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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 61 198 5
T.A. No.

DATE OF DECISION 8. 7. 86

<u>Shri M.L. Zutshi</u>	Petitioner
<u>Petitioner in person</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Others</u>	Respondent
<u>Shri P.H. Ramchandani</u>	Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

JUDGMENT

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The petitioner Shri M.L. Zutshi, Data Processing Supervisor in the Directorate of Data Processing of the National Sample Survey Organisation(NSSO) has come up before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985

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with his application dated 23.12.1985 praying that the seniority list issued by the respondents on 2.6.1982 downgrading his seniority by ignoring his officiation as Data Computer Processing Supervisor between 17.8.1974 and 5.12.1977 as ad hoc, may be quashed and his seniority should be restored on the basis of his officiating from 17.8.1974.

2. The brief material facts of the case which are not in dispute can be summarised as follows. The applicant was appointed as a Computing Supervisor on 17.8.1974. The designation of the post was changed to that of Data Processing Supervisor with effect from 1.9.1977. The respondents issued a seniority list on 13.12.1978 placing the petitioner at Sl.No.39 on the basis of his appointment as Computing Supervisor with effect from 17.8.1974. This seniority list was modified by another provisional seniority list issued on 5.12.1977 in which he was shown at Sl.No.81 based on his date of appointment to the grade of Computing Supervisor from 5.12.1977 and ignoring more than three years of his officiation from 17.8.1974. He represented against the revised seniority list also pointing out that others who started officiation as Computing Supervisor on an ad hoc basis later had been placed above him. His representations were rejected and provisional seniority list of 5.12.1977 was finalised on 2.6.1986.

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3. A pertinent point of petitioner's appointment as Computing Supervisor on 17.8.1974 may be relevant. While the applicant was working as a Computing Inspector which is a feeder post for the post of Computing Supervisor, the Nagpur Data Processing Centre of the Division was opened in November, 1973 and 22 Computing Inspectors were asked on 11.2.1974 to give their option to be posted at Nagpur. This option was later extended to all holders of feeder posts on 2.7.1974. The petitioner opted for the Nagpur post and after being screened by the DPC for suitability and was promoted as Computing Supervisor and posted to the Nagpur Centre on a temporary basis. He took over on 17.8.1974 and has been officiating in that grade continuously since then. The respondents' case is that since promotions to the Nagpur posts of Computing Supervisor was confined only to those Computing Inspectors and others holding feeder posts who were willing to be posted at Nagpur, the promotion cannot be held to be regular and, therefore, officiating service of the applicant and others similarly situated can be held to be ad hoc and cannot count for seniority.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents very carefully. The appointment order dated 26/27.7.1974 by virtue of which the applicant was promoted as Computing

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Supervisor on 17.8.1974 (copy at Annexure B to the petition) indicated that the appointment was temporary and was for the time being upto 28th February, 1975 but likely to be extended further. There is no mention of the appointment being ad hoc in this order. The petitioner has also appended at Annexure 'C' a demi-official letter from the Deputy Director in the Department of Statistics (NSSO) dated 24/25th June, 1976 in which it is stated as follows:-

"You are perhaps aware that two writ petitions have been filed in the Calcutta High Court challenging the principle of seniority enunciated by the I.S.I. on the basis of which, seniority list has been prepared in various categories of posts. The High Court have issued rules restraining us from making appointment except on ad hoc basis and hence we have made appointment of Shri Kalidas Chatterjee on an ad hoc basis whereas Shri Sharma, Dhawan and Zutshi were promoted on temporary basis as at that time no writ petitions were filed."

It would be thus clear that the appointment of the applicant Shri Zutshi was not deemed to be ad hoc by the department itself.

5. We are unable to appreciate the arguments of the respondents that since the selection was confined only to those chandidates who were willing to be posted at Nagpur it cannot be held to be regular. Supposing that the selection had been made without asking for willingness to be posted at Nagpur and some persons senior to the petitioners having been selected along with the petitioner refused

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to be posted at Nagpur, the resultant position would not have been any different from what actually transpired. We think that it was more rational to seek willingness first and then confine the selection to the willing candidates rather than waste efforts of selection even as candidates who would not have gone to Nagpur after selection. The merit does not seem to have suffered in any manner by confining the process of selection to the willing candidates only. We cannot therefore, hold the selection and promotion of the petitioner as irregular or ad hoc in any manner. Insofar as the counting of continuous officiation for the purpose of seniority is concerned, the Supreme Court and several High Courts have on several occasions ^{upheld} ~~held~~ the sanctity of continuous and durable officiation in higher grade for the purpose of seniority in that grade. The latest ruling of the Supreme Court is available in the celebrated case of Narender Chadha and others vs. Union of India & others (A.T.R.1986 S.C.49). In that case the Hon'ble Supreme Court has held that even ad hoc officiation in excess of the promotion quota in Grade IV posts of the Indian Economic Service and Indian Statistical Service will count for seniority. The Hon'ble Supreme Court observed as follows:-

"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

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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 rule 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 clause (a) of Rule 9-C of the Rules."

The Supreme Court also observed in that case that since the promotees were discharging their duties to the best of their ability and receiving salary and allowances from the Government for the services rendered by them, they are entitled to count their officiating service for the purpose of seniority. If the Government feel that they were not competent to discharge their duties and they had not been appointed permanently to the posts held by them, it was open to revert them to their posts from which they had been promoted leaving it open to them to question the orders of reversion in Court. The Government was in need of their services and the petitioners have been holding these posts for nearly 15 to 20 years. Discussing the various aspects of the case and relevant

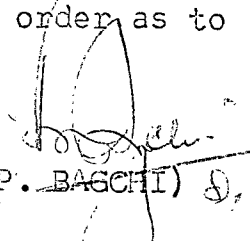
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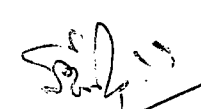
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rulings, the Hon'ble Supreme Court allowed the concession of counting the entire period of ad hoc officiation for seniority not only of those who had officiated for fifteen to sixteen years but also of those who had officiated for five to six years, by directing that even the promotees who were selected in 1970 should get this benefit. Since the two Services were constituted in 1964 those even with six years of officiation in both of these Services would get the benefit of seniority. Thus it cannot be argued that the ruling of the Supreme Court would be available only where the officiation is of 15 to 20 years. The instant case of the petitioner is more meritorious than that of the ad hoc appointees to Grade IV of the Indian Economic and Indian Statistical Services, because unlike the Grade IV appointees the petitioner was promoted not in violation of any promotion quota and was not appointed on an ad hoc basis.

6. In the facts and circumstances of the case we have no hesitation in allowing the petition with the direction that the impugned seniority of the petitioner in the seniority list be quashed and the petitioner be given seniority on the basis of his continuous officiation as Computing/Data Processing Supervisor from 17.8.1974. There will be no order as to costs.


(H.P. BAGCHI) 8.7.86

 8/7/86
(S.P. MUKERJI)