

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 583 of 2006

Friday, this the 20th day of June, 2008

C O R A M :

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

P. Unnikrishnan,
Staff Car Driver Grade-I,
Central Administrative Tribunal,
Ernakulam, Residing at
Malayil House, Udayamperoor,
Ernakulam

... Applicant.

(By Advocate Mr. P. Vijaya Kumar)

v e r s u s

1. Central Administrative Tribunal,
Principal Bench, Represented by its
Registrar, 61/35, Copernicus Marg,
New Delhi : 110 001

2. Central Administrative Tribunal,
Ernakulam Bench, Represented by its
Registrar, Indira Nagar,
Sastha Temple Road, Kaloore,
Cochin - 682 017.

... Respondents.

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

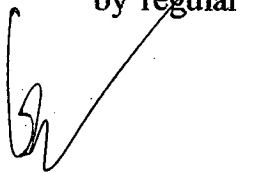
The applicant was initially engaged on daily wages basis as staff car driver in this Tribunal since 13th June, 1986 and without any break, he was appointed on ad hoc basis as staff car driver w.e.f. 03-11-1986 vide Annexure A-1. Again,

without any break in between after successive extension of ad hoc appointment (Annexure A-2 to A-4), the applicant's services as staff car driver had been regularized w.e.f. 01-01-1988.

2. Seniority list of staff car drivers was published in 1999 vide Annexure A-5 in which the period of regular service was reflected as effective from 01-01-1988 and the earlier period of adhoc service was also separately shown. The applicant represented but there was no joy. Vide Annexure A-6, a scheme was devised by the respondents providing for a three grade structure of staff car drivers as Ordinary Grade (Rs 3050-4590), Grade II (Rs 4,000 – 6000) and Grade I (Rs. 4,500 – 7,000/-). The entry grade was the ordinary grade and on completion of 9 years in that grade one could move to Grade II and on completion of 6 years in that grade or 15 years' combined service in Ordinary Grade and Grade II, one could be promoted to Grade I, subject however to qualifying in the test conducted for this purpose.

3. Based on the above scheme, the applicant was positioned in Grade II w.e.f. 01-01-1997, taking 01-01-1988 as the date of commencement of regular appointment. Again, w.e.f. 01-01-2003 the applicant was positioned as Staff Car Driver Grade I. Annexures A(8)(a) and A(8)(b) respectively refer.

4. As the applicant felt that in view of the fact that his initial ad hoc appointment was against a regular vacancy and that the same having been followed by regular appointment, he should be deemed to have been regularly appointed




w.e.f. 03-11-1986, the applicant moved Annexure A-9 representation for treating the period of ad hoc service as regular and for corresponding advancement of his promotion to Grade II and Grade I. However, the same had been rejected vide Annexure A10 Memorandum, which has been impugned in this O.A.

5. Respondents have contested the O.A. It has been contended that the applicant's appointment in June, 1986 was on daily wages basis, made in the exigencies of administration and the same cannot be considered as government service. Ad hoc appointment was resorted to in November, 1986 as there was no recruitment rules. Since Recruitment Rules were notified w.e.f. 01-01-1988, the applicant was considered, by relaxation of requisite qualification of VIII pass and he was appointed on regular basis. As the applicant was not in possession of the qualification at the time when he was appointed on regular basis, his appointment was de- hors the rules. Hence, the said period cannot be considered for regular appointment.

6. The applicant has filed his rejoinder, in which he has contended that as per the recruitment Rules, the essential qualification was possession of a valid driving licence for motor cars and knowledge of motor mechanism and experience of driving a motor car for at least 5 years. Qualification of VIII pass was only a desirable qualification and not essential qualification.

7. Counsel for the applicant submitted that non notification of Recruitment Rules cannot be a reason for non-regularization from the date of initial



appointment, when the applicant had possessed requisite qualification, when the initial appointment was by following the prescribed procedure for selection, when there were regular vacancies and the ad hoc appointment was followed by regularization without any break, there is no reason as to why the ad hoc period be not treated as regular. To substantiate his case the applicant has referred to the following decisions:-

- (a) 1980(4) SCC 226
- (b) 1994 Supp (1) SCC 71
- (c) 1999 (2) SCC 119
- (d) 2003(8) SCC 714
- (e) 2006(6) SCC 57

8. Counsel for the respondents reiterated the submissions made in the counter.

9. Arguments were heard and documents perused. The period of ad-hoc appointment from 03-11-1986 to 31-12-1987 is not in dispute. Nor is it under the dispute that immediately w.e.f. 01-01-1988 the applicant's services were regularized. In so far as qualification requirement is concerned, the recruitment rules provide for VIII standard pass only as a 'desirable qualification' and not essential qualification. Annexure A-11 refers. Thus, the contention of the respondents that the applicant's ad hoc appointment was de hors the rules cannot be accepted. No other reason for non-regularization of ad hoc period of appointment has been given.

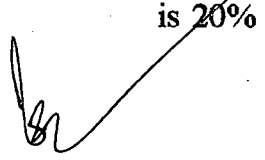
10. It is, therefore, to be seen whether the applicant is entitled to treat the ad hoc period anterior to regularization as regular for the purpose of promotion etc.

11. The applicant has relied upon the aforesaid decisions of the Apex Court. A reference to these cases at this juncture would be useful.

"In Baleshwar Dass vs State of U.P. (1980) 4 SCC 226, the Apex Court has held, "officiating service, even before confirmation in service has relevancy to seniority if eventually no infirmities in the way of confirmation exist. " In fact, before making this observation, the Apex Court referred to the decision in the case of N.K. Chauhan vs State of Gujarat (1977) 1 SCC 308 wherein it was observed, "Seniority, normally is measured by length of continuous officiating service — the actual is easily accepted as the legal."

12. Referring to the above decision in the case of **Kailash Chandra Rajawat vs Union of India**, (1994) Supp (1) SCC 71, the Apex Court allowed the claim of the petitioner therein in whose case the period of appointment as train clerk on temporary basis from 1979 to 1982 was counted as regular as the same was followed by regularization for promotion to the post of Goods Guard 'C'.

13. In the other three cases, the point involved was whether the past service in other department could be counted for the purpose of calculating the period of experience in respect of time bound promotion. These are of little assistance to the case of the applicant as his is not the case of time bound promotion but one of promotion within the prescribed vacancies. As per the scheme, vide Annexure A-6 the posts of Staff Car Drivers have to be trifurcated in the ratio of 55:25:20. That is why, in the grade of Rs 4,500 – 7,000/- and above, the total number of promotions vide Annexure A-8(b) was restricted to 10, which is 20% of total of 51 posts. As such, the above cases relating to one time bound



promotion would not be of any assistance to the applicant.

14. In a Constitutional Bench Judgment of the Apex Court in *Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra*, (1990) 2 SCC 715, the Apex Court has held 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.

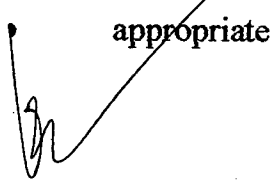
(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.”

15. The above dictum of the Apex Court would go to show that even when there be certain irregularity (not illegality) in ad hoc appointment and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with rules, the period of officiating service will be counted. Thus, the applicant's regular service shall be reckoned with effect from 03.11.1986.

16. The benefit in regularization is of two-fold. First, it is taken as qualifying service for pension purpose. Next is relating to seniority. The first one has no impact upon the career of the other employees while the second would have certain impact upon the career of others as well. In so far as the case in hand is



concerned, the respondents have issued the seniority list once in 1999 and another in 2002. Though it has been stated that the applicant had agitated against his ad hoc service not having been counted for regularization in the past, neither he has annexed copy of such representation nor had he approached the Tribunal within 18 months from the date of such representation, as per the provisions of Sec. 20(2) of the Administrative Tribunals Act, 1985. The seniority list has become a settled affair as early as 2002. It has been held in the decision by the Apex Court in the case of *Bimlesh Tanwar v. State of Haryana*, (2003) 5 SCC 604, "it is now well settled that a settled seniority position should not be unsettled.". Thus, if the seniority list is now sought to be unsettled, the same would go against the law laid down by the Apex Court. In fact, even if the seniority is given to the applicant as prayed for, it would be highly doubtful whether the applicant could be benefited by the same, since the posts in the grade of Rs 4,500 – 7000 and above being limited, but there being more individuals whose ad hoc appointment is prior to that of the applicant (i.e. at least five juniors to the applicant would become senior to the applicant as their ad hoc appointment is prior to that of the applicant, while above the applicant there has been only one individual whose ad hoc appointment is later than the applicant), they would steal a march over the applicant. Hence though the applicant has a case for regularization right from the date of initial ad hoc appointment, in view of the law laid down by the Apex Court in *Bimlesh Tanwar* case (*supra*), seniority would not be disturbed. However, the period of ad hoc appointment shall be counted as qualifying service for the purpose of pension and other terminal benefits. In fact, had the applicant approached the Tribunal at the appropriate time, perhaps he would have been given the benefit of seniority as



well, but then again, it is not certain that he would have been senior enough to have the benefit of promotion as Grade I Driver prior to 2003, since there would be, as stated earlier, more individuals who would become senior to the applicant if such ad hoc period is included.

17. As at present, the applicant's date of regular appointment is 01-01-1988 and his date of birth being November, 1957, he would superannuate on 30-11-2017. Thus, he would have put in only 29 years of service, which would be at least four years less than the full tenure of 33 years to derive full pension. If the period of ad hoc service is added the total period would work out to 31 years. To that extent, he would be benefited by adding his ad hoc service as qualifying service. In addition to the applicant, respondent may give such a benefit to others similarly situated as it has been recommended by the Fifth Central Pay Commission as under:-

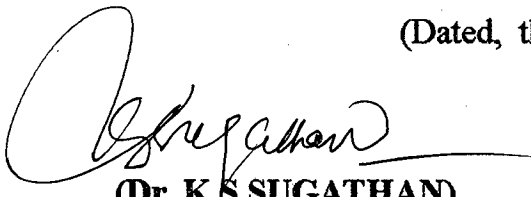
"126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147)], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the

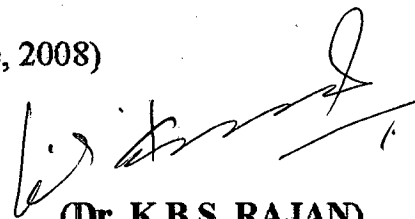
Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

18. In view of the above, the O.A. is **partly allowed**. Memorandum dated 22nd May, 2006, is quashed and set aside. It is declared that the period of ad hoc service from 03-11-1986 to 31-12-1987 shall be treated as qualifying service for the purpose of pension and other terminal benefits. Respondents are directed to make suitable entries in the Service Book of the applicant and others similarly situated.

19. Under the circumstances, there shall be no orders as to costs.

(Dated, the 20th June, 2008)


(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvt.