

(4)

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.928/87

Date of decision: 26.11.1992.

Smt. Raj Rani Sharma

...Petitioner

Versus

Union of India through the
Secretary, Department of Economic
Affairs (Ministry of Finance),
North Block, New Delhi & Another

...Respondents

Coram:-

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

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

For the petitioner Shri R.K. Saini, Counsel.

For the respondents Shri P.P. Khurana, Counsel.

Judgement(Oral)

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

Shri S.P. Sharma (petitioner's husband)

joined service on 1.11.1961. He was promoted as
ad hoc Research Officer Grade-IV on 14.9.1964. He
was reverted on 12.3.1965. Again he was promoted
on ad hoc basis on 24.5.1965 and reverted on 9.7.1965.
He was again promoted on ad hoc basis on 5.3.1966
and continued to hold the post on ad hoc basis from
that date until he died on 7.12.1978. This petition
has been filed by his widow, Smt. Raj Rani Sharma
on 3.7.1987 in which she has prayed for a direction
to the respondents to include the name of the
petitioner's husband in the revised Grade IV list
at a proper place and for a further direction to
✓ the respondents to include her husband's name in

the promotion list in Grade III of the Indian Economic Service and for payment of the monetary benefits flowing from the same. The relief has been claimed in the light of the direction issued by the Supreme Court in the judgement rendered in AIR 1986 SC 638 between **Narender Chadha and Others vs. Union of India and Others**. That Shri Sharma was continuously officiating on ad hoc basis from 5.3.1966 till he died on 7.12.1978 stands admitted by the petitioner even though the stand taken in the Original Application is filed by her/that the date of continuous officiation started from 14.9.1964 itself. We shall, therefore, proceed on the basis that the continuous officiation started from 5.3.1966. In pursuance of the directions issued in **Narender Chadha** (supra) case seniority list has been prepared and review of promotions has also been undertaken and the benefit of seniority and review has been accorded to the persons concerned. So far as Shri Sharma is concerned, his name does not find a place either in the seniority list of Research Officer Grade - IV or in the list of promotees prepared in accordance with the directions in the judgement. It is in this background that the petitioner has come forward with this case,

stating that the action, taken by the respondents in not considering the case of the petitioner for inclusion in the seniority list and the promotion list is not in accordance with the directions issued by the Supreme Court in **Narender Chadha** (supra) case. We have, therefore, to examine as to whether the petitioner is right in this behalf.

2. Reliance was basically placed on paragraphs 23 and 24 of the judgement of the Supreme Court in the case of **Narender Chadha** (supra) which contain the operative portion of the directions issued. They reads as follows:-

"23. Having given our anxious consideration to the submissions made on behalf of the parties and the peculiar facts present in this case we feel that the appropriate order that should be passed in this case is to direct the Union Government to treat all persons who are stated to have been promoted in this case to several posts in Grade IV in each of the two services contrary to the rules till now as having been regularly appointed to the said posts in Grade IV under R.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. Even those promotees who have been

selected in 1970, 1982 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. For purposes of seniority the dates of their selection shall be ignored. The direct recruits shall be given seniority with effect from the date on which their names were recommended by the Commission for appointment to such grade or post as provided in Cl.(a) of R.9-C of the Rules. A seniority list of all the promotees and the direct recruits shall be prepared on the above basis treating the promotees as full members of the Service with effect from the dates from which they are continuously officiating in the posts. This direction shall be applicable only to officers who have been promoted till now. This is the meaning of the direction given by the Court on February 1, 1984 which stated, 'we wish to make it clear that there is no question of any rotation system being applied under the Rules, as they exist now.' All appointments shall be made hereafter in accordance with the Rules and the seniority of all officers to be appointed hereafter shall be governed by R.9-C of the Rules.

24. We are informed that some of the promotees and direct recruits who are governed by this decision have been promoted to higher grades. If as a result

of the preparation of the seniority list in accordance with the decision and the review of the promotions made to higher grades any of them is likely to be reverted such officer shall not be reverted. He shall be continued in the higher post which he is now holding by creating a supernumerary post, if necessary, to accommodate him. His further promotion shall however be given to him when it becomes due as per the new seniority list to be prepared pursuant to this decision. There shall, however, be a review of all promotions made so far from Grade IV to higher posts in the light of the new seniority list. If any officer is found entitled to be so promoted to a higher grade he shall be given such promotion when he would have been promoted in accordance with the new seniority list and he shall be given all consequential financial benefits flowing therefrom. Such review of promotions shall be completed within three months and the consequential financial benefits shall be paid within three months thereafter. In giving these directions we have followed more or less the directions given in P.S. Mahal v. Union of India, (AIR 1984 SC 1291) (supra)."

3. Our attention was drawn by Shri Saini, learned counsel for the petitioner to the direction given in paragraph-23 which directs the Government to treat all persons who are stated to have been promoted in this case to several posts in Grade-IV in each of the two services contrary to the rules as having been regularly promoted. The directions in paragraph-24 need not detain us, as they are consequential directions for the purpose of review of promotions to be made in accordance with the seniority list to be prepared as per the directions in paragraph-23. It is urged by Shri Saini, learned counsel for the petitioner that when the Supreme Court directed that all persons who are continuously officiating in the posts should be treated as having been promoted regularly to the said cadre and appropriate ranks assigned to them in the seniority list, it did not contemplate exclusion of persons like Shri Sharma who had died or others who had retired or otherwise left service before the writ petition was filed in the year 1979 in which the aforesaid directions were issued by the Supreme Court. On a careful perusal of the said judgement we do not find any expression in the judgement which can be regarded as having on consideration of the cases of those persons like

Shri Sharma who had died before the writ petition was filed. Emphasis is laid on the directions contained in paragraph-23 which directs the Government to treat all persons who have been continuously officiating in the posts in a particular manner. It was contended that all persons who were similarly situated viz. who are appointed on ad hoc basis and have continued for long number of years are to be treated in the same manner. It was urged that the Supreme Court has not made any distinction between those who were in service on the date of filing of the writ petition and those who have ceased to be in service at that time. In the absence of clear and specific consideration of the case of those who had died or retired before the filing of the writ petition, and, there being no clear and express direction dealing with such persons, it becomes necessary to gather as to whether the Supreme Court intended to confer the benefit of its directions not only to those who were parties to the writ petition but also to those who had died or retired before filing of the writ petition. This takes us to the examination of the relevant observations in the judgement and the surrounding circumstances.

4. It is necessary to bear in mind that ordinarily relief is granted by a Court to parties who are before them or those who have brought the lis before

the Court. This is a case which was filed by the ad hoc holders of Grade IV posts in a representative capacity, invoking Order 1, Rule 8 of Code of Civil Procedure. That is clear from the statement in paragraph-1 of the judgement. As action is a representative one, the inference to be drawn is that all persons who belong to that category viz. ad hoc employees who were in service on that date must be deemed to have been parties as petitioners to the said case even though they were not ^{named as} parties, the proceedings have been instituted in a representative capacity. The persons who had died before the action was brought, cannot be regarded as having been represented in such a representative action. This is one aspect which has to be borne in mind. Another aspect to be borne in in mind is that this is not a case in which the Supreme Court granted relief on the basis of any statutory provision. This is not a case in which the Supreme Court took the view that any right conferred on ^a class of employees under any statutory provision or conditions of service has been denied to them. This is not a case of enforcing a pre-existing right of the petitioners in regard to the conditions of service. This is a case in

which the Supreme Court was impressed by the enormity of the problem flowing from continuing in service of large number of ad hoc employees for 15-20 years without an attempt being made to regularly appoint persons into service. It is because of the peculiar facts and circumstances of the case that the Supreme Court issued certain directions. In our opinion, the judgement in **Narender Chadha** (supra) case confers certain rights on the ad hoc employees which rights they did not otherwise enjoy under the statutory provisions or conditions of service. As certain rights and benefits were sought to be conferred in this background by the Supreme Court, it becomes necessary to examine carefully as to who were the persons that were in the mind of the Supreme Court for conferring certain benefits by their directions. It is necessary to point out that there was none who presented the case of persons like Shri Sharma, who had died long before the writ petition was filed before the Supreme Court. Hence, there was no occasion for the Supreme Court to examine as to whether any relief should be granted to such persons, and if so, to what extent. What is, however, relied upon by the learned counsel for the petitioners


is the language of the directions which is contained in paragraph-23 which adverts to relief being granted to all persons who were continuously officiating in the post concerned. It is also necessary to note that the Supreme Court was largely impressed by the fact that they were dealing with the ad hoc holders of Grade IV posts who had put in 15-20 years of service on ad hoc basis. The Supreme Court has adverted to this aspect in more than one place in the judgement. It is this long length of service which was rendered by the persons concerned that largely influenced the decision of the Supreme Court.

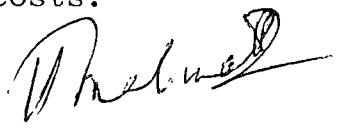
5. It was rightly asked by Shri Khurana, learned counsel for the respondents in the context as to whether the Supreme Court can be regarded as having conveyed that relief was granted to every one who died long before the filing of the writ petition, whether ^{he died} / a few years before the filing of the writ petition or even before a decade of the filing of the writ petition. He, therefore, submitted that having regard to the context the attention of the Supreme Court was ^{not} invited to the cases of those who had died before the filing of the writ

petition. Now, if we look at the extract of the judgement in writ petition No.1595 of 1979, which was first rendered on 1.2.1984, in paragraph-1 of the reported judgement we find that reference is made specifically to the petitioners. In paragraph-7 of the reported judgement there is reference to all those promotees who have been holding the posts continuously till now without being reverted. This expression, obviously, does not cover the persons who had died before the filing of the writ petition in the year 1979. In paragraph-10 of the judgement the Supreme Court has adverted to the petitioners who have been holding the post for nearly 15-20 years. Here emphasis is on the petitioners. In paragraph-14 of the judgement it is observed that "it is significant that neither the Government has issued orders of reversion to their former posts nor has anybody so far questioned the right of the petitioners to continue in the posts which they are now holding." Hereagain, the emphasis is on the petitioners. In paragraph-17 of the judgement this is what is stated "the continuance of these petitioners may be justified on the basis of the above quoted R.16 on the assumption that the Government had relaxed the Rules and appointed them to the posts in question to meet the administrative requirements." Hereagain, the emphasis is

on the petitioners. Bearing all these observations in mind and the circumstances discussed earlier, we are inclined to take the view that the Supreme Court when it issued directions, as contained in paragraphs 23 and 24 did so in respect of the petitioners who were before the Court in the representative action. A special benefit was being conferred by the judgement of the Supreme Court for the first time. It is not possible to take the view that confining the relief to the petitioners viz. all ad hoc employees who are in service on the date of filing of the writ petition and who had been continuously officiating in service would be arbitrary or that the choosing of the date of filing of the writ petition is irrelevant.

6. For the reasons stated above, we hold that Shri Sharma was not entitled to the benefit of the directions of the judgement of the Supreme Court, as the directions must be understood as being confined to all ad hoc employees who were in service as on the date of filing of the writ petition and who had been continuously officiating on ad hoc basis in the posts concerned. That being the position, it is not possible to grant any relief to the petitioner. This petition fails and is dismissed. No costs.


(I.K. RASGOTRA)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN