

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH

Original Application No. 148 of 1990 (L)

C.K. Panday &amp; others ..... Applicant

Versus

Union Of India and others ..... Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

( By Hon'ble Mr. Justice U.C. Srivastava V.C.)

The dispute in this application is regarding seniority between promotedees and direct recruit from Graduate quota who too were earlier working on adhoc basis like applicants before passing the examination and empanelment, though applicant too passed in the same subsequently that is when they get opportunity for it and were regularised to the post of Senior Clerks. Vide letter dated 18.5.81 the Railway Ministry after reaching of argument in Departmental council conveyed its decision regarding appointment or promotion for the post Senior clerk. The Railway Board acceded the sanction for the restructuring of the cadre of Ministerial staff ( other than personal ) laying down that there shall be direct recruitment of graduates to the post of Clerks in the grade of Rs. 330-560 (new 1200-2040 ) to the extent of 20% and 13 1/3% of the total posts of Senior Clerks ~~shall~~ be filled from amongst the graduate clerks already serving in the Lower grade by competing after allowing them the age relaxation .

2. The applicants who were working on the post of Clerk in the office of Deputy Controller of Stores Northern Railway were appointed on the posts of Senior clerks between 1983 to 1988 except that the applicant No. 16 and 17 who were appointed in January 1987 and October 1988 respectively. Applicant No. 1 to 4 were regularised with effect from 19.4.1986 and 5 to 7 with effect from 22.8.88 after passing suitability test in term of Office order dated 15.11.89. This was done after representation. The suitability test took place end in July 1988 and according to Railway Administration the delay was caused because of pending litigation which started from the year 1982 in respect of seniority one such case was decided by Allahabad Bench of C.A.T. which was set aside by Supreme Court in respect of promotion only.

3. The respondents who were serving graduates appeared in a selection for the post of senior clerk for the posts which arose for graduates clerks in term of Railway Board letter dated 18.6.1981. They qualified for the selection on the basis of which test held on 2.6.85 followed by interview on 14th and 16th August 1985. They were promoted as senior clerks on 8.10.85 on regular basis. 6 of the respondents were appointed as adhoc senior clerks from 1983 on different dates. Some of these persons were promoted on provisional and adhoc basis as Head Clerks with effect from 13.4.1988. Respondents No. 21 to 29 are from the direct graduate quota, who had joined between 11.5.1987 to 30.7.1988. They were allowed seniority on the basis of their empanelment and merit position.

4. Respondents 3 to 18 have pointed out that seniority panel of respondents was circulated on 15.10.85 which was not challenged by the applicants whose panel was declared on 22.8.1988. Respondents were promoted as Head Clerk on 13.4.1988 and the same too was not challenged by the applicants, some of the applicants were promoted as Head Clerks which was dated back earlier on 1.1.1986 or 1.1.1987 or 1.2.1987 some similarly placed person filed an application before Allahabad Bench of the Central Administrative Tribunal for regularisation of their adhoc promotion but the same was dismissed.

5. For the present ignoring the plea of non filing of objection by the applicant at the appropriate stage and thereby making the seniority list final which now is not open for challenge on this ground, the main question which now arises for determination is as to whether the applicants would be entitled to count the period of adhoc promotion prior to their regular appointment not by regularisation straightway but after undergoing the process of suitability test regarding which a direction was also given by Allahabad Bench of the Central Administrative Tribunal vide its judgment dated 14.12.1987 in Hari Shankar Maurya vs. Union of India and others. There is no denial of the fact that promotion could have been made after passing the suitability test. The same was being delayed because of litigation and that is why it appears adhoc arrangements were made but no promotion in accordance with rules were made.

The learned counsel for the applicants contended that seniority is to be determined on the basis of length of service and not on any fortuitous circumstances in the absence of any specific rule in this behalf. In this connection reference was made to certain cases.

In the case of G.P.Doval and others vs. The Chief Secretary Government of U.P. and others (1985, U.P.L.BEC page 4). The facts even were different. In the said case it was held that for determining seniority, length of continuous officiation from substantive appointment (emphasis supplied) can not be ignored if followed by confirmation. Thus emphasis was on substantive appointment (which is not the same thing as adhoc appointment) followed by confirmation. In Narendra Chaddha and others vs. Union of India & others (1986 U.P.S.B.E.C., 373(SC) the dispute was regarding seniority between adhoc promotees and direct recruits. The adhoc promotion was made to fill several vacancies allocated to direct recruits. The promotees continued to work for 15 to 20 years and it was in these circumstances they were given benefit of continuous officiation as it was also directed that they are to be treated as having/regularly appointed. In the case of Direct Recruit Class II Engineer Association vs. State of Maharashtra (AIR 1990 SC page 1607) it was held that where initial appointment is not made by following the procedure laid down in the rules the appointee continues in the post uninterruptedly till

regularisation (emphasis supplied) of his service in accordance with the rules the period of officiating service will be counted and at the same time it was also held that where initial appointment was only adhoc and not according to the rules made as a stop gap arrangement the officiation in such post can not be taken into account for consideration of seniority.

6. In the instant case there was no regularisation and the adhoc appointments so made were time gap arrangement till appointment was not made in accordance with rules. In the case of M.B. Joshi and others vs. Sathish Kumar Pandey and others and other connected cases (1992 Vol. II SVLR) page 284, it was held that in the absence of any separate rule, the seniority amongst persons holding similar posts in the same cadre has to be determined on the basis of length of service and not on any other fortuitous circumstances. There can be no deviation from the principle which does not apply in the instant case in view of the appointment or promotion so made on adhoc basis pending appointment in accordance with statutory rules which existed in the instant case. But in the case of Ashok Gulati vs. B.S. Jain, (A.I.R. 1987, S.C. 424) initial appointment in class II service on adhoc basis was purely as stop gap arrangement for six months at a time debars the rules and later appointed as Assistant Engineer on regular basis through Public Service Commission. It was held that they were not entitled to the benefit of their continuous officiation as such adhoc employees in reckoning their seniority vis-avis direct recruits in the class II service and

eligible in class I service under rules. In Masood Akhtar Khan vs. State of M.P. (1990) 4 S.C.C. 24, stop gap emergency appointments were made for six months pending regular selection by P.S.C. They were allowed to continue and later on were regularly selected by Public Service Commission. It was held that seniority is to be counted not from the date of their initial stop gap appointment but from the date of their regular selection under the rule. In the case of Union of India vs. Sri S.K.Sharma and others (1992) 2 S.C.C. 728, it was held that adhoc service can not be counted for determining seniority. The order granting arrears of pay and allowances for actual working on the post on adhoc basis was held not to be conferring any right to claim seniority on the post by reckoning the adhoc service, and the approval by U.P.S.C. for continuation on adhoc basis being for the purpose of granting pay and allowance would not amount to regular appointment. In R.P. Pandey case (supra) the Allahabad Bench of the C.A.T., after taking into consideration the legal position and provisions of Railway Establishment Manual has taken the view that benefit of adhoc appointment can not be given towards seniority. We do not find any ground to disagree with the said judgment. The respondents, some of whom were working on adhoc basis came as a direct recruit, through proper selection. Their appointment proceeded the regular promotion or appointment of the applicants. In view of para 382 of the Railway Establishment Manual which provides that seniority amongst incumbents of a post in a grade is governed by the date of appointment.

to the grade and in categories of posts partially filled by direct recruitment and partially by promotion seniority should be determined by the date of promotion in case of a promotee and date of joining of the working posts in the case of direct recruit subject to maintenance of the seniority of promotees and direct recruits amongst themselves. The Railway Establishment Manual also provides for ranking in seniority of those selected in earlier selection. Thus the respondents who were directly appointed as Senior Clerks after due selection would rank senior to the applicants in view of the fact that they are not entitled to count the earlier adhoc service towards seniority which was not the ground for making them regular promotion as they have to undergo the process of test and who qualified in the same get regular promotion. In this view there is no question of applying the principle of continuous officiation in the presence of specific statutory rule and ignoring the time gap adhoc appointment does not arise.

7. The other question which requires consideration is to the effect of delayed promotion or its process for no fault of applicants. The delay was caused because of pendency of litigation between direct recruit and promotees, so far direct quota is concerned for which there was no litigation, process went ahead. No rule for simultaneous process of fixing of seniority quota wise and prohibits filling of any particular quota without filling the other one. The Railway

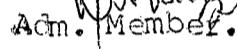
Administration was not responsible for delay nor it is a deliberate act and there is no violation of rule and as such no benefits accrue to the applicants, nor can they claim any. The applicants have thus failed to make out any case for counting the adhoc period towards seniority. They are thus not entitled to the relief claimed and the application is dismissed. There will be no order as to costs.



Vice Chairman.

Shakeel/-

Lucknow: Dated: 5th January 1993.



Adm. Member.