Hold that the petitioners fulfil the requisite period of experience of 3 years upon counting the period from 12.6.1984 as machine Attendants and they are entitled for promotion to the post of Asstt. Machineman since they have qualified the trade test to the said post held on 19.9.1987;
- (d) Call upon the respondents to consequently promote the petitioners against the post of Asstt. Machineman and not to allow any other person junior to them to supersede the petitioners for purposes of promotion for the post of Asstt. Machineman in the grade of Rs.950-1400 on the basis of trade test held on 19.9.1987; Cost of the proceedings may be allowed to the petitioners.

3. The facts of the case are that the applicant, Raghubir Singh joined the Government Press as a Labour on 21.9.1972 and was promoted as Machine Attendant on 12.6.1984. The other applicant, Ram Kisnan joined as Labour in Government Press on 15.9.1972 and was promoted as Machine Attendant on 12.6.1984. The recruitment and

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promotion of the applicants are governed by the Recruitment Rules dated 7.11.1974 for Class-III and Class-IV industrial posts in Government of India Press, New Delhi (Annexure-III). These rules provide that for the post of Machine Attendant, 50% of the vacancies shall be filled up by promotion from the Labours with 3 years' service subject to a trade test and the remaining 50% by direct recruitment, failing which by deputation. Both the applicants qualified the trade test for the post of Machine Attendant held in May, 1983. The applicants further stated that after December, 1983, the respondents made appointment through Employment Exchange and two persons were appointed in the month of April or May, 1984. It was thereafter that both the applicants were promoted to the post of Machine Attendant on 12.6.1984 as departmental candidates. After the promotion of the applicants, one Shri Om Prakash was appointed through Employment Exchange as Machine Attendant on 25.6.1984.

4. The applicants were issued letters dated 16.4.1986 showing that they were treated to be regularised against the post of Machine Attendant w.e.f. 1.4.1986. By virtue of this, it is evident that the respondents omitted to consider the

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alleged ad-hoc period of service from 12.6.1984 to 31.3.1986 for the purpose of seniority and other benefits. It is further stated by the applicants that when they made verbal and written representations, they were allowed to sit in the trade test held on 19.9.1987 for the promotion to the post of Machineman, but their result has not been declared and appears to have been withheld. The applicants apprehended that they are sure to be omitted simply on the ground that they are junior to Shri Om Prakash and other direct recruits. The criteria for promotion to the post of Machineman is seniority subject to qualifying the trade test, provided that the minimum of three years' service has been rendered in the grade of Machine Attendant which the applicants have already completed in September, 1987. The contention of the applicants is that they are senior to the direct recruits, but the respondents have not released any seniority list.

5. The respondents filed the reply and stated that the applicants were given ad-hoc promotion on 12.6.1984 which does not confer any right for regularisation in the grade or for the seniority purposes for promotion to the higher grade. The respondents referred to the appointment letter issued to the applicants dated 13.6.1984 (Annexure-II Page-25, 26 of the paper book) where it is written that

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this ad-hoc promotion shall not count for promotion to the next higher grade. It is further stated by the respondents that Ram Kishan was not appointed in a clear vacancy, but in a chain vacancy which was created due ^{to} promotion in the higher grade. The direct recruits, Om Prakash joined on 26.6.1984 and Raj Kumar joined on 22.5.1984 in regular vacancies, while the applicants were regularised in April, 1986 and so they were not included in the seniority list as on 1.1.1986. Raj Kumar and Om Prakash, therefore, are senior to the applicants. The applicants were inadvertently allowed to take the trade test and on discovery of the mistake that they are juniors to the direct recruits, Om Prakash and others, the result was withheld as they did not fill up the requirements as Machine Attendants on 19.9.1987 having been regularised w.e.f April, 1986. The respondents, therefore, stated that the application be dismissed.

6. We have heard the learned counsel for the parties at length and gone through the record of the case. The contention of the learned counsel for the parties is that the position is now settled as per the pronouncement of the judgement by

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the Hon'ble Supreme Court* that the ad-hoc period of service is to be counted towards regular service. The applicants have been duly performing the services of Machineman from 12.6.1984 and they have never been reverted and were appointed according to the Recruitment Rules (Annexure-A III) attached to the reply.

7. The learned counsel for the respondents almost conceded the facts that the whole of the ad-hoc continuous period in view of the latest position of law has to be counted for the purposes of seniority.

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- i) S.B. Patwardhan Vs. State of Maharashtra
A.I.R. 1977 SC p.2051
 - ii) Rajendra Narayan Singh Vs. State of Bihar
A.I.R. 1980 SC p.1246
 - iii) Baleshwar Dass Vs. State of U.P.
A.I.R. 1981 SC p.41
 - iv) A. Janardhan Vs. Union of India
A.I.R. 1983 SC p.769
 - v) P.S. Mahal Vs. Union of India
A.I.R. 1984 SC p.1291
 - vi) O.P. Singhla Vs. Union of India
A.I.R. 1984 SC p.1995
 - vii) G.S. Lamba Vs. Union of India
A.I.R. 1985 SC p.1019
 - viii) Pran Krishana Goswall Vs. State of West Bengal
A.I.R. 1985 SC p.1605
 - ix) D.K. Mitra Vs. Union of India
A.I.R. 1985 SC 1558
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8. In direct recruits Class-II Engineering Officers' Association Vs. State of Maharashtra & Others, reported in 1990 Vol.2 SCC 715, it has been held in para-47 at p-745 that :-

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

9. In view of the settled position of law, since the appointment of Raghubir Singh and Ram kishan has been according to the rules and they continuously worked without any break from the date of initial promotion, i.e. 12.6.1984, then their seniority is to be counted from 12.6.1984 and those who are appointed subsequent to 12.6.1984 according to the rules, shall be junior to the applicants. In other words, those who have been regularly appointed according to rules before 12.6.1984 shall be senior to the applicants.

10. In view of the above, the application is allowed with

the following directions :-

The respondents shall correct the seniority list showing the applicants in the seniority list from the date of their initial promotion, i.e., from 12.6.1984 and not from the date of regularisation, i.e. April, 1986 and those who have joined after the applicants, i.e., after 12.6.1984, shall be shown as junior to the applicants. The applicants shall also be entitled to all consequential benefits arising out of this correction in the seniority list. In the circumstances, the parties shall bear their own costs. It is made clear that those who have already been promoted, shall not be reverted on account of the present direction and the respondents shall carry out the direction within a period of one month from the date of receipt of this order.

J. P. Sharma
(J.P. SHARMA) 7.6.91
MEMBER (J)

P. C. Jain
(P.C. JAIN) 7/6/91
MEMBER (A)