

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(7)

REGN. NO. O.A. 280/87

DATE OF DECISION: 20.8.1992

Shri K.D. Sharma.

.... Petitioner.

Versus

Union of India & Ors.

.... Respondents.

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

For the Petitioner.

.... Shri E.X. Joseph,
Counsel.

For the Respondents.

.... Shri P.P. Khurana,
Counsel.

JUDGEMENT (ORAL)

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

The petitioner has sought the following reliefs in
this petition filed under Section 19 of the Administrative
Tribunals Act, 1985:

- "(1) to issue writ and/or directions/to treat the applicant to be deemed to be continuously officiating in Grade IV of the Indian Economic Service with effect from the date of initial promotion to the Grade being 1.8.1980; and
- (2) to issue a direction to respondents to assign seniority to the applicant from the said date and for consequential benefits."

2. The facts giving rise to the petition are briefly stated as follows:

3. The petitioner was appointed as an Economic Investigator in the Ministry of Finance, Department of Economic Affairs. With effect from 1.8.1980 he was appointed on an ad hoc basis as Research Officer for a period of six months or till a regular officer is nominated by the Department of

Personnel & Training and Administrative Reforms, whichever is earlier. The petitioner's appointment appears to have been continued on an ad hoc basis from time to time and the last order in this behalf was made on 22.4.1982 appointing the petitioner as Research Officer on an ad hoc basis for the period from 1.4.1982 to 30.9.1982 or till the regular Grade IV Officer of the IES is nominated by the Department of Personnel and Administrative Reforms, whichever is earlier. The petitioner came to be reverted to the regular post of Economic Investigator w.e.f. 14.9.1982 on Shri P.M. Saxena, Research Officer, being posted in his place on his repatriation from deputation. The petition seeking the aforesaid relief came to be filed on 19.2.1987. On the face of it, the petition is hit by the provisions of sub-section (2) of Section 21 of the Act, the same having been filed beyond a period of three years from the date of cause of action. It is for this reason the petitioner has pleaded certain other facts which are necessary to be adverted to.

4. On 5.12.1979 Narender Chadha had filed a Writ Petition No. 1595/1979 in a representative capacity. Their principal grievance before the Supreme Court was that though they have continued in Grade IV of the IES for the periods from 15 to 20 years, they are being treated only as ad hoc appointees and thereby denying their right

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to continue in service. The said petition was allowed by the Supreme Court and certain directions were issued having regard to the peculiar facts of the case. The Supreme Court directed (i) ^{the} Union of India to treat all persons who are stated to have been promoted in that case to several posts in Grade IV in each of the two services contrary to the rules till then as having been regularly appointed to the said posts in Grade IV under Rule 8(1)(a) (ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts. The Supreme Court made it clear that those promotees who have been selected in 1970, 1982 and 1984 shall be assigned seniority with effect from the dates on which they commenced to officiate continuously in the posts prior to their selection. The Supreme Court further made it clear that for purposes of seniority the dates of their selection shall be ignored. Certain other directions were also issued in regard to preparation of the seniority list. During the pendency of the Narendar Chadha's case, the Supreme Court had passed an order on 5.4.1982 that the promotees shall not be reverted during the pendency of the writ petition. As already stated, the petitioner came to be reverted on 14.9.1982. It is in the light of the

interim order passed by the Supreme Court on 5.4.1982 prohibiting reversion of promotees that the petitioner complained before the Supreme Court against his reversion by filing a Civil Misc. Petition as also a petition for taking action under the Contempt of Courts Act. Though these petitions were filed before the judgement was rendered in Narender Chadha's case, it appears that no orders were passed on these petitions. The Supreme Court ultimately passed an order on 12.1.1987 after the judgement was rendered in Narender Chadha's case as follows:

"No orders are necessary on the Civil Miscellaneous Petitions. It is open to the petitioners to raise the points urged before us, if so advised in separate applications before the Central Administrative Tribunal.

Same order in the contempt petition. Accordingly, all CMPs are disposed of".

It is clear from this order of the Supreme Court that there was no direction to the Tribunal to treat the applications as Original Application filed by the petitioner under Section 19 of the Act and to dispose of the same on merits. All that the Supreme Court has observed is that it is open to the petitioners to raise the points urged before them, if so advised, in separate applications before the Tribunal. In other words, it was left to the petitioner to work out his rights, if so advised, by approaching the

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Tribunal. Hence it is not possible to accept the argument of Shri Joseph, learned counsel for the petitioner, that there is a direction of the Supreme Court to entertain the present application whether or/we have jurisdiction to entertain the same and whether or not it is within time.

5. The cause of action accrued in favour of the petitioner when he came to be reverted on 14.9.1982. The petition having been filed on 19.2.1987, it is obvious that it is hit by sub-section(2) of Section 21 of the Act as the Tribunal cannot entertain an application in respect of a matter in which cause of action accrued beyond a period of three years from 1.11.1985, the date of constitution of the Tribunal. But it was maintained by Shri Joseph, learned counsel for the petitioner that it is a case of recurring cause of action. It is not possible to accede to this contention. The grievance is in regard to reversion of the petitioner in 1982 and to his claim for regularisation. It is also not possible to accede to his contention that he is entitled to claim the benefit of the judgement of the Narender Chadha's case for the reasons to be stated presently.

6. Though the Narender Chadha's case is a representative action, it is necessary to bear in mind that the writ petition was filed on 5.12.1979. The grievance of the petitioner in that case is that persons who have put in 15 to 20 years of service on ad hoc basis are not being regularised

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and are being continued only on ad hoc basis. It is only having regard to these facts that the Supreme Court interfered in the said case and issued certain directions to treat such persons as having been regularly appointed to the said posts in Grade IV. The clear effect of the judgement of the Supreme Court is to confer benefit on those persons who had put in 15 to 20 years of service as on the date on which the writ petition was filed on 5.12.1979. Obviously, the Supreme Court was not required to examine the claims of those persons who for the first time became ad hoc appointees after filing of the writ petition, as in the present case. The petitioner came to be appointed on an ad hoc basis on 1.8.1980 nearly 9 months after the writ petition was filed in Narender Chadha's case. It is also necessary to bear in mind that the Supreme Court was persuaded to allow the petition in Narender Chadha's case having regard to the special facts and circumstances, namely, large number of persons were continuing on ad hoc basis from 15 to 20 years. The Supreme Court in the circumstances from the conduct of the Government drew the inference that the persons must be deemed to have been regularised in relaxation of the relevant rules. So far as the petitioner is concerned, no such situation has arisen. He was appointed only on 1.8.1980 on an ad hoc basis and he was reverted on 14.5.1982. We, therefore, have no hesitation in holding that the petitioner cannot take advantage of the judgement of the Supreme Court in Narender Chadha's case, firstly, for the reason that he was

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not an ad hoc appointee as on the date on which the writ petition was filed, and, secondly, for the reason that there was no direction in the judgement of the Supreme Court to confer such benefits to those persons who were appointed on ad hoc basis after the filing of the writ petition in Narender Chadha's case. Though there is no doubt reference in paragraph 23 that even those promotees who have been selected in 1970, 1980 and 1984 shall be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to their selection, it does not refer to the ad hoc appointments made in these years. The Supreme Court directed that such promotees, who have been selected in the years 1970, 1982 and 1984, shall, for the purpose of seniority, which have the benefit of the dates from they were continuously holding the post on ad hoc basis and not from the dates on which they were regularly appointed and, thirdly, for the reason that the Supreme Court gave directions in favour of those who were continuing in service for 15 to 20 years on an ad hoc basis and did not issue any direction to regularise services of those who had put in comparatively a short period of 2 to 3 years of service, as in the present ^{case} We have, therefore no hesitation in taking the view that the petitioner cannot, on the strength of the judgement of the Supreme Court in Narender Chadha's case, claim regularisation of his service. So far as the interim order of the Supreme Court is concerned, it is necessary to point out that it was passed in favour of the petitioners in the writ petition, as they were holding

the post in Grade IV on ad hoc as on the date of the filing of the writ petition. As far as the petitioner is concerned, he came to be appointed for the first time long after the filing of the writ petition, namely, on 1.8.1980. Hence, the petitioner was not governed by the interim order. That is also one of the contentions taken by the respondents in the reply filed before the Supreme Court in this connection. Besides, it is necessary to point out that the Supreme Court as an interim measure directed not to effect any reversion. Though there was reversion of the petitioner in this case, it is obvious that even if the order of reversion is ignored, the petitioner would have continued in Grade IV on the strength of the appointment made in his favour only till 30.9.1982. At least with effect from 30.9.1982 the petitioner would have reverted back as Economic Investigator. The reversion would have, therefore, taken effect automatically and not because of any order and no order of reversion would become necessary. This is an additional reason for taking the view that the interim order would not come to the aid of the petitioner.

7. For the reasons stated above, this petition fails as it is barred by sub-section(2) of Section 21 of the Administrative Tribunals Act, and is dismissed. No costs.

Malhotra
(I.K. MALHOTRA)
MEMBER(A)

SRD
210892

Malhotra
(V.S. MALINATH)
CHAIRMAN