

Central Administrative Tribunal
Principal Bench
Delhi

(5)

Regn. No. OA 978/1987

Date of decision 9-7-1990.

Shri N.N. Chakraborty & Another ... Applicants
vs

Union of India ... Respondent

Coram: Hon'ble Shri Justice Amitav Banerji, Chairman.
Hon'ble Shri M.M. Mathur, Member(A)

For the applicants ... Shri N.L. Duggal,
counsel.

For the respondent Shri M.L. Verma,
counsel.

(Judgement of the Bench delivered by
Hon'ble Shri Justice Amitav Banerji, Chairman)

The two applicants, Shri N.N. Chakraborty and Shri K.K. Agarwal have filed the present Application under Section 19 of the Administrative Tribunals Act, 1985 praying that the entire period of continuous service rendered by the applicants as Superintending Engineers w.e.f. 10.1.1978 be considered as regular service in the grade of Superintending Engineer. They are aggrieved by the provisional seniority list of Superintending Engineers as on 1.7.1986 (Annexure IA). In the above list, the applicants are shown as having been appointed as Superintending Engineer w.e.f. 23.4.1986 although they had continuously officiated as Superintending Engineer from 10.1.1978 to 22.4.1986 which, according to them, has been ignored. In other words, the applicants want their seniority to be determined as on 1.7.1986

taking into consideration their entire officiating period from 1978.

There is no dispute on the facts in this case in regard to the date of appointment and date of officiation from 10.1.1978 onwards as Superintending Engineers. The only question, therefore, is whether this period of continuous officiation from 10.1.1978 to 26.4.1986 is to be taken into consideration in fixing the seniority.

Shri N.L. Duggal, learned counsel for the applicants stated that there is a catena of decisions of Supreme Court which supports the view that the entire period of officiation is to be taken into consideration in fixing seniority.

Learned counsel for the respondent, Shri M.L. Verma contended that the applicants were promoted as Superintending Engineer w.s.f. 10.1.1978 on an ad hoc basis and this period of ad hoc service rendered by an officer does not count for the purpose of seniority and does not confer any right on him for promotion to the next grade.

We have heard learned counsel for the parties. In our opinion, it is not necessary to refer to any other decision except the latest decision of the Supreme Court in the case of The Direct Recruit Class II Engineering Officers' Association and Others vs. State of Maharashtra & Others (JT 1990(2) SC 264). In this case the Constitution

Bench of the Supreme Court observed:

"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 judgment 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. 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 judgments including those in Baleshwar Dass vs. State of U.P. and others: (1981) 1SCR 449, and Delhi Water Supply and Sewage Disposal Committee and others vs. R.K. Kashyap and others: (1989) Supp. ISCC 194, with which we are in agreement. 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."

Their Lordships summed up the conclusions in separate paragraphs. It will be relevant to reproduce Paras (A) & (B) as under:

(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.

It is, therefore, evident from the above that a person who has been initially appointed on an ad hoc basis according to rules is entitled to count his seniority from the date of his appointment and not from the date of his confirmation. There is nothing in the reply to show that the initial appointment to the promoted post of Superintending Engineer was not made in accordance with Rules or was a mere stop-gap arrangement. Consequently, the respondents cannot take the advantage of the second proviso to para (A) in the above judgment by the Supreme Court. Even if the initial appointment is not by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of the service in accordance with the rules, the period of officiating service will be counted according to para (B). In this view of the matter, both the applicants are entitled to claim that the entire period of officiation from 10.1.1978 to 22.4.1986 would also count towards determining their seniority. The matter is thus concluded in favour of the applicants.

In view of the above, we are of the view that the respondent should be directed to count the entire period of continuous service rendered by the applicants as Superintending Engineer w.e.f. 10.1.1978 to 22.4.1986 for all purposes including seniority, as regular service in the grade of Superintending Engineer. We order accordingly. The O.A. is allowed but there will be no order as to costs.

(M.M. MATHUR)
MEMBER (A) 9/7/91

(AMITAV BANERJI)
CHAIRMAN.