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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: 22.12.84

Original Application No: 1434 of 1993

1. S.C.S.Negi, S/O Shri Umraw Singh Negi aged about 53 years, Assistant in Surveyor General Office, Survey of India, Dehra Dun
2. Ratan Lal S/O Late Beshamber Sahay, aged about 47 years, Assistant in Northern Circle, Survey of India, Dehra Dun
3. S.R.Sharma S/O Shri Sukh Ram, aged about 46 years, Assistant in Map Publication Office, Survey of India, Dehra Dun.
4. Guna Nand, S/O Shri Ghana Nand, aged about 49 years, Assistant in Surveyor General Office, Survey of India, Dehra Dun.
5. Inderjeet Singh S/O Late Amar Singh, aged about 49 years, Assistant in Surveyor General Office, Survey of India, Dehra Dun.
6. Ved Prakash S/O Late Shri Hem Raj, aged about 51 years, Assistant in No. 20 Part (NC), Surveyor General Office, Survey of India, Dehra Dun.

.... Applicants.

By Advocate Shri Y.K.Saxena

Versus

1. Union of India through Secretary, Ministry of Science & Technology, Government of India, New Delhi.
2. Surveyor General of India, Survey of India, Hathibarkala Estate, Dehra Dun

.... Respondents.

By Advocate Shri N.B.Singh

C O R A M

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma, Member-B

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O R D E R

By Hon'ble Mr. T.L.Verma, Member-J

The subject matter of challenge in this O.A. is the seniority of Assistants/Head Clerks circulated under Surveyor General's letter No. C-4061/854(S) dated 20.08.1993.

2. The applicants were appointed as Assistants in the Ministerial Cadre of the Surveyor General Office, Survey of India, Dehradun on different dates in between 1.1.1969 to 1.1.1972. They were promoted to the grade of Upper Divisional Clerk between 29.5.1968 to 26.10.1974. It is stated that the post of Assistants/Head Clerks were lying vacant in various stations. The respondent No. 2, by circular dated 16.2.1982 (Annexure-1 to compilation-2) invited options from the regular Upper Divisional Clerks to move out on promotion as Assistant/Head Clerk on ^{to} adhoc basis. According to the stipulation in the circular aforesaid, the Assistants who were selected for such adhoc promotion, will remain adhoc till regularised based on their seniority and selection as per Rules by D.P.C. The selection for promotion, according to the stipulation of the circular was to depend upon the seniority and consideration of the A.C.R. dossiers along with their integrity certificates and the availability of post at the place of their choice. The applicants expressed their willingness to move out on promotion as Assistants/

Head Clerks. They were accordingly promoted vide promotion orders dated 12.5.1982 and 28.7.1982 (Annexures-4 & 5 respectively) against regular permanent vacancies after following the due process of selection according to the Rules by the competent authority. The promotion of the applicants in the grade of Assistants/Head Clerks has been treated as regular promotions. The applicants, it was stated, have discharged their duties with utmost dedication and sincerity to the satisfaction of all concerned. At the time of their appointment, the respondents had held out a promise to the applicants that their services will be regularised on the promoted post. Applicant No. 1, therefore, filed a representation on 28.4.1993 (Annexure-6) to give seniority to him w.e.f. his initial date of promotion. Similar representations were submitted by other applicants for fixation of their seniority with their respective date of promotions on adhoc basis. The respondents, it is stated, have issued the impugned seniority list without assigning correct seniority to the applicants w.e.f. the date of their initial promotion on adhoc basis. Hence, this application for issuing a direction to the respondents to modify the impugned seniority list by placing the names of the applicants ~~as~~ at their respective places by taking into consideration their date of initial promotions as Assistants/ Head Clerks on adhoc basis and on the basis of their regularisation.

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3. The respondents have resisted the claims of the applicants. In the Written Reply filed on behalf of the respondents, it has been stated that while offering adhoc promotions, it was made clear that the persons appointed on adhoc basis shall remain adhoc till regularised based on their seniority and selection as per rule by D.P.C. The applicants, it has been averred, have accepted the adhoc promotion with their eyes open and as such cannot now be permitted to claim promotion on regular basis from the date, they were given adhoc promotion in preference to their seniors.

4. We have heard the learned counsel for the parties and perused the record. The learned counsel for the applicant urged that since the applicants were promoted, although on adhoc basis, by the D.P.C. after following the procedure laid down thereon and that their work and conduct during the period of their adhoc officiation has not been found unsatisfactory and not giving them seniority from the date of their promotion on adhoc basis is unfair and against principle of equity and natural justice. For proper appreciation of the argument advanced, a ~~number~~ of reference to the background leading to the appointment of the applicants is necessary. Admittedly, during the year, 1982, some posts of Assistant/Head Clerks were lying vacant in various stations considered difficult because the senior persons promoted from the regular Departmental Promotion Committee panels were not willing to



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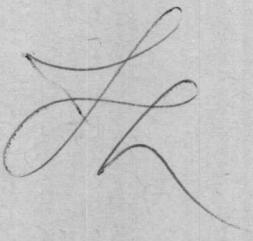
move out of those stations on promotion. In the above context, a scheme, to promote junior regular U.D.Cs who were willing to move out on promotion to the above places, was formulated. The letter dated 16.2.1982 (Annexure-1) was circulated for inviting willingness of such junior regular U.D.Cs who were willing to move out on promotion on adhoc basis to the aforesaid places. The relevant portion of the letter is being extracted below for convenience of reference;

There are some posts lying vacant in the grade of Assistant/Head Clerk in various stations. In order to enable this office to fill up these vacancies, would you kindly ascertain from the regular Clerks, Upper Division of your Circle/ Directorate (from SL. 3 up to SL. 123 of the gradation list of U.D.Cs, as on 1.1.1980), if they are willing to move out on promotion as Assistant/Head Clerk on adhoc basis. They will remain adhoc till regularised based on their seniority and selection as per rules by D.P.C. (as further amplified below in para4). Those who are willing to move out should indicate first three stations of their choice, in order of preference, where they would go on promotion as Assistant/Head Clerk. Depending upon their seniority, all efforts will be made to adjust them in order of their preference at the indicated stations. If there is no vacancy at the given stations, it will be assumed that the individuals concerned are not interested in posting out of their present station. Unless a vacancy later arises at that station, no further offer of promotion will be sent to them.

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5. From the stipulation of the letter circulated to the applicants, relevant portion of which is extracted above, it is clear that it was made clear that the appointment shall remain adhoc and regularisation in service will be based on their respective seniority as per rule by the D.P.C. The applicants have accepted the promotions on adhoc basis by accepting the above stipulation. They, in our opinion, are now stopped from backing out from the said position and demand promotion on regular basis from the date of their adhoc promotion.

6. The respondents, by the letter circulated inviting willingness of the candidates, had only guaranteed their adhoc promotions by making provision in para 5 of the said letter that till such time such persons are not regularised, no one else will be posted against that post provided service record of such promotees ~~can~~ continued to be satisfactory. The applicants have not ^{raised} made any grievance against the respondents ^{that} ~~in regard~~ ^{they have} with the respondents ^{not} ~~having~~ protected their adhoc promotion as undertaken by them. Therefore, it can safely be presumed that this commitment was kept by the respondents. From Para 10 of the Counter Affidavit, it appears that the promotion of the applicants was not recommended by the Departmental Promotional Committee as no D.P.C. meeting was held ~~in~~ ^{for} making recommendation for adhoc promotion of the regular U.D.Cs who had indicated their willingness to move out to different places pursuant to the letters circulated to them. The



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selection, however, was made after processing their ACRs to determine the fitness for adhoc promotion. It would thus appear that adhoc promotions of the applicants were not made on the recommendation of the DPC as is essential for regular appointment. In this view of the matter also, the applicants are not entitled to regularisation of their promotion from the date of their adhoc promotion. In this connection reference to the decision of the Supreme Court in AIR 1990 SC page 1607, Direct Recruit Class II Engg. Officers' Assn. Vs. State of Maharashtra may/ be mad The Supreme Court in the said case has held;

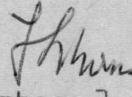
Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as a stop-gap arrangement the officiation in such post cannot be taken into account for considering the seniority.

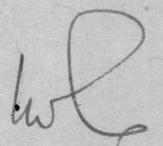
7. The learned counsel for the respondents submitted that the adhoc promotions of the applicants were made in exigency of the interest of administration without following the D.P.C. procedure. This was done to protect the interest of the seniors. The applicants have accepted the adhoc promotion with the clear understanding that their adhoc promotions will be protected but the promotion will be regularised only according to their seniority. In this view of the matter and having regard to the principle of law laid down by the Supreme Court for determining seniority in the case referred to above, we are satisfied that the applicants cannot be given seniority w.e.f. the date of their adhoc promotion.



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8. On a consideration of the facts and circumstances discussed above, we find and hold that the applicants are not entitled to regularisation of their promotion w.e.f. the date of adhoc promotion. The respondents have rightly regularised their service as Assistant/Head Clerks on the basis of their seniority and seniority fixed taking into account the date of their regularisation in the grade of Assistant/Head Clerks. We find no merit in this application and the same is dismissed.


Member-J


Member-A

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