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Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.2121 of 1993

9th day of November, 1993.

Shri J.P. Sharma, Member (Judl.)

Shri B.K. Singh, Member (A)

Shri A.N. Pruthi,
s/o Late Shri Ladha Ram Pruthi,
r/o 1922, Mukerji Nagar, Phase-III,
Opposite I.D. Hospital,
Delhi.

Applicant

By Advocate Shri D.R. Gupta

Versus

1. The Medical Supdt.,
RML Hospital, N.Delhi.

2. Shri D.N. Chugh,
Head Clerk,
Dr. R.M.L. Hospital,
New Delhi.

3. Shri H.C. Madan,
Head Clerk,
R.M.L. Hospital,
New Delhi.

Respondents

By Advocates Shri A.K. Behera, for Shri D.N. Chugh,
Respondent, Shri M.L. Ohri, Counsel for Shri H.C.
Madan, Respondent, and Shri Jog Singh, Counsel for
the official respondents.

Order (Oral)

Shri J.P. Sharma

The applicant, Shri A.N. Pruthi, is holding
the substantive post of Head Clerk in the Office
of Medical Supdt., R.M.L. Hospital, New Delhi.
By the order dated 6.9.1993, he was promoted purely
on ad hoc basis to the post of Office Supdt. However,
by a subsequent order dated 5.10.1993, he was reverted
as Head Clerk w.e.f. that date. He filed the applica-

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tion under Section 19 of the A.T. Act, 1985 which came before the Bench on 6.10.1993 and on 7.10.1993, notices were issued to the respondents for 21st October, 1993 and an interim direction was issued to them, "We direct that the impugned order dated 5.10.1993, passed by the Chief Administrative Officer reverting the petitioner to the post of Head Clerk shall remain stayed provided an order promoting Shri D.N. Chugh to the post of Office Supdt. has not already been passed." This order continued till 21.10.1993 and was further extended to 5.11.93. The official respondents opposed the continuance of the interim order as also Shri A.K. Behera, counsel for Shri D.N. Chugh and Shri M.L. Ohri, Counsel for Shri H.C. Madan, respondents. The respondents opposed the interim relief on the ground that the applicant is not eligible as per the recruitment rules for appointment to the post of Office Supdt. in view of the fact that a minimum period of five years in the feeder cadre of Head Clerk is not fulfilled by him. The applicant was on ad hoc appointment purely as a stop-gap arrangement. Further, it is also argued that the seniority between Shri A.N. Pruthi, Shri D.N. Chugh is disputed and that has to be examined on merits. According to the provisional seniority list dated 1.9.1993, Shri D.N. Chugh is placed above Shri Pruthi and this seniority list could not be produced before the D.P.C. inadvertantly. Since Shri Chugh in the provisional list is shown senior to Shri Pruthi, the latter should not have been given ad hoc promo-

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tion to the post of Office Supdt. The applicant has been reverted on administrative grounds.

2. Shri A.K. Behera, Counsel for Shri D.N. Chugh, who has been subsequently impleaded as a respondent, also opposed the grant of interim order in view of the existing provisional seniority list showing the applicant senior to Shri Pruthi. This provisional seniority list is dated 1.9.1993. The contention of Shri Behera is that Shri Chugh entered into service in October, 1957, while Shri Pruthi joined service on 11.12.1958.

3. The contention of the learned counsel for Shri H.C. Madan is that Shri Madan is even senior to Shri Chugh, who has been wrongly shown in the provisional seniority list as senior to him.

4. We have heard the learned counsel for the applicant, Shri D.R. Gupta. The contention of the learned counsel is that the order of reversion is bad in view of the fact that the reversion is took place on the basis of the provisional seniority list dated 1.9.1993 which is yet to be finalised. According to the learned counsel, the final list has also been prepared but that has not been signed by the Medical Supdt., Dr. R.M.L. Hospital. This fact is denied by the learned counsel, Shri Jog Singh, appearing for the official respondents. The applicant, in the O.A. has also challenged the provisional seniority list. We have given a careful consideration to the matter in issue. An ad hoc promotee has no lien on the post. In the present case, the respondents have also taken the stand that in the provisional seniority list, Shri Chugh is senior and this could not be placed

before the D.P.C. The applicant also attacked the provisional seniority list. When the seniority list is in dispute, the right of the applicant to be given ad hoc promotion, can only be considered on merits at the time of the final hearing. It cannot be said to make out a prima facie case unless the seniority is determined and the applicant is held senior both to Shri Chugh and Shri Madan. In fact, Shri Chugh is shown senior to the applicant and Shri Madan asserts to be senior to Shri Chugh. Even in ad hoc promotion, the seniority cannot be ignored. Merely because the applicant is superannuating within a month, would not make out a case for grant of the interim relief. The learned counsel for the applicant has also given the photocopy of certain judgements regarding ad hoc service. In the case of D.K. Yadav Vs. J.M. Industries Ltd., reported in 1993, SCC (L&S) 723, which is regarding termination of service without observing principles of natural justice. In this reported case, the action of the respondents terminating the services of the petitioner, Shri D.K. Yadav, on his being unauthorisedly absent for more than 8 days, was considered and it was found that the action was arbitrary and against the principles of natural justice, which implied just, fair and reasonable action on the part of the respondents. This authority has no application at all to the present case because the respondents have taken the stand that the applicant in the provisional seniority list is junior to Shri Chugh and this fact was not placed before the D.P.C. The seniority list is under consideration

and it would be arbitrary if a junior is given ad hoc promotion, ignoring the merit of the senior. It is another fact if subsequently, the applicant is declared senior but that by itself will not prejugue the issue about the seniority of the applicant. The other two cases referred to by the applicant are of the C.A.T., one reported in A.T.R. 1993 (1) C.A.T. 524 of the Madras Bench and the other in the same journal of the Principal Bench at page 770, the parties being K. Jayaballan Vs. U.O.I. & Another, and Kuldeep Singh Vs. C.S.I.R. and Anr., respectively. Both these authorities are besides the point in issue in the present case. In the case of Dr. K. Jayabalan, the petitioner was appointed in a stop-gap arrangement, but subsequently, his appointment was on a vacant post which was continued for more than four years. The Tribunal ordered that he should be accommodated in one of the existing vacancies or the vacancies likely to occur and the case be referred to the U.P.S.C. and the order of relieving him from duty w.e.f. 16.1.1990 was quashed. In the other case of Kuldeep Singh, the petitioner was given adhoc appointment as Section Officer and was discontinued on the basis of the O.M. on 27.4.1992. The Tribunal directed that the appointment of the applicant may be considered on ad hoc basis if any vacancy in the post of Section Officer existed till he attained the age of supra-

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nnuation in the same manner as one, Shri Shamsher Singh, was continued on ad hoc basis. Actually, the point of law laid down by the Principal Bench is that even in matter of ad hoc promotion, there should not be discrimination among officers equally placed. This authority does not help the case of the applicant, but rather goes against him. As discussed in the earlier part of the judgement, the provisional seniority list dated 1.1.1993 shows Shri Chugh at No.1 and the applicant at No.2. Though the seniority list is to be finalised, yet the position existing at the relevant time when the applicant was reverted, is clear that there is a dispute of seniority and the applicant cannot claim as of right his seniority over Shri Chugh. Here, Shri H.C. Madan also claimed himself senior to Shri Chugh. The impugned order, therefore, does not call for any further extension and is, therefore, vacated, but till the seniority list is finalised, no ad hoc appointment shall be made, which should follow only after the final seniority list is notified. However, it is made clear that if the applicant is finally declared senior, he will get all the consequential benefits on the date of his reversion in matters of pay, allowances, seniority, etc.

(B.K. Singh)
Member (A)

(J.P. Sharma)
Member (J)