

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1031/96

Dated this Thursday the 20th day of September, 2001.

P.A. Nunes

Applicant

Mr. Suresh Kumar

Advocate for the
Applicant.

VERSUS

Union of India & Anr.

Respondent.

Mr. V. S. Masurkar

Respondents.

CORAM :

Hon'ble Shri Justice V. Rajagopala Reddy, Vice
Chairman.
Hon'ble Smt. Shanta Shastry, Member (A).

- (i) To be referred to the Reporter or not? *No*
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal?
- (iii) Library. *Y*

Ch

(V. Rajagopala Reddy,
Vice Chairman.

H.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No.1031/96

Dated this Thursday the 20th Day of September, 2001.

Coram : Hon'ble Shri Justice V.Rajagopala Reddy, Vice Chairman
Hon'ble Smt.Shanta Shastray, Member (A).

P.A. Nunes,
Sub Divisional Engineer,
Working under the General Manager,
West-III, MTNL, Mumbai, Kandivli
Telephone Exchange Bldg., 4th Floor,
S.V. Road, Kandivli (W)-400067. Applicant.

(Applicant by Shri Suresh Kumar, Advocate)

Vs.

1. Union of India, through the
Secretary, Ministry of Communication,
Sanchar Bhavan, New Delhi-110001.
2. The Chief General Manager,
MTNL Mumbai, Mumbai Telephones,
Telephone House, 15th Floor,
V.S. Marg, Dadar (W)-400028. Respondents.

(Respondents by Shri V.S. Masurkar, Advocate)

ORDER (Oral)
[Per : Justice V. Rajagopala Reddy, Vice Chairman]

The applicant in this application seeks the entire period of service from 24.5.1982 till he was regularised on 19.11.1990 on the post of TES (Group B) to be counted for the purpose of promotion to the post of Sub.Divisional Engineer.

2. It is submitted by the applicant that while working as Jr.Engineer, he was promoted on 24.5.1982 in TES (Group B) as Assistant Engineer now redesignated as Sub. Divisional Engineer on ad-hoc basis. Though he has been promoted on ad-hoc basis he was continuing as such till 19.11.1990 when he was regularly

appointed in the said post. The continuation of the applicant on ad-hoc/officiating basis was approved by the orders of Director General, Department of Posts and Telegraphs which were issued from time to time. He was allowed to cross the efficiency bar in TES (Group B). It is the case of the applicant that he was officiating as Asstt. Engineer was not on temporary basis but regularly and permanent basis. Hence, the applicant is entitled for counting his said period for the purpose of promotion to a higher post, as 12 years of regular service in the post of Sub. Divisional Engineer, he is entitled to be considered for promotion to the post of Sr. Sub-Divisional Engineer. However, the respondents have rejected his claim for such promotion on the ground that he had not completed regular service as Sub-Divisional Engineer. The applicant therefore filed the present O.A.

3. It is contended by the Learned Counsel for the applicant that as he has been working continuously right from 1982 his entire period of service should be counted for the purpose of promotion.

4. It is also contended that the applicant's promotion though termed as officiating or ad-hoc or local basis, since the promotion was purely on seniority basis and he was promoted considering his seniority on all India level his promotion should be treated as regular promotion.

5. It is however, stated in the reply that such local

officiating promotion was ordered to fill up for the short term vacancies arising out of exigencies of service from time to time that could not be filled up by regular incumbents due to administrative reasons such as holdings DPC's, the vacancies being temporary, posts sanctioned specifically for Installation and Commissioning of new exchanges etc. Such officiating promotions which were stated to have been granted purely on temporary and local seniority basis. Whereas, the regular promotion was accorded based on All India Seniority maintained by DOT.

6. Heard, Learned Counsel for the applicant and respondents. The initial order of appointment of the applicant on 24.5.1982 clearly states that it was only a local promotion. The subsequent orders also show that the promotion of the applicant was only by way of local arrangement for brief period. Such promotions have been extended from time to time till he was regularised on 19.11.1990. It is admitted that the applicant has been regularised with effect from the date of the order and not with retrospective effect from 1982. The orders of adhoc promotion also indicate that the promotion of the applicant was not on regular basis in accordance with the relevant rules. In the reply it was clearly stated that the promotion of the applicant was against short term vacancies which arose for Installation and Commissioning of new exchanges.

7.....The eligibility condition for promotion to the post of

Sr.Sub-Divisional Engineer was as follows:-

"Assistant engineer in TES Group B who have completed 12 years of regular and continuous service as Asst. Engineers will be eligible for consideration for promotion to this post of Sr.Assistant Engineer the promotion will be on the basis of seniority subject to rejection or unfit".

As 12 years of regular and continuous service as Asstt. Engineer was the requirement, in our view the applicant's service right from 1982 till he was regularised cannot be treated as regular service in the post of Asstt. Engineer.

8.. The Learned Counsel for the applicant places reliance upon the The Direct Recruit Class-II Engineers Officers' Association and others Vs. State of Maharashtra & Others, 1990(2)AISLJ, SC 40. The Clause B of the conclusion at para 44 of the Judgment is sought to be relied upon. But in our view this decision will not help the applicant. ^{use} Class A clearly says that once an incumbent is appointed to a post according to rule his seniority has to be counted from the date of his appointment. Clause B says that if the initial appointment was not made by following the procedure laid down by the rules and if he was regularised subsequently in accordance with the rules, the period of officiating service would be counted. It ^{does} not mean that the initial appointment could be made in violation of the rules. What it means is that if there was only deficiency in following

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the rules at the initial appointment and such defect was cured subsequently then his officiating promotion should be treated as regular service for the purpose of seniority. As the applicant's initial appointment was admittedly not in following selection process as the merit of the rival candidates was not assessed.

9. I.K. Sukhija and others vs. Union of India and Others {1997 SCC (L&S) 1512} is also relied upon by the Learned Counsel for the applicant. This judgment also will not come to the help of the applicant. In that case the appellants therein were promoted on ad-hoc basis during the period of 1970 to 1977 and they were regularised with effect from 20.3.1978. Their contention was that they were entitled to fixation of seniority from the dates of their initial promotion which though termed as ad-hoc, was in effect regular because they were promoted after following the selection process in which merit was assessed. The Hon'ble Supreme Court having considered the facts of the case and held that, when the appellants were promoted, though on ad-hoc basis, clear vacancies were available in the promotion quota and the minutes disclosed that they were not promoted on ad-hoc basis and that a regular process of selection was held. It was also stated that the reason for making their appointments as temporary and ad-hoc was that the draft recruitment rules could not be finalised but they were duly considered by the DPC and their promotion according to their placement in the merit list and not according to their seniority and the promotions were made against the regular vacancies. These facts are singularly absent in the instant case. It is not shown that any regular vacancy was available at the time of applicant's promotion and no DPC was

held following the procedure contemplated under the Recruitment Rules.

10. The applicant also relied upon the Judgment of Full Bench of the Punjab & Haryana High Court, Chambel Singh Vs. State of Haryana and Others { 1995(1)SLR Page 1 }, answering the question, the Full Bench held that ad-hoc services cannot be counted to determine his seniority in the cadre.

11. The State of West Bengal Vs. Aghore Nath Day's case {1993 (2) SLR, 528 }. explains the scope of conclusion B arrived at by the Supreme Court in Maharashtra Engineer's case (Supra).

The Hon'ble Supreme Court observes that:

"25.....In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the later expression 'till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases".

The initial appointment therefore should be in accordance with the rules. If the appointment was dehors the rule the service rendered by the incumbent till he was regularised cannot be counted for the purpose of seniority.

12. In the light of the dicta of the Supreme Court we do not find any merit in this case and the applicant is not entitled for benefit of his service as claimed by him. In the result O.A. fails and accordingly dismissed with a cost of Rs.1000/-.

Shanta Shastray
(Smt. Shanta Shastray)
Member (A).

Com. George (Alandy)
(V.Rajagopala Reddy)
Vice Chairman.

H.