

Research Design and Standard Organisation (RDSO), Lucknow. The applicants were thereafter promoted to class II posts in the R.D.S.O. on adhoc basis between 1975 to 1982. The details of their ad-hoc promotions to Class-II posts of Assistant Design Engineer/Assistant Research Engineer etc. have been indicated in Annexure A-1 to the O.A. The applicants 1 to 3 belong to Electrical Engineering Department while applicants 4 to 7 belong to Mechanical Engineering department and the applicants 8 to 10 belong to the Civil Engineering Department and the applicant No.11 belong to Signal and Tele-Communication Engineering Department. Admittedly the promotion to the said Class-II posts at the relevant time was governed by 'R.D.S.O. Recruitment and Promotion (R & P) Rules of 1967'. The applicants' case further is that for the purposes of promotion to Class-II Posts a combined seniority list of the eligible persons in each department/discipline was prepared. The date of joining the higher Class-III post is the basis for combined seniority list, department-wise.

2. The further case of the applicants is that no selections to fill up the regular class-II posts were held since 1972, for over 12 years. A selection was held in August, 1984. The applicants ~~were~~ qualified at the said selection and ^{were} empanelled. _{for} The applicants are presently working as Assistant Design Engineer/Assistant Research Engineer.

3. Further avenue of promotion to the Class-II Officers is Class-I, as Deputy Directors in the R.D.S.O. The said Posts earlier were governed by Recruitment and Promotion Rules of 1967. The said recruitment and promotion rules have been amended and revised vide Gazette notification dated 21-1-84. Copy of the said rules is annexed as Annexure-A-13 to the O.A. Two methods of recruitment to Class-I posts are provided as per the said rules :-

- 1) By promotion to the extent of $33\frac{1}{3}\%$, failing which by transfer on deputation.
- 2) $66\frac{2}{3}\%$ by transfer on deputation.

For purposes of promotion, the eligibility indicated in the said rules is that Assistant Design Engineers/ Assistant Research Engineers with 8 years regular service in the grade and possessing a degree of engineering in the concerned discipline of a recognized University or equivalent. A note appended to the said rule says :-

" Requirement of possessing degree in engineering of a recognized University or equivalent shall not be applicable in case of departmental candidate holding the above posts on regular basis on the date of promulgation of these rules."

4. On the basis of these facts the applicants have prayed that a direction be issued to the opposite parties to treat the petitioners as having been regularly appointed from the date on which they were appointed and joined on ad-hoc Class-II Services. Consequently the relaxation from possessing engineering degree in the respective disciplines be also applicable to them. They have further sought a direction for their being promoted to Class-I Post on the date vacancies in the

said posts had arisen. They have also claimed that they may be deemed to have been promoted on Class-I posts on adhoc basis on the date their juniors have been promoted in the said capacity and pay them difference of salary and all other consequential benefits in pursuance of the said promotion with retrospective effect on ad-hoc basis.

5. A detailed counter affidavit, on behalf of the respondents, has been filed to which the applicants have filed rejoinder-affidavit.

6. We have heard the learned counsel for the parties.

7. The first question that arises for consideration is the question of eligibility of the applicants for promotion to the post of Deputy Director in the discipline/departments of Civil/Electrical/Mechanical/Signal and Tele-Communication Engineering. The relevant portion of the RDSO (Group 'A' Technical Posts) Recruitment Rules, 1983 is reproduced below :-

" In the case of recruitment by promotion/ deputation/transfer, grades from which promotion/deputation/transfer to be made-

PROMOTION

Assistant Design Engineer/Assistant Research Engineer/Assistant Inspecting Engineer/Assistant Liaison Engineer (Civil Engineering Department) with eight years' regular service in the grade and possessing degree in Civil Engineering of a recognised University or equivalent.

NOTE: The requirement of possessing Degree in Civil Engineering of a recognized University or equivalent shall not be applicable in case of departmental candidates holding the above posts, on regular basis on the date of promulgation of these rules."

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8. Identical provisions have been made in respect of different disciplines/departments. In fact there is twin requirements for eligibility for promotion :-

- (1) 8 years' regular service in the grade of Assistant Engineer/Assistant Research Engineer.
- (2) Possessing Engineering degree of a recognized University or equivalent of the discipline concerned.

Further because of the provisions in the note, the requirement of possessing engineering degree in the requisite discipline shall not be applicable in case of departmental candidates holding the post of Assistant Design Engineer/Assistant Research Engineer/ Assistant Inspecting Engineer/Assistant liason Engineer(Civil Engr.) on regular basis on the date of promulgation of the rules.

9. Along with the misc. petition No.874/94 seeking modification/clarification of the Tribunal's order dated 20-9-91, a copy of the letter dated 1-4-92 has been annexed as Annexure-2. In the said letter the details in respect of the applicants viz. date of appointment, their qualification, etc. have been indicated. None of the applicants possesses an engineering degree in the discipline concerned in respect of them. The applicants, therefore, based their claim of eligibility to be considered for promotion to the posts of Deputy Director on the basis that the period of ad-hoc service rendered by them in Class II Posts be construed as regular service in the cadre. If the ad-hoc service is

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treated as regular service, then they can ^{get} ~~be~~ benefited ^{bel} of the provision in the 'note' and would become eligible.

10. The applicants, in support of their claim for ad-hoc service to be treated as regular service, have taken the plea that their ad-hoc appointment was against substantitive post. They have crossed Efficiency Bar in the grade admissible to Class-II posts. Regular selections have not been held for almost 12 years starting from 1972. The selection was held in 1984 as noted herein above. Their plea further is that under the relevant promotion rules, 1967, selection is required to be held every alternate year, but due to the inaction of the authority the regular selections were not held and on that account the applicants cannot be made to suffer.

11. The respondents, on the other hand, in their counter affidavit, have taken the stand that regular service be counted only after an officer becomes a member of the service/cadre, after regular appointment through proper selection as per the requirements of the recruitment and promotion rules. Till such selections are held, in the interest of work, purely ad-hoc and stop gap arrangements are made to carry out the work, ^{and as} /such claim of the applicant that their service should be counted from the date of their ad-hoc promotion is untenable. It has further been indicated that the selection to Class-II Technical Posts could not be held in time, as the RDSO Class-III staff Association, which a a recognized association, represented the case of Class-III Staff of RDSO and demanded that recruitment and promotion rules of RDSO Class-III may be revised in accordance with the recruitment

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and promotion rules applicable to other railway staff and they ~~was~~ also demanded that selection for Class-II posts may be held only after the revision of the recruitment and promotion rules. It has further been indicated in the C.A. that the employees of the RDSO filed petition in the High Court of judicature at Allahabad, Lucknow Bench, against the enlargement of Class-II panel, formed in 1971-72 and pending these cases, the selection also could not be finalised. The revisions of ^{recruitment} rules were finalised in the year 1983 and notified in the year 1984, as a lot of deliberation has to take place in consultation with U.P.S.C., Department of Personnel & Training Ministry of Law, etc. which were essential for the Railway Board before the rules were approved and notified. It has been indicated that the applicants were working in the Grade of Class-II on adhoc basis, as a stop gap arrangement, and as such not being the members of Class-II Services, their ad-hoc service cannot be treated as regular service. For this plea reliance has been placed on proposition '(A)' in paragraph 47 of the decision of the Hon'ble Supreme Court in Direct Recruitment Class II Engineering Officers' Association Vs. State of Maharashtra reported in 1990 S.C.C. (L & S) page 339. The applicants in their rejoinder has not disputed the filing of cases to question the enlargement of 1971-72 panel nor they denied that the RDSO Class-III Staff Association had made representations and demanded that the selection be held only after revision of (R & P) 'recruitment & Promotion Rules, 1967' at par with the Class I recruitment terms as applicable to the open line Railways. They, however, have indicated that in the said case no interim order had been passed and, therefore, there was no justification in not holding selections every alternate years as enjoined under 'Recruitment & Promotion Rules, 1967'.

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12. From the documents on record it can be seen that there is a reference to various petitions filed in the High Court, before the Tribunal and SLP to the Hon'ble Supreme Court. It is admitted that recruitment to certain Class-I and Class-II cadres in the RDSO are governed by the Railways RDSO (Class-I & Class II Posts) Recruitment & Promotion Rules, 1967. Rule 3 provides that the method of recruitment to the said posts, qualification and other matters relating thereto, etc. shall be as specified in Col. 5 to 13 of the said Schedule. Class II posts to which the applicants are promoted under the said rules are classified as 'selection Posts' and are required to be filled up from the eligible staff by promotion through selection process. Admittedly, ad-hoc promotions were made and later on in the year 1984 selection was held and the applicants were qualified at the selection.

13. The learned counsel for the applicant urged that the judgment rendered by the Division Bench of this Tribunal on 17-10-1989 in T.A.No.1683/87 connected with T.A.No.1725/87 J.K. Verma & another Vs. U.O.I. & Others support the contention that the adhoc service rendered by the applicants in Class-II posts should be counted for the purpose of seniority and thus, because of the said service the applicants should be treated as having put in 8 years' regular service when the 1983 'RDSO Recruitment & Promotion Rules, 1983(Class I & Class II)' were on promulgation. A copy of the judgment in T.A. No.1683/87 connected with T.A.No.1725/87 J.K. Varma & another Vs. UOI & Others is annexed as Annexure A-14.

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14. We have now to analyse the decision dated 17-10-89 in the case of J.K. Verma and another Vs. U.O.I. & Others (supra) given by this Tribunal. In the said case the applicant Shri J.K. Varma was promoted as A.R.O., Class-II, on 6-10-1976 on adhoc basis. He continuously worked without any break on the said post. He was allowed to cross E.B. in the ARO grade and then he was empanelled for the post of ARO on 30-9-83 after the selection process. Even thereafter he had been posted as ARO on 'provisional basis'. The applicants, therefore, prayed for a direction to the respondents to assign them seniority effect in Class-II service with / from the date of their continuation on promotion as A.R.O. and to promote or consider for promotion as Deputy Director in the vacancies that have arisen in RDSO. They also sought for consequential monetary benefits including interest. In the said cases after considering the decision in :-

- 1) G.P. Doval Vs. Chief Secretary, Govt. of U.P. (1984) 4 S.C.C., 329.
- 2) Narendra Chhadha Vs. Union of India & others AIR 1986 SC.638 ..

it was held that the applicants therein were entitled for such seniority from the date of their ad-hoc promotion. It was also indicated in the order passed by the Tribunal that:-

"there was no reason at all why the petitioners were not regular from the date of their promotion on ad-hoc basis. 'It is certainly not the case that they were promoted'

There is no ^hwisper that the petitioners were not found fit for regular posting."

Reference to a decision of the Principal Bench of the Tribunal No.2217/88 Balram Singh Vs. Secretary, Ministry of Information and Broadcasting & others was also made to support the applicants' case that they were entitled to count their adhoc service for the purpose of seniority.

15. On the question of eligibility of the said applicants Shri J.K. Varma and another, for promotion to Class-I in the RDSO particularly when the vacancies arisen in January, 1985 and May, 1985 it was noted that there was no rules governing such promotion of Class-I in the RDSO before 1983 Rules came into effect from 7-9-83. Here it is relevant to indicate that the applicants Shri J.K. Varma and Shri B.A. Sharma, were working in the directorate of Metallurgical and chemical the rules therein were different. It was held that the promotion to the vacancies in question has been on the basis of 1985 Rules applicable in that case. Some other points^{had}/arisen in that case as to whether the 1985 rules governing Metallurgical and chemical directorate were applicable. The High Court, Lucknow Bench, in Special Appeal No.107/87 in the case of C.D.Dixit had held that the said Rules of 1965 did not cover the posts in the RDSO. The Union of India preferred S.L.P. before the Supreme Court. The Hon'ble Supreme Court, by order dated 23-8-90 passed the following order in the said S.L.P. :-

" We do not find any merit in the case. Therefore, these Special Petitions are dismissed."

Copy of the order passed by the Hon'ble Supreme Court is annexed as Annexure A-16.

16. We would have no hesitation in applying the proposition of law laid down by the Division Bench of this Tribunal in T.A.No.1683/87 J.K. Varma & another(Supra), but for the fact that the question whether adhoc service

made de hors the service rules, ^{or not} ~~the~~ ^{would count for seniority has been considered in later decisions of the Apex Court. but} The respondents placed reliance on The Direct Recruits Class II/ Association & Ors. Vs. State of Maharashtra 1990 S.C.C. (L&S) 339= 1990 (2) S.C.C. 715 =AIR 1990 S.C. 1609. In para 47 the following two propositions were laid down :-

"(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. "

17. The proposition 'A & B' on paragraph 47 of the Direct Recruits' case came up for ^{elucidation} ~~litigation~~ and consideration in a subsequent case by the Hon'ble Supreme Court. The decision is reported in AIR 1991 S.C. 284 - K.C. Joshi Vs. Union of India & Others. In para 24 of the said decision it was noted that the learned counsel for the appellant made submissions to apply the ratios in the cases of :-

- 1) Narendra Chhadda & Others Vs. U.O.I. and Others AIR 1986 SCC 38
- 2) AIR 1981 S.C. 41 -
N.K. Chauhan Vs. State of Gujarat
(1977 S.C. 251.

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It was submitted that promotees were appointed to the same posts and are discharging the same duties, drawing same salary, therefore, they should be deemed to be given promotion from the initial date of appointment. The apex Court, however, expressed its inability to travel beyond the ratio in direct recruits case. It was further observed that to lay down binding precedent, the cases were referred to a Constitution Bench. It was held that the Supreme Court has laid down clear proposition of general application in items 'A to K'. For these reasons their Lordships observed:-

"Therefore, to keep the law clear and certain and to avoid any stand, we are of the considered view that it is not expedient.....

 and we prefer to adhere to the ratio laid down in Direct Recruits case."

18. In the present case also for the same reasons we feel called upon to prefer to follow the proposition 'A & B' of Direct Recruits Case (Supra) and to hold that the order of this Tribunal in J.K.Varma & another Vs. U.O.I & Others, T.A. 1633/87 would ^{not} be _{be} conclusive on the pleas advanced before us.

19. In the instant case ~~the~~ learned counsel for the applicant submitted that the Direct recruits' case is not applicable to the facts of the present case.

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The proposition therein were given in the context of the rights of the promotees via-a-viz the Direct Recruits. We are not impressed with these submissions As observed by the Hon'ble Supreme Court in K.C.Joshi's case, Constitution Bench in Direct Recruits case (Supra) has, therefore, laid down clear proposition of law of general application ⁱⁿ 'A' to 'K'. The plea taken by the applicants before us are wholly identical to the proposition ^{'B'} of law/in para 47 of the Direct Recruits' case (Supra) while the respondents place strong reliance on proposition 'A' of the said case. In paragraph 25, similar stand of the parties in K.C.Joshi's case was analysed ^{by} and it was laid down that :-

"Proposition 'A' lays down that 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 later part thereof states:-

"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."

⁵⁶ Quintessence of the proposition is that appointment of a post must be according to rules and not by way of ad hoc or stop gap arrangement made due to administrative ^{initial} exigencies. If the appointment thus made ~~is~~ ^{is} de hors the rules, such services cannot be counted for such seniority. In other words the appointee would become a member of the service in the substantive capacity

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from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date." It was further observed, in the said case, that proposition 'A & B' cover different aspects of one situation. One must discern the different situation. It was laid down that proposition '3' must therefore be read along with paragraph 13 of the judgment.

20. In the present case the applicants do not dispute that the initial promotion of the applicants to Class-II posts was on adhoc basis. The applicants however, claim that their ad hoc appointment was made on substantive posts and since no selections were held starting from 1972 upto 1984 the applicants should not be denied the right of counting their ad hoc service as regular service. We have also noted herein above ~~that~~ the respondents' stand that the selections could not be held by reason of ~~some~~ several judicial proceedings having been initiated and being pending to challenge the validity of 1967 Rules. The amendment to the rules could only be finalised and the amended rules were promulgated in the year 1983. Immediately thereafter selection was held in the year 1984. In paragraph 18 of K.C. Joshi's case (Supra) Their Lordships of the Apex Court clearly laid down :-

"There exists marked distinction between appointment in substantive capacity and appointment to the substantive posts."

They further held that :-

"Membership to the service must be precedent by an order of appointment to the posts validly made by the Govt....."

21. In paragraph 22 of the same case it was held that employees purely on ad hoc or temporary basis due to administrative exigencies, even though continued for a long spell, do not become the members of the service. We have also herein above noted that under the '1967 Rules', the Class-II posts were categorised as 'selection posts'. The ad hoc appointment of the applicants ^{was} ~~de hors~~ the rules. In view of the categorical proposition of law, laid down in K.C. Joshi's case, in our considered opinion, ad hoc service cannot be termed as regular service within the meaning of the relevant rules of 1983, for the purposes of promotion to Class-I posts. The order impugned in the present case is order dated 9-8-90 by which the President, RDSO Class-II Association was informed that the request of providing one time relaxation in educational qualification for promotion to Class-3 posts, after careful examination by Railway Board, has not been found feasible to grant. Along with rejoinder affidavit, minutes of various meetings held by the RDSO Class-II Officers' Association with Director General, RDSO and Railway Board and other

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connected letters have been annexed as Annexure A-25. The Association, it appears, has been insisting on one time relaxation in educational qualification. The association also, on one or two occasions, sought regularisation/continuation of class-II service for seniority and promotion to Class-I. On that count it had been indicated categorically that ad hoc service do not confer any right of claim ^{being} for/regular or for future promotions. Thus it was settled that the ad hoc service rendered by the promotee officers of RDSO cannot be treated as regular and ad hoc service rendered prior to the approval of the panel cannot be reckoned as regular service for the purpose of seniority or promotion. It was also noted that RDSO Class-I Officers' Association has filed petition in Principal Bench, C.A.T., New Delhi, for counting ad hoc service as a regular service and the matter was subjudice. This reply and Railway's letter dated 7-9-89, in paragraph 5, is annexed as Annexure A-25. Surprisingly enough, neither of the parties before us, has placed the decision of the C.A.T., Principal Bench. We are, therefore, not sure whether any decision has been rendered by the Principal Bench. Neither of the counsel adverted to this fact.

22. A Full Bench of C.A.T., Principal Bench, New Delhi had rendered a decision on 5-2-93 in the leading case of Ashok Mehta & others Vs. Regional Provident Fund Commissioner, T.43/87 and other connected

matters. The decision of the Hon'ble Supreme Court in the case of K.C.Joshi (Supra) was considered and the proposition of law accordingly has been laid down.

23. In view of the discussion herein above, we do not find any merit in the O.A. It deserves to be dismissed and ^{is} accordingly dismissed. The parties shall bear their costs.

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MEMBER(A)

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B. Sakse
18/10/94
VICE-CHAIRMAN.