

16.

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-1165/87

Date: 4.5.1989.

Shri K.V. Vijaya Babu & Ors. Applicants

Versus

Union of India & Others Respondents
For the Applicants Shri R.L. Sethi, Advocate
For the Respondents Shri O.N. Moolri, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri M.M. Mathur, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes

2. To be referred to the Reporter or not? No

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The question whether ad hoc appointment followed by regular appointment relates back to the date of initial appointment for the purpose of seniority, has been raised in this application filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985.

2. The applicants were recruited as Artisan Khalasis in the Railways on various dates from 1974 to 1977. They passed the prescribed trade test and were declared suitable as Electric Fitters and thereafter, were appointed to officiate as Electric Fitters on ad hoc basis w.e.f. 22.12.1979. These appointments were subsequently regularised by order dated 21.2.1983.

3. The next channel of promotion of the applicants is to the post of Electric Fitter, Grade II on the basis of passing the prescribed trade test. Entry to the trade test is on the basis of seniority as Electric Fitter.

4. The applicants have stated that as the chances of promotion for the category of Staff in Delhi Division (where they are working) were scanty and meagre because Railway electrification has only been done upto Delhi, the respondents have decided by their letter dated 17.4.1980 that Electric Fitters of the Delhi Division will have combined seniority with their counterparts in Allahabad Division. The Allahabad Division have regularised the temporary ad hoc appointments vide letter dated 21.2.1983 but no steps have been taken to issue the combined seniority list despite repeated requests.

5. In the above factual background, the applicants have prayed that the respondents should be directed to finalise the seniority list of Electric Fitters by assigning the applicants their due seniority and that the applicants be allowed to take the prescribed trade test for promotion to the post of Electric Fitters Grade II and if found suitable, their names be interpolated at the appropriate place above their next immediate juniors similarly placed.

6. The application was admitted on 21.8.1987. On 14.6.1988, after hearing the learned counsel for both the parties, a Bench of this Tribunal had passed an order directing the applicants to file representations against the seniority list and the respondents were directed to dispose them of within a month of the receipt of their representations. While disposing of the representations, the respondents were directed to take into account the various rulings of the Supreme Court, High Courts, and the Tribunal regarding counting of ad hoc service for the purpose of seniority. Accordingly, the applicants submitted their representations but no action has been taken by the respondents in this behalf.

On

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7. The respondents have filed their counter-affidavit in which they have contended that the combined seniority list is under preparation and has been finalised. They have further contended that the applicants are juniors and not eligible for promotion, that no junior persons have been promoted, and that the judgements relied upon in the application regarding counting of ad hoc period of service for the purpose of seniority, are not applicable to the facts and circumstances of this case.

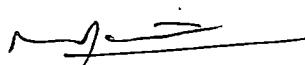
8. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. The respondents have not produced before us the combined seniority list which has been prepared and finalised by them. It is also not clear as to whether they have borne in mind the rulings of the Supreme Court, High Courts, and the Tribunal regarding counting of ad hoc service for the purpose of seniority.

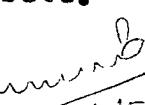
9. The legal position in this regard is well settled. If the first appointment is made by not following the prescribed procedure, but later on the appointee is approved, making his appointment regular, in the absence of a contrary rule, the approval which means confirmation by the authority which had the authority, power and jurisdiction to make appointment or recommend for appointment, will relate back to the date on which the first appointment is made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation (vide G.P. Doval Vs. Chief Secretary, Government of U.P., 1984 (4) S.C.C. 329 at 341; and Delhi Water Supply and Sewage Disposal Committee & Others Vs. R.K. Kashyap & Others, A.I.R. 1989 S.C. 279 at 284).

* It is needless to refer to numerous other rulings of the High Courts and the Tribunal in support of the legal position stated herein. *Ok*4...

10. In our opinion, the aforesaid rulings would apply to the facts and circumstances of the present case. Though the applicants were initially appointed to officiate on ad hoc basis, their officiation was continuous and they have also been regularised subsequently. Therefore, the ad hoc appointment followed by regular appointment would relate back to the date of initial ad hoc appointment.

11. In the light of the foregoing, we see merit in the reliefs sought by the applicants. We, therefore, direct that the respondents shall finalise the seniority list of the Electric Fitters on the principles laid down in the rulings referred to above. The applicants should also be allowed to take the prescribed trade test for promotion to the post of Electric Fitter, Grade II. If they are found suitable, their names should be interpolated at the appropriate place above their next immediate juniors similarly placed. The respondents shall comply with the above directions within three months from the date of communication of a copy of this order. The parties will bear their own costs.


(M.M. Mathur)
Administrative Member


4/5/89
(P.K. Kartha)
Vice-Chairman(Judl.)