

Open Court.

Central Administrative Tribunal,  
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 08th Day of September, 2000.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr.S.K.I. Naqvi, J.M.

Original Application No. 1353 of 1992.

N.C. Chaurasiya aged about 37 years  
son of Sri Chinta Mani Chaurasiya,  
R/O 966-D, R.B. II,  
T.R.S. Colony, Nagra,  
Jhansi.

. . . Applicant.

Counsel for the applicant Sri Rakesh Verma, Adv.

Versus

1. Union of India through the General Manager,  
Central Railway, Bombay V.T.
2. The Divisional Railway, Manager (P)  
Central Railway, Jhansi.

. . . Respondents.

Counsel for the Respondents: Sri V.K.Goel, Adv.

Order ( Open Court)

(By Hon'ble Mr. S. Dayal, Member(A.))

This application has been filed for  
setting aside order dated 4.8.92 by which the  
request of the applicant has been rejected by  
respondent No.2 for giving him seniority as  
Highly Skilled Fitter , Grade-I with effect from  
21.3.84.

2. The applicant seeks a direction to the respondents to refix the seniority of the applicant after taking into account the period of service rendered by the applicant as Highly Skilled Fitter Grade-I with effect from 21.3.84.

3. The applicant has stated that he was appointed as Trainee Fitter with effect from 4.3.76, as Fitter with effect from 4.9.77, as Highly Skilled Fitter Grade-II on adhoc basis with effect from 30.10.82, as Highly Skilled Fitter Grade-II on provisional basis with effect from 1.1.84, as Highly Skilled Fitter Grade-I, adhoc basis with effect from 21.3.84 and as Highly Skilled Fitter Grade-I with effect from 22.7.87. The applicant seeks seniority from 1.1.84 or in the alternative with effect from 21.3.84 when he was promoted as Highly Skilled Fitter Grade-I.

4. The arguments of Sri Rakesh Verma for the applicant and Sri V.K.Goel for the respondents have been heard.

5. The applicant in claiming promotion from 21.3.84 has relied on the judgment of Apex Court in Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and others 1990 Supreme Court Cases (L.&S.) 339. The Apex Court in para 47(B) has laid down as follows:-

\*47(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."

The learned counsel for the applicant claims that since this is applicable to the case of the applicant, the applicant should be allowed seniority with effect from 21.3.84.

6. The learned counsell for the applicant has also placed reliance on judgment of the Apex Court in 1999(83) F.L.R.770 (Supreme Court) which lays down as follows:-

" Para 12.

It is now well settled that even in cases of officiating appointments which are followed by a confirmation unless a contrary rule is shown the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of this court in G.P. Dayal and another Vs. Chief Secretary, Government of U.P. and others.

7. The learned counsel for the applicant has also relied on T. Vijayan and others Vs. Divisional Railway Manager and others 2000 Supreme Court Cases

(L & S) 444 in which in an issue regarding the seniority of direct recruits and Promotees were the Respondents No. 4 to 143 were given promotion on adhoc basis. The Apex Court examined the question whether respondent Nos. 4 to 143 were entitled to reckon the period of adhoc service towards the seniority and held that respondent Nos. 4 to 143 were promoted on adhoc basis in a situation where regular promotion was not immediately possible and adhoc promotion was permissible under para 216 of Indian Railway Establishment Manual. Therefore the respondents were entitled to be benefit of adhoc service.

8. The learned counsel for the respondents has relied on para 13 of the Apex Court Judgment between Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra and others 1990 Supreme Court Cases (L & S) page 339 in which the proposition of law laid down as follows:-

" Extract of para 13

If an appointment is made by way of stop gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to



exclude the officiating service for purpose of seniority."

9. The learned counsel for the respondents has also placed reliance on Rajbir Singh and others Vs. Union of India 1992 S.C.C. (L & S) 153 which lays down as follows:-

" It is well settled by several decisions of this Court that an appointment against a purely temporary adhoc or fortuitous post does not entitle the holder of the post to be a member of the service and as such such fortuitous or ad hoc appointment does not entitle the holder of the post to get the benefit of the period of such adhoc or fortuitous service."

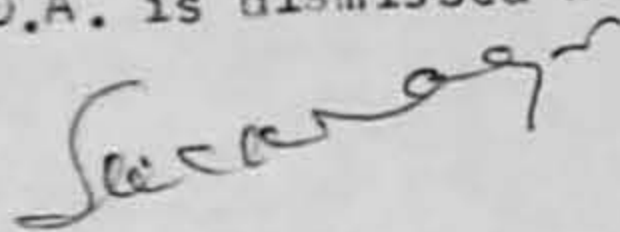
10. Thus the law which has been laid down by the Apex Court is that if the officials were promoted after considering the claim of all eligible candidates and the appointment is uninterrupted till regularisation of service the period of service shall be counted for seniority. In the instant case the order of promotion on ad hoc basis itself states as follows:-

" Since the promotions are purely on temporary and on ad hoc basis the concerned staff will have no properative rights regarding their continuation officiating confirmation etc. over their seniors if any."

11. The learned counsel for the applicant has not been able to show that the order in this case was passed as per seniority and after considering <sup>all</sup> the eligible persons although he orally

stresses <sup>it</sup> ~~is~~ to be so. We do not accept the oral  
assertion and looking to the language of the order  
of ad hoc promotion, we do not consider that the  
applicants were promoted on other than as local  
arrangement without considering all the eligible  
persons hence the applicant is not entitled to  
the benefit of the judgment of the Apex Court.

The O.A. is dismissed with no order as to  
costs.



Member (J.)



Member (A.)

Nafees.