

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 804/89

Transfer Application No:
~~XXXXXXXXXXXXXXXXXXXX~~

DATE OF DECISION 7.4.1993

Shri Parasnath Dube & Anr. Petitioner

Shri Menghani. Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri N.K.Srinivasan. Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble ~~Shri~~ Ms. Usha Savara, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(M. S. DESHPANDE)
VICE-CHAIRMAN

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No.804/89.

Shri Parasnath Dube & Anr. Applicants.

V/s.

Union of India & Ors. Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Ms.Usha Savara, Member(A).

Appearances:-

Applicants by Shri Menghani.
Respondents by Shri N.K.Srinivasan.

Oral Judgment:-

[Per Shri M.S.Deshpande, Vice-Chairman] Dated: 7.4.1993.

By this application the applicants Nos. 1 and 2 seek a direction to the Respondents to assign them seniority to the post of Junior Typist w.e.f. 10th October, 1977 from which date they have been continuously officiating as Junior Typist with all consequential benefits and to consider them for the post of Senior Typist on that basis.

2. The applicant No.1 had joined as a Messenger on 2.5.1959, and the applicant No.2 had joined as Khalasi on 13.3.1973. On 10.10.1977 the applicants were promoted as Junior Typists on ad hoc basis against clear and existing vacancies in the grade of Rs.260-400 and were continuously officiating as such, though their appointments to the posts of Junior Typists were on promotion from Class-IV staff. There was another stream from which the appointments could be made and that was by direct recruitment. The Respondents Nos. 4, 5 and 6 were directly recruited as Junior Typists respectively on 14.6.1980, 13.6.1980 and 16.2.1981. In August, 1980 the applicants appeared for selection and were declared successful and their services came to be regularised as Junior Typists w.e.f. 20.5.1981. The Respondents Nos.4, 5 and 6 were

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promoted as Senior Typists in the year 1980-81. The applicants made a representation on 28.12.1981 for getting proper seniority assigned to them, but that representation was rejected by Respondent No.2 on 1.3.1982 stating that the applicants would rank junior to Respondents Nos.4, 5 and 6 though the latter were appointed later. Another representation was made on 20.8.1987, but since no relief was granted to the applicants they have approached this Tribunal for the aforesaid relief.

3. The contention of the Respondents Nos. 1 to 3 is that the appointment of the applicants in the year 1977 was not in accordance with rules because a written test was prescribed and since they had not given the written test their appointment continued to be on ad hoc basis as was mentioned in the Government letter dt. 12.7.1977 (Ann. R-1 to the reply). They urge that the selection in the year 1977 for promotion to the post of Typist was then made only on ad hoc basis, the eligibility for it being three years continuous service and a minimum speed of 40 w.p.m. in English Typewriting. The candidates who had Matriculated (or passed S.S.C.E.) after their appointment in these shops were assured of all consideration but after a typing test followed by interview.

4. There is no dispute before us that the applicants had satisfied these tests. It was urged on behalf of the Respondents that what was important was Clause III of the letter which clearly mentioned that the proposed ad hoc promotion would be purely temporary and the promotees, if any, were likely to be reverted immediately on receipt of qualified hands from Railway Service Commission or when the Administration feel that their services as

Typists are no more required. The Office Order Annexure 'A' dt. 10.4.1982 shows that the applicants were selected for promotion to the posts of Junior Typists and their promotions were to be treated as regular from 20.5.1981. By the letter dt.28.12.81 the applicants protested and sought regularisation from the date of ad hoc appointment. In their reply dt. 1.3.1982 the Respondents Nos. 1 to 3 stated after ^{referring to} ~~hearing~~ the roster points that promotions of Class.IV employees to Class.III posts such as Clerks, Typists had been effective from 1.10.1975 and that was for 33.33% of the total vacancies and since 1.10.1975 nine persons had been appointed. The first two points were given to direct recruits to be followed by a ranker. Out of the next two points one went to direct recruit and thereafter one to ranker. According to Respondents due to non-availability of candidates for direct recruitment the appointment of the applicants was made on purely ad hoc basis, though there were clear vacancies in the cadre. In the last para of that letter it was mentioned that there was no delay in processing the case for holding selections for two vacancies due for rankers as it was started immediately on appointment of Sl. No.7 viz. on 5.9.1980 and the panel was declared by the office on 20.5.1981 after holding selections.

5. We have already pointed out that the applicants were appointed after passing the test which had been prescribed for their ad hoc appointments and they continued to hold the post of Junior Typists from 10.10.1977 upto 1980-81 and continued even thereafter.



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The regular test was held only in August/September, 1980 and they were declared successful.

6. Shri Srinivasan for the Respondents Nos.1 to 3 relied on the observations in (A.I.R. 1991 S.C. 284) Keshav Chandra Joshi and others etc. V/s. Union of India to the effect that where the initial appointment is only ad hoc and not according to rules and is made as a stop-gap arrangement, the period of officiation in such post cannot be taken into account for reckoning seniority. The appointment to a post must be according to rules and not by way of ad hoc or stop-gap arrangement made due to administrative exigencies. If the initial appointment thus made was de hors the rules, the entire length of such service cannot be counted for seniority. In other words, the appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date. A look at the facts of that case would show that the appointments to the post there had been made de hors the rules.

7. In (1992(3) A.I.S.L.J. Page 7) Union of India Anr. V/s. Shri S.K.Sharma, the employee was not even eligible for promotion to the post of Professor according to the extant rules under which three years service on regular basis on the post of Professor(Junior Scale) was essential. As such it was held that he was not entitled to claim his seniority even though he had received his pay by virtue of an order passed by the Central Administrative Tribunal.



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8. On the other hand, in ^{149 R} (1987 S.C. 717) A.N. Pathan and others V/s. Secretary to the Government, Ministry of Defence and another, it was pointed out that the promotees come into service, not by any fortuitous circumstances but they form an integral part of the regular cadre entitled to all benefits by the length of their service. The rules enabling the authorities to fill in vacancies for direct recruits as and when recruitment is made and thereby destroying the chances of promotion to those who are already in service cannot but be viewed with disfavour. If the authorities want to adhere to the rules strictly all that is necessary is to be prompt in making the direct recruitment. Delay in making appointments by direct recruitment should not visit the promotees with adverse consequences, denying them the benefit of their service. With regard to the principle that has to be applied, the matter is no longer res integra in view of the decision of the Constitution Bench in the Direct Recruit Class-II Engineering Officers' Association and others V/s. State of Maharashtra and others (A.I.R. 1990 S.C. 1607). It was laid down that ~~as~~ 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. When the appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if ~~the~~ rules are framed in this regard they must ordinarily be followed strictly. But if it becomes impossible to adhere to the existing quota rule, it should be substituted

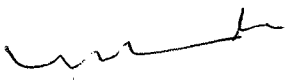


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by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down. Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date. In our view, the position of the applicants would be covered by Item B of para 44 of the Supreme Court decision. The applicants here have been regularised after their continuation in their posts uninterruptedly by following the rules, and though a written test had been prescribed and they had not given it they had officiated as Junior Typists all along since 1977.

9. It is difficult to understand why the requisite tests had not been held for promotees for their absorption, though on the showing of the respondents themselves the direct recruitment could not be effected because candidates were not available. We are of the view that the applicants cannot be made to suffer for the inaction of the authorities, as they were found to be suitable and their appointments came to be regularised after they had passed the prescribed test. In view of the dictum of the Constitution Bench, therefore, the applicants would be entitled to the relief sought.

10. We therefore, allow this application and direct the respondents Nos.1 to 3 to assign to the applicants seniority to the post of Junior Typist with effect from



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10.10.1977 from which date they had been continuously officiating as Junior Typists, with all consequential benefits and consider them for promotion for the post of Senior Typists on that basis. There will be no order as to costs.

Usha Savara
(USHA SAVARA)
MEMBER (A)

M. S. Deshpande
(M. S. DESHPANDE)
VICE-CHAIRMAN

B.

to C.P.
Reply of Respondent/Recd.
on 27-8-93 & same is
Served on other side
[Signature]