

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. O.A. 486/87.

DATE OF DECISION: 8.9.1992

Suresh Kumar 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 G.D. Bhandari,
Counsel.

For the Respondents.

... Shri P.S. Mahendru,
Counsel.

JUDGEMENT (ORAL)

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

The petitioner Suresh Kumar Sharma started his career as Assistant Station Master in the scale of Rs.330-560 and in due course got promotion to the next cadre in the scale of Rs.425-640 in 1982. The next promotion which he could aspire was that of Section Controller in the grade of Rs.470-750 to which post the petitioner was appointed on purely temporary ad hoc basis as per Annexure A-1 dated 21.7.1984. He actually reported to duty on 15.10.1984. It is an admitted case of the petitioner that as per the existing rules, the post of Section Controller is required to be filled up by the process of selection from different categories for which different quotas have been allocated. It is also not disputed that temporary and ad hoc appointment was made and it was not on the basis of any selection process. The selection process consists of a written test and viva voce. For the purpose of

making a selection for promotion to the post of Section Controller, applications were invited and the petitioner offered himself as a candidate. He took the test and did fairly well in the written test. He was also orally examined but in the panel that was ultimately prepared, the petitioner's name was not included. He was, however, continued on ad hoc basis. It is brought to our notice that during the pendency of these proceedings another selection was held and the petitioner appeared in the test and he was duly empanelled. In pursuance of that empanelment in the panel, he was given regular promotion to the post of Section Controller in the year 1988. It is in this background that we have to examine the claim of the petitioner, firstly, for empanelment of his name in the panel that was prepared in pursuance of the selection held in the year 1986 and, secondly, in regard to regularisation of his services with effect from the date on which he was originally appointed on an ad hoc basis.

2. So far as the claim of the petitioner for his empanelment in the first panel in the year 1986 is concerned, the contention of Shri Bhandari, learned counsel for the petitioner, is that he having secured first rank in the written test, he fails to see how ^{he} could not be empanelled in the panel on the basis of the viva voce. In the reply it is stated that so far as the empanelment of the petitioner in the panel prepared in the year 1986 is concerned, none of the juniors to the petitioner

have been empanelled in the panel except two Scheduled Caste candidates. It is their case that the empanelment was made in accordance with the proper selection made by the concerned authorities. As the selection test consisted of both the written test as well as viva voce, the empanelment of the petitioner did not depend solely on the performance of the written test. It is taking into account his performance in the viva voce in addition to his performance in the written test that the empanelment had to be made. No materials have been placed before us justifying an inference that the selection was arbitrary or mala fide. In this background, it is not possible to take the view that non-empanelment of the petitioner in the year 1986 suffers from any illegality justifying the interference. It is, therefore, not possible to direct the respondents that the petitioner's name should be empanelled in the panel prepared in the year 1986.

3. So far as the claim of the petitioner for granting him seniority from the date of his original appointment in the year 1984 is concerned, the question stands concluded by the decision of the Supreme Court. A Constitution Bench of the Supreme Court has ruled in JT 1990(2)SC 264 between Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Others 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 a post cannot be taken into account for considering the seniority

This decision was followed subsequently in another decision of the Division Bench of the Supreme Court in JT 1992(2) SC 491 Union of India Vs. Sh. S.K. Sharma, Professor of Civil Engineering Punjab Engineering College, Chandigarh. The law is, therefore, well settled that if the initial appointment is only ad hoc and not made according to rules and made as a stop-gap arrangement, that service cannot be taken into account for considering the seniority. As the petitioner was appointed on purely ad hoc basis and this was a stop-gap arrangement pending filling up the post on a regular basis in accordance with the rules after holding a proper test for that purpose, we have no hesitation in holding that the petitioner cannot claim seniority from the date of his ad hoc appointment in the year 1984. He can, however, claim his seniority from the date on which he was regularly selected in the year 1988. Hence, it is not possible to grant the second relief either.

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

SRD
090992

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

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