

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 903 of 1993

New Delhi, dated this the 30th JULY

1999

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. P.C. KANNAN, MEMBER (J)

Shri R. Ramamurthy,
S/o Shri K. Radhakrishnan,
R/o C-701, Kaveri Apartments,
Kalkaji,
New Delhi-110019.

... Applicant

(By Advocate: Shri G.D. Gupta)

Versus

1. Union of India through the
Secretary,
Ministry of Civil Aviation & Tourism,
Sardar Patel Bhawan,
New Delhi-110001.
2. Director General of Civil Aviation,
Technical Centre, Opp. Safdarjung Airport,
New Delhi-110003.
3. Chairman,
National Airports Authority,
Safdarjung Airport, New Delhi-110003
(No relief claimed. Impleaded for information)
4. S/Shri U.K. Sinha, STO
5. P. Gupta, STO
6. V. Govartanan, DDC
7. A.K. Sangal, STO
8. S.D. Awasti, DDC
9. A.V. Krishna, STO
10. K. Ramakrishna, DDC
11. R. Maheshwari, DDC
12. S. Bhattacharya, DDC
13. M.K. Verma, STO
14. P.K. Bandopadhyaya, STO
15. C.R. Sudhi, STO
16. K. Ganesan, STO
17. Arjun Singh, STO
18. M.L. Chakraborty, STO

19. A.K. Chatterjee, STO
20. S. Ghosh, STO
21. N.R. Dass, STO
22. D. Srivastava, STO
23. N.V.P. Raj, STO
24. P.K. Srivastava, STO
25. A.K. Banerjee, STO
26. Y.K. Bhagat, STO
27. Shakti Dev, STO
28. Mansoor Ahmed, STO
29. A.K. Khare, STO

(All the Respondents from R-4 to 29 ... Respondents
C/o Chairman, NAA.)

(By Advocate: Nene appeared)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant seeks the counting of the period of continuous officiation as Technical Officer from 8.4.81 till 5.5.83 as Technical Officer towards seniority.

2. Admittedly applicant along with other Asst. Tech. Officers were appointed as Tech. Officer on ad hoc basis w.e.f. the date they took charge till 30.6.81 vide respondents Notification dated 23.5.81 (Ann. 1). Applicant took charge on 8.4.81. That ad hoc appointment continued till applicant and others were regularised as T.Os w.e.f. 5.5.83.

3. Applicant had earlier filed O.A. No. 2166/88 seeking counting of that period from 8.4.81 until 5.5.83 towards seniority. That O.A. was disposed of by order dated 13.9.90. By that order, the previous impugned seniority lists as on 1.12.82 and as on 1.7.87 were quashed and set aside, and respondents were directed to prepare a fresh seniority list as on 1.10.83 in accordance with the

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principles laid down in the case of Direct Recruit Class II Engineers Officers' Association Vs. State of Maharashtra JT 1990 (2) SC 264.

4. Respondents therefore prepared a revised seniority list as on 1.10.83, but applicant assailed the same vide CCP No. 229/91 contending that the revised seniority list had not been prepared by respondents in accordance with the Tribunal's directions dated 13.9.90. That CCP was dropped by order dated 13.11.92 after noticing that as the Tribunal's order dated 13.1.90 did not specify which particular principle out of the several principles contained in the Class II Engineers' case (Supra) was to be applied by respondents to the facts and circumstances of this particular case, respondents could not be said to have committed contempt of Court if in the preparation of the revised seniority list they had applied the Corollary to Principle A of that judgment. While disposing the contempt proceedings the Bench however did not express any opinion on the merits of the claims, and gave liberty to applicant to agitate the grievance if any through independent original proceedings.

5. Accordingly the present O.A. has been filed.

6. We have heard both sides.

7. Shri Gupt has argued that even if applicant was not appointed as T.O. on 8.4.81 by following the procedure laid down in the rules, all eligible candidates were considered, and the appointment had all the characteristics of a regular appointment, and in the background of Para 13 of the Class II Engineers' case (Supra) and the fact that he had continued uninterruptedly till his services were regularised

in accordance with rules, ~~and hence~~ his period of officiating service had to be counted towards seniority, in accordance with Principle B of the Direct Recruit Class II Engineers' case (Supra).

8. On the other hand respondents in their reply have contended that applicant's ad hoc appointment as T.O. on 8.4.81 was squarely hit by the Corollary of Principle A in the Direct Recruit Class II Engineers' case (Supra).

9. We have considered the matter carefully.

10. A mere perusal of the Notification dated 13.5.81 states that applicant and others were being appointed on ad hoc basis. Even the period for which this ad hoc appointment was made, was specified i.e. till 30.6.81. No doubt this ad hoc appointment continued till applicant and others were regularised on 5.5.83, but there is no doubt in our minds that this appointment by Notification dated 1.3.5.81 which was specifically spelt out as ad hoc, ~~and~~ was by way of stop gap arrangement till persons could be appointed on regular basis. Further more as it was not made in accordance with the rules, it is squarely hit by the Corollary to Principle A in the Direct Recruit Class II Engineers' case (Supra).

11. In so far as the applicability of Principle B (Supra) is concerned, the Hon'ble Supreme Court in Keshav Chandra Joshi and Others Vs. UOI and Others AIR 1991 SC 284 had occasion to examine its scope and ambit and held thus

"Proposition B must therefore be read along with Para 13 of the judgment wherein the ratio decidendi of Narendra Chandra was held to have considerable force. The latter postulated that if the initial appointment to a substantive post or vacancy was made deliberately, in disregard of the rule and allowed the incumbent to continue on the post for well over 15 to 20 years without reversion and till the date of regularisation of the service in accordance with the rules, the period of officiating service has to be counted towards seniority.

This Court in Narendra Chaudhary's case was cognizant of the fact that the rules empower the Government to relax the rules of appointment." 2

12. Again in Shri Ashok Mehta & Others Vs. Regional P.F. Commissioner & Others decided on 5.2.92 the CAT, Principal (Full) Bench held as follows:

"Promotion by way of ad hoc or stop gap arrangement made due to administrative exigencies and not in accordance with rules cannot count towards seniority. Principle B laid down by the Supreme Court in the Direct Recruit Class II Engineers' Officers' Association Vs. State of Maharashtra & Others will apply as explained by the Supreme Court in K.C. Joshi and Others Vs. U.O.I. & Others only in cases where the initial appointment is made deliberately in disregard of the rules and the incumbent allowed to continue in the post for long periods of about 15 to 20 years without reversion till the date of his regularisation of service in accordance with the rules there being power in the authority to relax the rules."

13. Another occasion in which the Hon'ble Supreme Court had occasion to examine the scope and ambit of Principles A & B was in State of West Bengal Vs. Aghore Nath Dey & Others JT 1993 (2) SC 598. Their Lordships held thus

"In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the later expression till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed

period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment in such cases.....This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stop-gap arrangement and not according to rules. It is, therefore not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A).

14. Applying the aforesaid extracts to the facts and circumstances of the present case, it is clear that applicant's appointment as T.O. w.e.f. 8.4.81 was on ad hoc basis as specified in the appointment Notification dated 23.5.81 itself, and the period therein was also limited to a fixed period, that is 30.6.81. It is another matter that this ad hoc arrangement which was clearly stop gap in nature, and was not in accordance with the rules, was continued till applicant and others were eventually regularised on 5.5.83, but this ad hoc period of barely two years was nowhere near the 15-20 years required for counting the period towards seniority.

15. Shri Gupta has cited certain authorities to support his contentions. These include K.N. Misra & others Vs. UOI & Others 1986(2) ATR 270; A. Janardhan Vs. UOI & Others AIR 1983 SC 769; O.P. Singhla & Others Vs. UOI & Others AIR 1984 SC 1595; and P.S. Mahal & Others Vs. UOI & Others AIR 1984 SC 1281. We have gone through these rulings. All of them are prior to the Hon'ble Supreme

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Court's judgment in the Direct Recruit Class II Engineers' Association case (Supra) and do not discuss the principles set forth in that judgment, which the Tribunal had specifically directed respondents to apply in its order dated 13.9.90 in O.A. No. 2166/88. Hence those authorities do not advance applicant's claims in the facts and circumstances of the present case.

16. In the result applicant's claim for counting of the ad hoc period of his service as T.O. from 8.4.81 till 5.5.83 is rejected. The O.A. is dismissed. No costs.

Dharmay
(P.C. KANNAN)
MEMBER (J)

Arfalg
(S.R. ADIGE)
VICE CHAIRMAN (A)

/ GK/