

7

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

O.A.NO. 113 of 1999
Cuttack, this the 8th day of July 2004

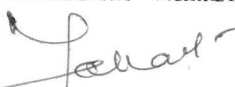
Narayan Sahoo and anotherApplicants


Vrs.

Union of India and othersRespondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? 74
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 12


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

8
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO.113 of 1999

Cuttack, this the .8th day of July 2004

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDL.)
.....

1. Narayan Sahoo
2. Niranjana Nanda,
Both are working as Assistant Accounts Officer,
Office of the Deputy Director of Accounts
(Postal), Cuttack 5.....Applicants

vrs.

1. Union of India, represented through the
Secretary, Department of Posts, Government of
India, New Delhi 110 001.
2. Director General of Posts, Government of India,
Dak Bhawan, New Delhi 110 001.
3. Chief Post Master General, Orissa Circle,
Bhubaneswar 751 001.
4. Deputy Director of Accounts (Postal), Cuttack
753005.Respondents

Advocate for applicants - Mr.D.P.Dhalsamant

Advocate for Respondents - Mr.B.Dash, ASC
.....

O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN

This Original Application has been filed
by S/Shri Narayan Sahoo and Niranjana Nanda, both
working as Assistant Accounts Officer (in short,
"A.A.O.") in the office of the Deputy Director
of Accounts (Postal), Cuttack, challenging the
all-India eligibility list of Junior Accounts
Officers/Assistant Accounts Officers (in short,
"JAO/AAO") as on 31.10.1994, on the ground that

4

while preparing the said eligibility list, the period spent by the applicants on ad hoc basis in J.A.O. cadre has not been taken into account.

2. The facts of the case in a narrow compass are that the applicants, after having come out successful in JAO, Part II (Postal) Examination, held in 1986, were given ad hoc promotion to the grade of JAO with effect from 30.4.1987 and 19.3.1987 respectively. However, they were regularly appointed to the grade of J.A.O. only from 22.12.1987 and 1.1.1988 respectively. It is their grievance that the period of their officiation on ad hoc basis has not been taken into account as regular service in the cadre and as such their cases were not considered by the Departmental Promotion Committee (in short, "D.P.C.") for promotion to A.A.O's cadre on the ground that they had not completed three years regular service. Their names were shown in the gradation list below the names of the officials who qualified in the Examination subsequent to the one in which the applicants had qualified and that their dates of appointment to the J.A.O. cadre had been wrongly shown as 22.12.1987 and 1.1.1988 respectively because they have been officiating in that grade from 30.4.1987 and 19.3.1987 respectively. They had represented their grievance before Respondent No.2 but without any success. Relying on the judgment of the Hon'ble Supreme Court in Maharashtra Engineers case, 1990 (2) SCC 715, they have argued that they are entitled

4

to counting of ad hoc service for the purpose of seniority.

3. The Respondents have contested the Original Application in all respects. They have stated that the Original Application is hopelessly barred by limitation because the eligibility list which is under challenge was published by the Respondents in the year 1997, but the same has been challenged only in the year 1999. Their second ground of attack is that the representation which the applicants had submitted was carefully considered by the Director General, Posts, as early as in December 1990 and was rejected with the remarks that ad hoc service rendered by the applicants as J.A.O. prior to the dates of regular promotion could not be counted for seniority purpose. The decision was communicated to them by a letter of Respondent No.4 dated 17.1.1991, after which the applicants had remained silent and then made a fresh representation dated 15.9.1998, i.e., after a period of eight years, which in any case did not give them a new lease of life so far as the question of limitation is concerned. They have referred to the decision of the Apex Court in the case of Shri Ratan Chandra Samanta v. Union of India, 1993 (1) ATR 251, that delay deprives a person of his remedy available in law and that in the absence of any fresh cause of action, a person who has lost his remedy by lapse of time loses his right as well. Referring to the facts of the case,

4

they have submitted that both the applicants were appointed as J.A.Os. on purely temporary and ad hoc basis against short term vacancies caused due to officiating promotion of the regular incumbents as Accounts Officers and that the promotion orders of both the applicants contained clear stipulations that the ad hoc services rendered by them as such would not count for seniority in the grade of J.A.Os. or for the purpose of promotion to the next higher grade. They have also disclosed that as per the departmental regulations, a candidate who comes out successful in both JAO Part I and Part II Examinations, becomes eligible for appointment as JAO, but he can only be appointed on regular basis if a regularly vacancy exists. They have argued that the inter se seniority of the applicants has been correctly fixed at Sl.Nos.251 and 257 with reference to the dates of their regular lappointment in the cadre as per the guidelines contained in the Postal Directorate's letter dated 24.7.1997 in which J.A.O. cadre has been declared as a Circle cadre and that the main criterion for fixation of seniority in the centralised eligibility list is the date of regular appointment to the cadre as notified by the Head of the Circle. In the end they have submitted that [redacted] the seniority of a JAO in the All India list is reckoned with reference to his date of regular appointment in the cadre and not with reference to the batch/year of examination of an official.

ay

They have also submitted that the case law cited by the applicants has no relevance to their case because the applicants were given promotion on ad hoc basis and as a stop-gap arrangement against short term vacancies caused due to officiating promotion of the regular incumbents as Accounts Officers.

4. We have heard the learned counsel for both the parties and have also perused the records placed before us including the case-laws relied upon by the rival parties.

5. The short point to be answered in this case is, whether the period of ad hoc officiation in the grade of JAO is to be counted for the purpose of seniority in that grade. The Respondents have brought to our notice in Annexure R/9, a policy letter issued by Respondent No.1 dated 24.7.1997, regarding the principles for preparing the eligibility list of JAOs/AAOs, the relevant portion of which is quoted below:

"SUBJECT: ELIGIBILITY LIST OF
JAOs/AAOs-REGARDING
Sir/Madam,

In continuation of this Directorate letter of even No. dated 8.1.97 I am directed to convey the guidelines adopted in the preparation of Eligibility list of JAOs/AAOs in consultation with Department of Personnel & Training.

2. The present eligibility list has been prepared centrally with reference to the guidelines already available la gist of which is outlined below:

(1) JAO being a circle cadre, the date of regular promotion to JAO cadre as notified by the Head of Circle, is the main criteria for the fixation of seniority in the centralised eligibility list.

6

- (2) (i) In case the date of regular promotion of official from different circles happens to be the same, then the seniority in the eligibility list is fixed with reference to marks obtained by the officials in aggregate in Part II of JAOs examination.
- (ii) If the aggregate marks obtained by the officials in JAOs examination happen to be the same, then the seniority is reckoned with reference to marks obtained by the officials in Paper 1st, 2nd and so on.

3. When a senior in circle joins later than his junior, the date of joining of junior in the concerned circle will be assigned to the senior provided the senior has not declined his appointment/No Vigilance Case is pending etc.

4. Further, preparation of seniority list of JAOs to the cadre of AAOs on the basis of merit list, i.e., marks obtained in JAO Part II examination (a qualifying exam.) is not practicable in view of the JAO cadre being a circle cadre where the promotions to JAOs are made from the available list of JAO Part II passed candidates according to the vacancy in the respective circle without taking cognizance of the individual as per merit list."

above quoted

6. In terms of the rules framed by the Respondent-Department for preparing the eligibility list of JAOs/AAOs for promotion to the next higher grade, it has been clearly spelt out that JAO cadre being a Circle based cadre, the date of regular promotion to JAO grade/cadre as notified by the Head of Circle will be the main criterion for fixation of seniority in the "Centralised Eligibility List".

The Respondents vide their letter dated 19.12.1990 at Annexure R/1 to the counter had apprised the applicants through Respondent No.3 that the ad hoc service rendered by them as JAOs prior to the dates of regular promotion "cannot be counted for

seniority in the J.A.Os. cadre and for promotion to the AAOs cadre." That decision being in conformity with the policy circular quoted above, we see no irregularity being committed by the Respondents in preparing the All India Eligibility List. We would also like to place on record here that reference to the decision of the Apex Court in Maharashtra Engineers case (supra) is not valid. The decision contained in that case was that only when an incumbent is appointed to a post according to the recruitment rules, his seniority has to be counted from the date of his appointment. Later the Apex Court has clarified that the corollary of the above rule is that where the initial appointment is only ad hoc and not according to the rules and made as a stop gap arrangement, the officiation in such a post cannot be taken into account for counting seniority. The same decision is available in Keshab Chandra Joshi and others v. Union of India and others, AIR 1991 SC 24. In the instant case, it is not the case of the applicants that they were not appointed on ad hoc basis and as a stop gap arrangement against the vacancies caused due to officiating promotion of the regular incumbents in JAOs cadre (Annexures R/3 and R/4).

7. In view of our above discussion and the settled position of law, we see no merit in this O.A. which is accordingly dismissed. No costs.


(M.R. MOHANTY)

MEMBER (JUDICIAL)


(B.N. SOM)

VICE-CHAIRMAN

an/ps