

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABADORIGINAL APPLICATION NO. 476 OF 2005ALLAHABAD, THIS THE 22nd DAY OF FEBRUARY, 2007

C O R A M :

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER

HON'BLE MR. P. K. CHATTERJI, ADMINISTRATIVE MEMBER

Gautam Giri S/O Sri Gopal Giri,
Packer Instrument Section,
National Sugar Institute,
Kalyanpur, Kanpur.

.....Applicant

By Advocate : Sri A. K. Srivastava

Versus

1. Union of India through the Secretary,
Ministry of Food, Government of India,
New Delhi.
2. The Director,
National Sugar Institute,
Kalyanpur, Kanpur.

.....Respondents

By Advocate : Sri V.V. Mishra & Shri P.C. Shukla

ALONGWITH

ORIGINAL APPLICATION NO.475 OF 2005

Subhash Chandra Tewari,
S/O Late Nagendra Narain Tewari,
R/O EWS-176 Indra Nagar,
Kalyanpur, Kanpur.

.....Applicant

By Advocate : Shri A. K. Srivastava

Versus

1. Union of India through the Secretary, Ministry of Food, Government of India, New Delhi.
2. The Director, National Sugar Institute, Kalyanpur, Kanpur.

..... Respondents

By Advocate : Shri S. P. Sharma

ALONGWITH

ORIGINAL APPLICATION NO.477 OF 2005

Basant Lal Tiwari,
Son of Sarju Prasad,
Mazdoor, National Sugar Institute,
Kalyanpur, Kanpur.

..... Applicant

By Advocate : Shri A. K. Srivastava

Versus

1. Union of India through the Secretary, Ministry of Food, Government of India, New Delhi.
2. The Director, National Sugar Institute, Kalyanpur, Kanpur.

..... Respondents

By Advocate : Shri R. C. Shukla

ALONGWITH

ORIGINAL APPLICATION NO.478 OF 2005

Kishan Lal Singh,
Son of Late S. P. Singh,
R/O Quarter No.1 Type II, New Colony,
N.S. I. Campus, Kalyanpur, Kanpur.

..... Applicant.

By Advocate : Sri S. K. Srivastava

Versus

1. Union of India through the Secretary, Ministry of Food, Government of India, New Delhi.
2. The Director, National Sugar Institute, Kalyanpur, Kanpur.

..... Respondents

By Advocate : Shri Ajay Singh

ALONGWITH

ORIGINAL APPLICATION NO.479 OF 2005

J.P. Kanaujia S/O Ram Kishan,
R/O 4940 EWS In Awas Yojna-3,
Panki Road, Kalyanpur, Kanpur.

..... Applicant

By Advocate : Shri A. K. Srivastava

Versus

1. Union of India through the Secretary, Ministry of Food, Government of India, New Delhi.
2. The Director, National Sugar Institute, Kalyanpur, Kanpur.

..... Respondents

By Advocate : Shri V.V. Mishra

ALONGWITH

ORIGINAL APPLICATION NO.480 OF 2005

Malku S/O Sri Shikharl,
Majdoor, National Sugar Institute,
Kalyanpur, Kanpur.

..... Applicant

By Advocate : Shri A. K. Srivastava



Versus

1. Union of India through the Secretary, Ministry of Food, Government of India, New Delhi.
2. The Director, National Sugar Institute, Kalyanpur, Kanpur.

. Respondents

By Advocate : Shri V. V. Mishra

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

As common question is involved in the above O.As, these are disposed of by a common judgment.

2. The question involved is whether the applicants whose regular service was preceded by ad hoc appointment are entitled to treat even the ad hoc period for seniority and ACP.
3. The details in each case as given in the list of dates and synopsis are given as hereunder:-

(a) O.A. No. 475/2005 :

| <u>S.No.</u> | <u>Date</u> | <u>Events.</u> |
|--------------|-------------|----------------|
|--------------|-------------|----------------|

| | | |
|----|------------|---|
| 1. | 23.08.1979 | Initial appointment as Fitter 'D' on ad hoc. |
| 2. | 03.02.1986 | Appointed to the post of Fitter 'D' on regular basis for 2 years probation. |
| 3. | 02.02.1988 | Successfully completed his probationary period. |
| 4. | 01.09.2004 | Representation made by the applicant to the respondents. |

(b) O.A. No. 476/2005 :

| <u>S.No.</u> | <u>Date</u> | <u>Events.</u> |
|--------------|-------------|---|
| 1. | 20.11.1974 | Initial appointment as Packer on ad hoc. |
| 2. | 03.02.1986 | Appointed to the post of Packer on regular basis for 2 years probation. |
| 3. | 02.02.1988 | Successfully completed his probationary period. |
| 4. | 03.09.2004 | Representation made by the applicant to the respondents. |

(c) O.A. No. 477/2005 :

| <u>S.No.</u> | <u>Date</u> | <u>Events.</u> |
|--------------|-------------|--|
| 1. | 11.04.1977 | Initial appointment as Mazdoor on ad hoc. |
| 2. | 03.02.1986 | Appointed to the post of Mazdoor on regular basis for 2 years probation. |
| 3. | 02.02.1988 | Successfully completed his probationary period. |
| 4. | 15.12.2004 | Representation made by the applicant to the respondents. |

(d) O.A. No. 478/2005 :

| <u>S.No.</u> | <u>Date</u> | <u>Events.</u> |
|--------------|-------------|---|
| 1. | April, 1977 | Initial appointment as Fitter 'D' on ad hoc. |
| 2. | 03.02.1986 | Appointed to the post of Fitter 'D' on regular basis for 2 years probation. |
| 3. | 02.02.1988 | Successfully completed his probationary period. |
| 4. | 22.01.2003 | Promoted to the post of Fitter 'C' for probation period of two years. |
| 5. | 28.09.2004 | Representation made by the applicant to the respondents. |

(e) O.A. No. 479/2005 :

| <u>S.No.</u> | <u>Date</u> | <u>Events.</u> |
|--------------|-------------|--|
| 1. | April, 1977 | Initial appointment as Electric Motor Driver Group 'D' on ad hoc. |
| 2. | 04.06.1987 | Appointed to the post of Electric Motor Driver Group 'D' on regular basis for 2 years probation. |
| 3. | 03.06.1989 | Successfully completed his probationary period. |
| 4. | 22.01.2003 | Promoted to the post of Electric Motor Driver Group 'D' for probation period of two years. |
| 5. | 15.12.2004 | Representation made by the applicant to the respondents. |



(f) O.A. No. 480/2005 :

S.No. Date Events.

| | | |
|----|-------------|--|
| 1. | 01.03. 1977 | Initial appointment as Junior Khalasi on ad hoc. |
| 2. | 02.01.1984 | Appointed to the post of Mazdoor on regular basis for 2 years probation. |
| 3. | 01.01.1986 | Successfully completed his probationary period. |
| 4. | 22.12.2004 | Representation made by the applicant to the respondents. |

4. Respondents have contested the OA. According to them, ad hoc cannot be considered for either seniority or ACP purposes.

5. Counsel for the applicant argued that in all the above cases, as per the seniority list circulated, the fact that the applicants were initially appointed on ad hoc basis had been mentioned and since their service was continuous without break followed by the regularization and confirmation, on the basis of various decisions of the Apex Court including constitution Bench of the Apex Court, period prior to regularization should also count for seniority and also for ACP purposes and thus, since all these applicants had put in 24 years of service on various dates on the basis of their initial appointment, they should be paid the second ACP also.

6. Per contra, the counsel for the respondents, who have also filed the written submission contended that the applicants having been regularly appointed only in late eighties and they having already been afforded the first

ACP, their entitlement to 2nd ACP would be only on their completion of 24 years of regular service and not a day before. Ad hoc period cannot be counted for this purpose, notwithstanding the fact that such ad hoc services were continuous and without break.

7. Arguments were heard and documents perused.
8. In so far as counting of ad hoc service as regular service is concerned, law laid down by the Apex Court in the case of ***Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715***, is as under:-

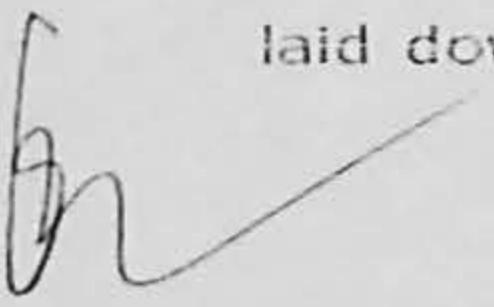
"47. To sum up, we hold that:

(A)Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B)If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

9. Thus, the above law should be applied to see whether the initial ad hoc appointment was only a stop gap arrangement or whether only procedure laid down was not followed but the applicants had been continuously and



uninterruptedly holding the post.

10. The initial appointment of the applicants had all been only ad hoc. It is not established that these applicants were appointed against regular vacancies. Nowhere have the applicants even stated as to whether they were in a fixed scale of pay and whether they were continuously drawing annual increment and whether their pay on regularization had been fixed taking into account such increments, if drawn by them. The authority cited by the applicant (Swamy's news) does not apply to their case as that case was one of promotion on adhoc basis followed by regular promotion. Thus, in order to establish their entitlement to the claim for regularisation from the date of initial ad hoc appointment, the applicants have to prove that their initial appointment was not de-hors any Rules and if at all only procedural infirmities were there, which could easily be ~~testified~~^{and}, there must have been regular vacancies against which they were appointed under the normal mode of recruitment and they should have been placed in the prescribed pay scale and they should have been paid annual increments. If these were present in their initial ad hoc appointment, then the applicants could move a representation for their regularization, duly reflecting all the facts and figures. Till such time they provide such particulars and establish their claim before the Administrative Authorities, their claim cannot be considered by the respondents.

[Signature]

11. ACP scheme is applicable to those who have completed 12/24 years of regular service only and the service on ad hoc basis is not to be counted. The applicants have thus not been able to establish that their initial appointment though on ad hoc basis qualified to be one of regular appointment. Further, it is not exactly known as to why the applicants did not raise their voice at the appropriate time in late seventies itself, when they were appointed on ad hoc basis. At least when they were confirmed and their earlier ad hoc service was not taken into account for seniority they ought to have agitated, which the applicants did not do. Again, when in 1998 and around that year they were held to be entitled to first ACP, they have not raised their voice even at that time.

12. Considering all the above, while we cannot allow the prayer, ^{we} dispose of the O.A. with liberty to the applicants that in case the applicants' initial appointment was by way of calling for applications from the Employment exchange or from open market and the applicants were duly selected and if their wages were on a specific scale of pay with necessary increment each year, they may make a representation with supporting documents and if such representations are filed the respondents shall consider the same to ascertain whether the case of the applicants fall within the ambit of the law laid down by the Apex Court in the case of Direct Recruits Class II Engineering Officers' Association (supra) and arrive at a judicious decision.

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13. No costs.