

In the Central Administrative Tribunal
Principal Bench: New Delhi

RA No.79/92 in
OA No.1467/89

Date of Order: 05.11.92.

Union of India through ...Petitioners
the Director General, Council
of Scientific and Industrial Research & Anr.

Versus

P.D. Aggarwal & Others ...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Member(A)

For the petitioners Shri A.K, Sikri, Counsel.

For the respondents Shri B.B. Srivastava, Counsel.

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

The principal contention of Shri A.K. Sikri, learned counsel for the petitioners is that the view taken by the Tribunal is inconsistent with the settled law. It was submitted that the question of law involved in this case stand settled by the decisions of the Supreme Court in Masood Akhtar Khan v. State of Madhya Pradesh 1990 (4) SCC 24, D.N. Agrawal and another v. State of Madhya Pradesh and others 1990 (2) SCC 553 and in The Direct Recruit Class II Engineering Officer's Association and others JT 1990 (2) SC 264. It was submitted that all these decisions have been

reviewed in the latest judgement by the Supreme Court reported in 1992 (3) SLJ 7 between **Union of India and Anr. v. Sh. S.K. Sharma**. On the strength of these judgements it was contended that the Tribunal has wrongly understood the principles laid down by the Supreme Court in **Narender Chadha & Others v. Union of India & Ors. ATR 1986 (1) SC 49**. He relied on the observation in paragraph-7 of the latest judgement wherein the following observation is made:-

"It was held by this Court in Narender Chadha's case that persons having been allowed to function in higher posts for 15 to 20 years with due deliberation it would be unjust to hold that there is no sort of claim to such posts and such persons could be reverted unceremoniously or treated as persons not belonging to the service at all, particularly where the Government is endowed with the power of relax the rules to avoid unjust results".

In other words, it was contended on the strength of this observation that the Narender Chadha's case went by peculiar facts of the case wherein the facts noticed by the Supreme Court were such as to justify an inference that it would be manifestly unjust


to hold that the persons who have served

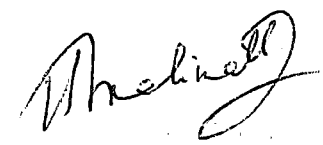
continuously for 15 to 20 years on ad hoc basis are likely to be reverted unceremoniously or treated, as persons not belonging to the service at all, particularly when the Government has the power to relax the rules to avoid unjust results. It was submitted that inference of implied relaxation of rules was sought to be drawn, having regard to the facts and circumstances of the case and that no principle of law of general application as such can be regarded as having been laid down by the Supreme Court in Narender Chadha's case. He invited our attention to paragraphs-8 and 9 of the latest judgement and submitted that the law which has been laid down by the Supreme Court is clearly to the effect that where the initial appointment is only ad hoc and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. He submitted that the petitioners in this case though appointed earlier on ad hoc basis they were appointed on regular basis only later in accordance with the relevant rules in force, governing the recruitment to these posts. But the rules now sought to be relied upon were not placed before the Tribunal when the case was heard and no reasons are assigned for not doing so. He cannot, therefore, construct an argument that the

7. appointment was contrary to the rules. It is necessary to point out that in the judgement under review the judgement in **Narender Chadha's** case as also the judgement in **The Direct Recruit Class II Engineering Officer's Association** have also been considered. Thus it is clear that the decision on which the learned counsel for the petitioner has relied was also examined by the Tribunal in the judgement under review. What the learned counsel now tried to persuade us is to take a different view than the one which the Tribunal had taken on consideration of the very same judgement. That cannot, in our opinion, be justifiably done in a Review Application. We are satisfied that this is not a case which falls under order XLVII, Rule-1 of Code of Civil Procedure, justifying review.

2. Having heard the learned ccounsel for the petitioners as also for the respondents we would, however, like to make it clear that the decision in this case must be regarded as confined to the facts of the present case and shall not be regarded as precedent to be followed by the petitioners.

3. With these observations this Review Application is dismissed.


(I.K. Rasgotra)
Member(A)


(V.S. Malimath)
Chairman