

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1846/87 189
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DATE OF DECISION 95 JAN. 1991

S.C. Anand and others Applicant (s)

Shri E.X.Joseph Advocate for the Applicant (s)

Versus

Union of India and others Respondent (s)

Shri K.L.Bhandula Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

and

The Hon'ble Mr. T.S.Oberoi, Judicial 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. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Mr.S.P.Mukerji, Vice Chairman)

In this application dated 24.8.87 filed under Section 19 of the Administrative Tribunals Act, 57 applicants who had been promoted as Assistant Directors in the lowest grade of the Central Power Engineering (Group 'A') Service have prayed that in the cadre of Assistant Directors their seniority should be fixed by taking into account their entire continuous officiation as Assistant Director both on ad hoc as well as regular basis and the Seniority List issued by the respondents 1 to 3 prepared without taking into account their continuous service on ad hoc basis in the grade of Assistant Director

should be set aside. The brief facts of the case are as follows.

2. For the efficient functioning of the Central Electricity Authority a Central Established Service called Central Power Engineering (Group 'A') Service was constituted with Assistant Directors in the lowest grade. The posts of Assistant Director/Assistant Executive Engineer in that Service are to be filled up in accordance with the Central Power Engineer^{ing} (Group 'A') Service Rules 1965 (Appendix-I to the Counter Affidavit). In accordance with these Rules, the posts of Assistant Directors/ Assistant Executive Engineers are to be filled up 60% by Direct Recruitment, 25% by promotion and 15% by deputation. Direct Recruitment is to be done by the Union Public Service Commission. The promotion quota is to be filled up by promotion of Extra Assistant Director/Assistant Engineer on completion of atleast three years of regular service through selection to be made by a Departmental Promotion Committee presided over by the Chairman/Member of the UPSC. The applicants who were working in the feeder grade were promoted as Assistant Directors on ad hoc basis in the years 1971, 1972, 1975, 1976, 1977, 1978, 1981 and 1982. The promotions were made admittedly on an ad hoc basis due to

non-availability of direct recruits and against the direct recruitment quota. It is also admitted that as ad hoc Assistant Directors the applicants were discharging the same duties and responsibilities as those discharged by regular Assistant Directors and they were paid salary, the increments and all other benefits as applicable to direct recruits. The Departmental Promotion Committee for regular promotion admittedly ~~again~~ met in 1973, 1975, 1980 and 1983 and the applicants were regularised by orders issued in 1973, 1975, 1980 and 1984. The grievance of the applicants is that in the Seniority List they have been ranked on the basis of their dates of regularisation overlooking their ad hoc service as Assistant Directors prior to their regularisation. The Seniority List on that basis was issued on 21.1.1980 giving the position as on 1.1.1980 (Annexure-VI). This was followed up by another Seniority List as on 1.1.86 (Annexure-A.VII) reckoning their seniority by taking into account their service as Assistant Director only from the date of the regularisation as Assistant Director. The applicants have illustrated at Annexure-A.1 that the gaps between the dates of commencement of continuous adhoc service and dates of regular appointment as Assistant Director range from 1 to 2 years to as much as more than 5 years. According to the applicants they made repeated representations

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requesting the authorities to take into account their ad hoc service prior to their regularisation and the respondents vide the impugned order at Annexure A.VIII informed them that no benefit of ad hoc service in seniority can be given in the Seniority List and accordingly the dates of regular appointment had been indicated. The applicants have referred to the rulings of the Hon'ble Supreme Court and this Tribunal in a catena of cases especially xxxx in Narendra Chadha Vs. Union of India, AIR 1986 SC 638 to urge that where quota rota system has failed the inter se seniority between promotees and direct recruits is to be determined on the basis of length of officiation including ad hoc and temporary officiation also.

3. The respondents while admitting the factual position as indicated above have stated that the applicants were appointed on adhoc basis against the direct recruitment quota as direct recruits were not available. In the promotion orders it was specifically indicated that their ad hoc service will not count for seniority and their ad hoc appointments will not entitle to them to any claim of promotion, confirmation in the grade of Assistant Directors. The respondents have further stated that the application is hopelessly time barred as in the

representations they had not challenged their seniority and claimed that their ad hoc service prior to regularisation should count for seniority. They had simply sought certain corrections in the various columns of the Seniority List as for example spellings of the name and prayed that their dates of appointment on an ad hoc basis also should be indicated in the Seniority List. They have also argued that in accordance with the extant instructions their ad hoc service which was rendered for short duration as a stop gap arrangement only due to the non-availability of candidates for direct recruitment/deputation cannot be counted for seniority. They have also explained that the meetings of the D.P.Cs could not be held every year because of non-availability of vacancies in the promotion quota.

4. The applicants in their rejoinder have argued that seniority is a continuing phenomenon and their application cannot be held to be time barred. They have not, however, specifically stated that they had represented for reckoning their ad hoc service for the purpose of seniority but have relied upon the wording at Annexure A.VIII to urge that by implication their claim in the representation was to get the benefit of ad hoc service for seniority.

5. We have heard the arguments of the learned counsel for both the parties and gone through the document

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carefully. The question of counting continuous adhoc service prior to regularisation for the purposes of seniority has been under judicial review over more than last one decade. The most liberal interpretation was given by the Hon'ble Supreme Court in Narendra Chadha Vs. Union of India, AIR 1986 SC 638, where ad hoc continuous service of the promotees rendered in excess of the promotion quota and without specific approval of the UPSC was considered to be valid for purposes of seniority when the promotees are regularly promoted. In that case the argument in favour of the promotees was that they had been continuously officiating in the higher posts for 15 to 20 years discharging the same duties as regular appointees when the direct recruits had not entered service and were mere students/ and their period of such officiation & cannot be wiped off for the purpose of questioning seniority. A contrary view of the validity of ad hoc service rendered as stop gap arrangement for seniority was expressed by the Hon'ble Supreme Court in Smt. M.Nirmala Vs. State of A.P., SLJ 1987 (1) 98 wherein it was indicated that ad hoc service rendered as a stop-gap arrangement till regular candidates are appointed cannot count for seniority. In Ashok Gulati Vs. B.S.Jain, AIR 1987 SC 425 it was held that ad hoc service 'de hors' the rules/ does not count as qualifying service for seniority. In D.N.Agrawal and another Vs. State of M.P. and others, 1990 SCC (L&S) 314, it was held

that adhoc service rendered as Assistant Engineer on the administrative exigencies while promotee was still not eligible for promotion having not completed qualifying period of service will not count for seniority even though he was later selected by the D.P.C. on regular basis. In C.Radhakrishna Reddy and others Vs. State of A.P. and others, 1990 (1) SLR 136, the Hon'ble Supreme Court reiterated that service rendered by the promotee while holding the post in excess of the promotion quota even though subsequently regularised would not qualify for seniority and upheld the guidelines issued by the Government on that basis. In Masood Aktar Khan Vs. State of M.P. and others, JT 1990 (3) SC 295, Hon'ble Supreme Court upholding the order of the M.P. High Court held that where appointment is made without consulting the Public Service Commission as enjoined in the Rules, and as a stop-gap emergency arrangement pending regular selection by the Commission cannot qualify for seniority even though the words 'ad hoc' are not mentioned either in the advertisement or in the appointment letter. In that case the Hon'ble Supreme Court held that if the initial appointment is not made according to the Rules, subsequent regularisation of his service does not entitle an employee to the benefit of intervening service for seniority. The final seal of the Hon'ble Supreme Court on the question

of ad hoc service not counting for seniority was given in their Judgment dated 2nd May, 1990 in Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra and others, (1990) 13 ATC 348.

Surveying the entire field of judicial pronouncements
on the question, the Constitution Bench of the Hon'ble Supreme Court in that case held as follows:

"47. To sum up, we hold 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 uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(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.

- (G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.
- (H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.
- (I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.
- (J) The decision relating with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position."

In the instant case before us it is admitted that the applicants were appointed on an ad hoc basis without being screened by the D.P.C. as laid down in the Rules and that too in excess of the promotion quota. Accordingly, in accordance with corrolary to Clause (A) of the Hon'ble Supreme Court's conclusions as quoted above, the ad hoc service of the applicants cannot be taken into account for seniority. For the same reason Clause (E) cannot give any benefit to the applicants because the appointment of the applicants in excess of the promotion quota were not made after following the procedure prescribed by the Rules even though we presume that the quota rule in this case had broken down. The question, however, is whether the applicants in this case can get any benefit out of Clause (B) of the Hon'ble Supreme Court's conclusion as cited above. According to that clause if the appointee continues in the post uninterruptedly till regularisation

the period of pre-regularisation service will count for seniority even "if the initial appointment is not made by following the procedure laid down by the Rules." The intention behind this finding is available in para 13 of the text of the Judgment of the Constitution Bench. In that para it was observed that "But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his services in accordance with the Rules made for regular substantive appointment, there is no reason to exclude the officiating service for the purpose of seniority." Since in the instant case the ad hoc promotions were made in administrative exigency and without holding the meeting of the D.P.C. it cannot be said that in making ad hoc promotions claims of all eligible candidates were considered. For instance, in the Seniority List of Assistant Directors at Annexure-A.6 it is found that Shri R.S.Chadha who is at the top of the Seniority List commencing from Sl. No.199 was confirmed as Extra Assistant Director on 2.12.71 whereas Shri S.P.Kapur at Sl.No.225 was so confirmed on 16.9.72. Thus even in the lower grade of E.A.D. Shri Chadha was senior to Shri Kapur but whereas Shri Chadha was promoted for the first time in the grade of Assistant Director on 8.8.67, Shri Kapur his junior

in the lower grade of E.A.D got the officiating ad hoc promotion earlier i.e., 20.5.63. Such examples can be multiplied. Thus it cannot be said that apart from non-observance of the Rules, even the procedure of considering/all eligible candidates was followed while making the ad hoc promotions. Accordingly the applicants cannot reckon ad hoc service in this case for the purpose of seniority. The inter se seniority having been fixed in 1980, in accordance with Clause (J) of the Constitution Bench's finding, we see no good reason to unsettle the settled position of seniority. We have gone through the representation which the applicants had made as at Annexure A.IX (collectively) and find that there is nothing to show that they had sought reckoning of their ad hoc service for the purpose of seniority. They cannot at this stage be permitted to reopen their seniority to which they had long been reconciled.

6. In the facts and circumstances, we see no merit in the application and dismiss the same. There will be no order as to costs.

Deo 9.1.91
(T.S. OBEROI)
MEMBER (JUDICIAL)

S.P.M.
(S.P. MUKERJI)
VICE CHAIRMAN