

19

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 9 OF 1992
TAX NO.

DATE OF DECISION 09.6.97

Jayantilal Punjabhai Waghela, Petitioner

Mr. M.S. Trivedi, Advocate for the Petitioner [s]
Versus

Union of India & Ors. Respondents

Mrs. P. Safaya, Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Radhakrishnan, Admin. Member.

The Hon'ble Mr. T.N. Bhat, Judicial Member.

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? *Y*
- 2, To be referred to the Reporter or not ? *Y*
- 3, Whether their Lerdships wish to see the fair copy of the Judgment ? *Y*
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? *Y*

Jayantilal Punjabhai Waghela,
80 Central Excise Colony,
Race Course Circle,
Vadodara 390 007

(A/o. Punjabhai Whela)
employed at U.D.C. Technical
Section in the office of the
Assistant Collector, Central
Excise and Customs Division II Vadodara.

: Applicant

(Advocate: Mr. M.S. Trivedi)

Versus

1. Union of India
Notice to be served through:
Secretary to Govt. of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Central Board of Excise &
Customs, New Delhi (Notice to
be served through Secretary
to Central Board of Excise
and Customs, North Block,
New Delhi.
3. Collector of Central Excise,
Central Excise Building,
Race Course Circle, Vadodara.
4. Assistant Collector of Central
Excise and Customs, Division II,
Central Excise Building, Race Course
Road, Vadodara.
5. Vichare Sunil Lazmanrao
6. Ashokkumar Sharma
7. Patel Yunusbhai Adambhai
8. Parmar Dilipkumar Maganbhai
9. Potdar Pradip Narhari
10. Desai Anil Anantrao
11. Padaya Premjibhai Najabhai
12. Kale Udaykumar Pandurang
13. Smt. Joshi Mandakini Jayendra.
14. Patel Shantilal Ramanlal
15. Suresh Chandra Panday
16. Smt. Gurjar Neela Vesvanath
17. Gigmon Philip



18. Smt. Thakar Rasmi Umesh
19. Satwani Hemant Kumar
20. Mehta Hitendrakumar Hasmukhbhai
21. Vaghela Ramesh Damjibhai
22. Solanki Balubhai Lallubhai
23. Chhikniwala Jayesh Rameshchandra
24. Patel Sumanbhai Bagabhai
25. Devasey P.V.
26. Patel Kantilal Thakorbhais
27. Thokar Kalpesh Pramodray
28. Roy Abraham
29. Pande Pawan Nagandraprasad
30. Kantheria Kavalbhai Chhaganbhai
31. Rachchh Pankaj D.
32. Chavda Raghavbhai Rudabhai
33. Shah Gopalbhai Sandarbhai
34. Smt. Mohita Varsha Dilipkumar
35. Chavda Chandu Amarabhai
36. Smt. Pispatikar Sunandaben Vinayakrao
37. Parmar Suresh Chandra M.
38. Smt. Vasava Ramaben Mohanbhai
39. Solanki Dineshchandra Bahechardas
40. Smt. Patel Lilavatiben Surendrabhai
41. Parmar Kacharabhai Jethabhai
42. Bharat Lal Meena
43. Mayavanshi Uttambhai Govindbnai
44. Ashokkumar Meena
45. Smt. Chaudhary Reenu K.
46. Macwan Michael Sigfrid
47. Mavati Mohammed Hanif Jusein
48. Kum. Goswami Paula Kantigiri
49. Patel Dipakkumar Shankarlal
50. Kum. Khatri Sunita Keshavlal
51. Parwani Jagatrai Harbhagwandas
52. Smt. Nainani Roshi Kesri
53. Chudasama Jaspalsinh Dilawarsinh
54. Patel Lolathhai Nanubhai
55. Shaikh Abikd Husain Nasir Husain
56. Bhagar Yogeshkumar Ratilal
57. Raval Satishkumar Amratlal

58. Smt. Ayachat Kundaben Bhaskar
 59. Ramesh Chandra Meena
 60. Parmar Ratilal Chimanlal
 61. Mukesh R. Kosta
 62. Chauhan Hasmushlal Maganlal
 63. Meena Shrawan Lal
 64. Mange Virendra Khataubhai
 65. Hirwaniya Kilipkumar Hiralal
 66. Shah Bharatkumar Nemchand
 67. Meena Heera Lal
 68. Shaikh Binyaminbhai Abdulrasid
 69. Meena Shanker Lal
 70. Bhatt Kaushikkumar Shankarlal
 71. Damor Jitendrakumar Shivabhai
 72. Parmar Sunil Prabhudas
 73. Meena Ramniwas
 74. Ekota Pradip Bhalchandra
 75. Patel Hiteshbhai Ramanlal
 76. Smt. Mayavanshi Hemlata Uttambhai
 77. Kum. Chaudhari Devyani Mansinh,
 78. Meena Radha Mohan
 79. Joshi Prakash Bhalshankar
 80. Patel Kanubhai Pragjibhai
 81. Smt. Nair Shobhana Padmanabhan
 82. Smt. Patel shobhanaben Pankajkumar
 83. Meena Prathvi Lal
 84. Waghela Mahendrakumar Valjibhai
 85. Patel Shashikant Somabhai
 86. Akolkar Kishor Laxman
 87. Gamit Dhirubhai Kachabhai
 88. Kotker Madhukar Pandherinath
 89. Kadu Pradip Shanker
 90. Prajapati Sureshkumar Ambalal
 91. Solanki Jagatsang Virsang
 92. Kalal Ramlal Nathalal
 93. Patel Prakash Suhas
 94. Shukla Mahesh Jugalkishor
 95. Smt. Adhyaru Virbala Nanhar



96. Maheshwari Bachubhai A.
97. Malek Vajiruddin F.
98. Chauhan Sabarbhai Motibhai
99. Rohit Bhagubhai Ambalal : Respondents

(All Nos. 5 to 99 UDC to be served through Collector of Central Excise & Customs, Central Excise Building, Race Course Circle, Baroda.

(Advocate: Mrs. P. Safaya)

: J U D G M E N T :

O.A. 9/92

Date: 09.6.97

Per: Hon'ble Mr. V. Radhakrishnan : Member (A)

The applicant was working as Sepoy/Laboratory Attender under the Respondents. In 1981 the respondents decided to fill up the post of LDC on adhoc basis as the Staff Selection Commission was unable to sponsor the required number of candidates against the vacancies. For this purpose educationally qualified Group 'D' staff were considered for adhoc promotion. The conditions including that of five years regular service in the grade in the 10% quota reserved for Group 'D' staff were relaxed. These promotees were to continue as LDC until the regular candidates were made available by the Staff Selection Commission. The applicant was also considered and promoted on ad hoc basis as LDC vide order dated 20.10.1981 (Annexure A-2)



subject to the conditions prescribed therein.

The applicant states that he has passed the departmental typing test and he continued as LDC without any break. The services of the applicant as LDC were regularised by the respondents in May, 1984. The grievance of the applicant is that the adhoc tenure as LDC from 20.10.81 to 10.5.84 was not treated as regular basis for counting his seniority. The applicant submitted a representation to the respondents contending that his seniority should be fixed from the initial date of appointment as adhoc LDC i.e., 20.10.81 (Annexure 'D'). The said representation was rejected by the respondents in March, 1989 (Annexure 'E'). Thereafter the applicant submitted another representation to the Secretary, Central Board of Excise and Customs, New Delhi claiming that he being an S.C., his adhoc services should be counted as regular service. This representation was also rejected by the respondents in December, 1990 (Annexure 'H'). Subsequently, the applicant filed this O.A. in 1992 praying the following reliefs:-

"(A) The order of the Central Board of Excise and Customs, New Delhi as contained and communicated in the letter dated 13th December, 1990 by the Assistant Collector of Central Excise & Customs, Division II, Vadodara may be set aside alongwith the order of Deputy Collector (P&E) Customs and Central Excise, Vadodara as communicated



(3)

and contained under letter dated 2nd March, 1989 of the Administrative Officer (Hq) Customs and Central Excise, Vadodara and further the applicant's seniority may be ordered to be refixed so as to count the period of adhoc appointment as L.D.C. from 20th October, 1981 to 10th May, 1984 as continuous length followed on regular basis appointment of L.D.C.

(B) The applicant may be declared to be eligible for consideration on the basis of such seniority for appointment to the post of Inspector of Central Excise & Customs in any of the collectorate of Central Excise and Customs, Ahmedabad, Rajkot or Vadodara; and

(C) Pass such other and further order or orders as may be thought fit in the interest of justice".

2. The respondents have contested the application. They have taken a preliminary objection that the applicant has not approached this Tribunal within the time-limit. In the O.A., the relief is for counting the service from 20.10.81 to 11.5.84. They have claimed that the application is hopelessly time barred. They have stated that the latest representation of the applicant was rejected in 13.12.1990 and he has not approached this Tribunal within one year thereafter.

3. In so far as the merits of the O.A. is concerned, they have stated that the applicant was promoted in October, 1981 the promotion order made it very clear that the promotion was purely on adhoc basis with the



following conditions:-

- (i) that the Group 'D' employee so promoted will not request for regularisation against the post to which they are appointed;
- (ii) that on becoming available of regular candidates against these posts, these ad hoc appointees will be reverted to their Group 'D' posts;
- (iii) that it will not bestow on him a claim for seniority in Group 'C' grade above those who have been regularly promoted and the service rendered on ad hoc basis in Group 'C' grade will not count for the purpose of seniority/confirmation and for promotion to the next higher grade."

4. They have stated that the Group 'D' official should fulfil the following conditions for promotion to the grade of LDC against 10% reserved vacancy:-

- (1) 10% of the vacancies in the grade of Lower Division Clerk to be filled by direct recruitment will be reserved for being filled up by Group 'D' employees (borned on regular establishment) subject to the following conditions namely:
 - (a) Selection would be made through a departmental examination confined to such Group 'D' employees who fulfil the requirement of minimum educational qualification, namely, matriculation of equivalent;



92

- (b) the maximum age for this examination would be 45 years (50 years for Scheduled Caste or Scheduled Tribe candidates);
- (c) at least five years service in Group 'D' would be essential;
- (d) the maximum number of recruits by this method would be limited to 10% of the vacancies in the cadre of lower division clerks occurring in a year; unfilled vacancies would not be carried over.

(2) Educationally qualified Laboratory Attenders who have initially been recruited through Employment Exchange can also compete for the post of Lower Division Clerk against 10% vacancies reserved for Group 'D' employees by allowing them to deduct the period of service rendered as Laboratory Attender including service, if any, in Group 'D' earlier, from their actual age for the purpose of reckoning age limit."

5. The applicant had not satisfied the above conditions at the time of adhoc promotions and the headquarter's of respondents had relaxed the conditions in the Recruitment rules in order to fill up the posts of LDC which were not filled in due to non-availability of candidates from Staff Selection Commission. The applicant was promoted on regular basis only from 11.5.1984 when he fulfilled the conditions as per the Recruitment

[Signature]

Rules. They have stated that the adhoc promotions were de-hors recruitment rules and hence that period of service cannot count for seniority. In so far as the question of reservation is concerned, the question will arise only to the direct recruitment quota did not exceed 66.2/3 %. However, in the case of promotion of LDC, the quota is 90%. Hence, reservation was not applicable. In short, they have stated that the applicant was not promoted after undergoing regular selection process in 1981 and as such the adhoc service cannot count for seniority.

6. Mr.Trivedi, the learned advocate for the applicant during the arguments stressed the point that even though the applicant was promoted on adhoc basis he was continued without break and he was regularised as LDC without being reverted to Group 'D', and he claims that the applicant be treated to be as regular LDC from the date of his initial appointment as adhoc LDC. In this connection he supported his case by two judgments given in the case of K. Balashanmuganathan V/s. Union of India and Ors. (430 Swamy's CL Digest 1995/1 decided by the Madras Bench and in the case of Bikari Lal and ⁸Ors. V/s. Ministry of Water Resources, New Delhi & Anr. (469 Swamy's C.L.Digest 1995/2 decided by the Principal Bench of C.A.T. according to which adhoc services ~~was~~ followed by regularisation can be counted for seniority.

Mrs. Safaya, the learned advocate for the respondents

on the contrary contended that the applicant was fully aware in 1981 that he was promoted on adhoc basis on a relaxation of the recruitment rules and therefore he cannot claim seniority from the date of his initial appointment as it was not regular process of selection. In the first instance we may dispose of the preliminary objection raised by the Respondents regarding time-bar. It is seen that the Respondents had rejected the applicant's last representation on 13.12.90 and he approached the Tribunal on 2.1.92 i.e., after a delay of about 20 days. We do not consider the delay as material and hence the preliminary objection is over-ruled.

7. It is quite evident from the orders issued that the promotion of the applicant in 1981 was not made according to the rules but was only made on adhoc basis. It has been held by the Hon'ble Supreme Court in Masood Akhtar Khan V/s. State of Madhya Pradesh (1990) 4 SCC 24 wherein it was held that if the initial appointment is not made according to the rules, subsequent regularisation of the service does not entitle him for the benefit of adhoc service for seniority. Seniority has reckoned from the date of regular appointment and not to be counted from the date of any adhoc arrangement. Again in D.N.Agrawal V/s. State of Madhya Pradesh (1990) 2 SCC 553 : (AIR 1990 SC 1311) it was decided ~~that~~ by the Apex Court that an employee cannot claim the benefit of officiation on adhoc basis even after being regularly appointed subsequently for the purpose of seniority. A constitution Bench of the Hon'ble Supreme Court in

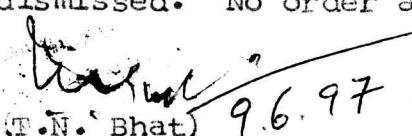


(2)

Direct Recruit Class II Engineering Officers' Association
V/s. State of Maharashtra (1990) 2 SCC 715 : (AIR 1990
SC 1607) held as under:-

"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. Seniority cannot be determined on the sole test of confirmation, for, confirmation is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Arts. 14 and 16. 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".

8. In view of the clear pronouncement of the Hon'ble Supreme Court we are unable to appreciate any merit in the O.A. in view of the fact that the appointment of the applicant as LDC in 1981 was on adhoc basis after relaxation of the recruitment rules which was clearly brought out ^{the} ~~from~~ in appointment order. That being the case the adhoc service put in by the applicant from 1981 to 1984 cannot be counted for the purpose of seniority. The cases quoted by Shri Trivedi, learned counsel for the applicant do not help his case. Accordingly, the O.A. is dismissed. No order as to costs.


(T.N. Bhat)
Member (J)


(V. Radhakrishnan)
Member (A)