

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 248/1987.
T.A. No.

199

DATE OF DECISION 21.10.1992.

V.K. Srivastava

Petitioner

Shri G.D. Gupta,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondents

Shri M.L. Verma

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice V.S. Malimath, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Y/N*
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 ?

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN
21.10.1992.

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CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH: CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A):

For the Petitioner. Shri G.D. Gupta, Counsel.

For the Respondents. Shri M.L. Verma, Counsel.

JUDGEMENT (ORAL)

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

The petitioner in this case was promoted by Order dated 30.7.1980 in the office of the Regional Cement Controller(Delhi) to the post of Section Officer on an ad hoc basis for a period of six months w.e.f. 1.8.1980 or till the post of Port Officer is operative, whichever is earlier vice Shri P.C. Gautam appointed as Port Officer. The order further states that the promotion has been ordered on administrative convenience and in public interest and it does not confer on him any right to seniority or for continuance in the post on a long term basis or to any such promotion in future. It is stated that the ad hoc appointment was further extended from time to time and the petitioner continued to serve uninterruptedly. Thereafter, an order came to be made on 29.5.1982 appointing the petitioner as Section Officer on an officiating and regular basis with effect from 28.5.1982. This was done after the

case of the petitioner was examined and recommended by the D.P.C. It is not disputed that the post of Section Officer is a region-wise post. The next promotional post it appears is a post which is available to be filled up on all India basis. It is for that reason that the seniority list of Group 'A' Officers as on 31.8.1983 of the Section Officers was prepared. The same is produced as Annexure IV. The name of the petitioner Shri V.K. Srivastava is to be found at Serial No. 5 of the Seniority List. Shri I. Banerjee and Shri J.L. Dawar are placed at Serial No. 3 and 4 respectively. They belong to other regions. A complaint having been made about the ranking given in the seniority list by the petitioner, the same was examined and ultimately rejected on 16.3.1985. It is in this background that the petitioner has approached the Tribunal for several reliefs. He has inter alia challenged the seniority list as also the promotion of Respondents 3 and 4 on the basis of the impugned seniority list. He has also prayed for consideration of his case for promotion from the dates on which Respondents 3 and 4 were promoted to higher positions and for consequential benefits.

2. The principal contention of Shri Gupta, learned counsel for the petitioner, is in regard to determination of petitioner's seniority. The seniority of the petitioner as Section Officer has been counted from 28.5.1982 when he was promoted as Section Officer on an officiating and regular basis after his selection by the D.P.C. What is contended on behalf of the petitioner is that the petitioner's seniority in the cadre of Section Officer should be counted from 1.8.1980 the date on which he was appointed as Section Officer on an ad hoc basis in the Delhi Region. It is his case that

if his seniority is reckoned from 1.8.1980, the same has to be reflected in the all India seniority list prepared as per Annexure IV. Hence, the principal question for consideration is as to whether the petitioner is right in maintaining that he is entitled to count his seniority from 1.8.1980, the date on which he was appointed on an ad hoc basis and from which date he is continuously in service without interruption until his regular appointment was made after selection by the D.P.C. on 28.5.1982.

3. The submission made by Shri Gupta, learned counsel for the petitioner, is that the initial appointment of the petitioner though on ad hoc basis was made on consideration of the cases of the eligible persons that were available in the region for consideration for promotion to the post of Section Officer. It was pointed out that the petitioner was the only person who was eligible on the date of his ad hoc appointment in the Delhi Region. It was further pointed out that the petitioner has continued in service uninterruptedly from 1.8.1980 and has rendered satisfactory service. It was pointed out that nearly 2 years after the petitioner's ad hoc appointment, his case was placed before the D.P.C. for regular selection and appointment. The D.P.C. after examining his case found him fit for regular promotion. He was, therefore, promoted on 28.5.1982. Having regard to this factual position, it was contended that the petitioner is entitled to count his seniority not from 28.5.1982 but from 1.8.1980. Shri Gupta, learned counsel for the petitioner, submitted that the claim of the petitioner is fully supported by the decision of the Supreme Court in the case reported in JT 1990(2)SC 264 between **The Direct Recruit Class II Engineering Officers' Association and Others Vs. State of Maharashtra and Others.** As the said decision

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is by a Constitution Bench of 5 Judges, it is obvious that we are bound by the law laid down by the Supreme Court in the said decision. Shri Gupta, learned counsel for the petitioner, relied upon the proposition (B) in support of his contention, as laid down by the Supreme Court which reads:

"If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues to the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted".

The relevant discussion in regard to this aspect of the matter is to be found in paragraph 13 of the judgement which may be extracted as follows:

"When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan's case was unsound and fit to be over-ruled, but no attempt was made to substantiate the plea. We were taken through the judgement by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality, spelt out by articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without

considering the claims of all the eligible - available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. 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 service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary. This principle has been followed in innumerable cases and has been further elaborated by this Court in several judgements including those in Baleshwar Dass Versus State of U.P. and others (1981)1 SCR 449 and Delhi Water Supply and Sewage Disposal Committee and others Versus R.K. Kashyap and others:(1989) Supp. 1SCC 194, with which we are in agreement. In Narender Chadha and others versus Union of India and others: (1986) 1SCR 211, the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of articles 14 and 16. There is considerable force in this view also. 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".

It was submitted by Shri Gupta that the present case answers all the requirements of principle (B) laid down by the Supreme Court. He pointed out that the initial appointment of the petitioner was not made in accordance with the rules inasmuch as his case was not considered by the D.P.C. The condition that the appointee should continue in the post uninterruptedly in accordance with the rules is also satisfied. It was further pointed out that having regard to the fact that these conditions are satisfied, the period of officiating service of the petitioner from 1.8.1980 should count for the purpose of seniority. But then it is necessary for us to advert our attention to principle (A) laid down by the Supreme Court in the aforementioned judgement which reads:

"(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".

4. If the corollary to principle (A) laid down by the Supreme Court applies to the facts of this case, the petitioner would not be entitled to claim that the seniority should count from 1.8.1980. The conditions contemplated in the corollary to become applicable are that (i)

the initial appointment is ad hoc (2) that it is not according to rules and (3) that it is made as a stop gap arrangement. If these three conditions are satisfied the officiation in such post cannot be taken into account for considering the seniority. If these three conditions are satisfied in this case, it would follow that the petitioner would not be entitled to seniority from 1.8.-1980. The question for examination is as to whether the facts of this case are governed by the principle laid down in the corollary to clause(A) or the principle (B) laid down by the Supreme Court. If we examine the facts of this case with reference to corollary to Clause(A), it becomes clear that the first condition is satisfied inasmuch as the initial appointment of the petitioner was only ad hoc. The second condition is also satisfied inasmuch as the initial appointment was not according to rules. The third condition is also satisfied inasmuch as the appointment was made as a stop gap arrangement. We say that the appointment was made as a stop-gap arrangement for the reason that the petitioner came to be promoted w.e.f. 1.8.1980 in a fortuitous vacancy vice ad hoc promotion of Shri P.C. Gautam, the incumbent of the post of Section Officer in the region concerned. It is stated in the reply filed by the respondents that Shri Gautam was also appointed on promotion as Port Officer on ad hoc basis as there was no regular vacancy in which he could be promoted. He came to be regularly promoted as Port Officer only when the vacancy occurred on 5.2.1982. That is only when Shri Gautam came to be appointed on a regular vacancy being available in the promotional cadre.

✓ In other words, from 1.8.1980 until Shri Gautam was

promoted on a regular basis as Port Officer, there was no regular vacancy of Section Officer in the Region. The vacancy was only of a stop-gap nature. It was not a regular vacancy. As it was not a regular vacancy, none could have thought of filling up the vacancy on a regular basis w.e.f. 1.8.1980 after getting the cases of the eligible persons examined by the D.P.C. The D.P.C. would be required to examine the cases and recommend for promotion only when an occasion arose for filling up the regular vacancies. That event took place only in February, 1982 when Shri Gautam secured a regular promotion. We have, therefore, no hesitation in holding that from 1.8.1980 to 5.2.1982 the vacancy of Section Officer in the Delhi Region was of a stop-gap character. It was not a regular vacancy. As the vacancy was only a stop gap vacancy, it follows that all the three conditions laid down in corollary to principle (A) are fully satisfied in this case. That being the position, the petitioner would not be entitled to count his seniority from 1.8.1980. The conditions mentioned in principle (B) may also appear to be fulfilled in this case inasmuch as the petitioner's original appointment on 1.8.1980 was not in accordance with the Rules and he continued in the post uninterruptedly. We must bear in mind that when the Supreme Court laid down the principles (A) and (B), it is ~~not~~ reasonable to understand the same as being mutually exclusive. If we read the two principles carefully it becomes clear that corollary to principle 'A' would be applicable when the ad hoc appointment is in vacancy of a stop gap character. Principle (B) would not come into play in cases where the vacancy is stop-gap. If the vacancy is of a stop-gap character, the corollary to the principle (A) comes into play which clearly says that where the

initial appointment is made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. We have, therefore, no hesitation in holding that on the facts of this case, it is corollary to principle (A) that is applicable for the reason that the appointment of the petitioner from 1.8.1980 to 27.5.1982 was only stop-gap in character. Hence, the petitioner is not entitled to claim seniority w.e.f. 1.8.1980. If the petitioner does not succeed on the question of seniority, his other contentions do not survive. It is, therefore, not necessary to examine the same.

5. For the reasons stated above, this petition fails and is dismissed. No costs.


(I.K. RASGOTRA)

MEMBER(A)


(V.S. MALIMATH)

CHAIRMAN

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