

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 356 of 1999.

Dated this Wednesday, the 11th day of December, 2002.

Shri M. M. Gupta & 5 Others, Applicants.

Shri R. P. Saxena, Advocate for
Applicants.

VERSUS

Union of India & Others, Respondents.

Shri Suresh Kumar, Advocate for
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other Benches of the Tribunal ?

(iii) Library.

BNS
(B. N. BAHADUR)
MEMBER (A).

OS*

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1. Shri M. M. Gupta,
Sr. Commercial Inspector,
Western Railway, BCT Divn.,
O/o. the Divisional Rail
Manager,
Bombay Central.
2. Shri R. P. Shasne,
Sr. Commercial Inspector,
Western Railway, BCT Divn.,
O/o. the Divisional Rail
Manager, Bombay Central.
3. Shri Baldev Raj,
Sr. Commercial Inspector,
Western Railway, BCT Divn.,
O/o. the General Manager,
Churchgate, Bombay.
4. Shri I. D. Gajre,
Sr. Commercial Inspector,
Western Railway, BCT Divn.,
O/o. the General Manager,
Churchgate, Bombay.
5. Shri J. M. Gachete,
Sr. Commercial Inspector,
Western Railway, BCT Divn.,
Nandurbar.
6. Shri Ashok B.
Sr. Commercial Inspector,
Western Railway, BCT Divn.,
Balsad. ... Applicants.

(By Advocate Shri R. P. Saxena)

VERSUS

1. Union of India through
The General Manager,
Western Railway,
Churchgate,
Bombay.

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BNP

2. Divisional Rail Manager,
Western Railway, BCT Divn.,
Bombay Central.

3. Sr. Divisional Commercial
Manager,
O/o. the Divisional Rail
Manager, Western Railway,
BCT Division, Bombay Central. Respondents.

(By Advocate Shri Suresh Kumar)

O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

The Applicants in this case, six in number, have come up to the Tribunal seeking the relief from the Tribunal for holding and declaring that Applicants are entitled for counting of their ad hoc service of three years (Learned Counsel, Shri R.P. Saxena, stated this as two years and three years is a typographical mistake) for seniority and consequential benefits.

2. The facts of the case, as brought out in the O.A. are that the Applicants, who are working as Commercial Inspectors were promoted on ad hoc basis w.e.f. 30.03.1995 as Sr. Commercial Inspectors through order dated 30.03.1995 (Annexure-A). They were regularised only at the selection which took place in 1997, i.e., they were regularised from 17.03.1997. The Applicants are aggrieved that the period of ad hoc service as Sr. Commercial Inspector w.e.f. 30.03.1995 to 17.03.1997 has not been taken as regular service for the purpose of all benefits, including seniority, etc. This, in short, is the grievance with which the Applicants have come up to the Tribunal in this joint application. Some grounds are taken in the application, which amongst others, were argued by their Learned Counsel, Shri R. P. Saxena.



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3. The Respondents have filed a Written Statement of reply, resisting the claims of the Applicants, taking an objection with regard to delay and laches. The basic facts and dates of promotion, etc. are not disputed. However, the stand taken is that the ad hoc service cannot be counted, this may affect people in other Divisions. It is stated that the ad hoc promotion was made only on the basis of seniority and that the (prescribed) regular selection process was not followed until 1997 when regular promotion was provided to the Applicants (w.e.f. 17.03.1997.) In the further part of the Written Statement, parawise comments are provided to the averments made in the O.A.

4. We have heard Learned Counsel on both sides, viz. Shri R.P. Saxena for the Applicants and Shri Suresh Kumar for the Respondents, for more than one day; time was provided to the Respondents to produce the original records and to check up whether the ingredients required for considering ad hoc promotion as regular, as per settled law of the Apex Court, were satisfied on the basis of facts obtaining especially to see if Recruitment Rules provisions were followed.

5. Learned Counsel, Shri Saxena, who argued the case at length, first took us through the facts of the case, and made the point that the Applicants were indeed qualified in all manner, for the post of Sr. Commercial Inspector at the time when they were promoted on ad hoc basis, in 1995. He asserted that all procedure was followed and that ad hoc promotion was made as per provisions in Railway Rules and there was no ground on which the ad hoc service of the Applicants could not be treated as regular.

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In fact, an allegation was made to the effect that Railways were very tardy in taking up selection process and it was only in 1997 that the regular process was conducted. Thus, in short, Shri Saxena's argument was that when promotion was made as per Railway Rules, the relief should be granted.

6. The second plank of Shri Saxena's argument was based on the legal position, which he claims, has been settled in his favour in the matter of *T. Vijayan & Others V/s. Divisional Railway Manager & Others* [2000 SCC (L&S) 444]. The point he made here was that when an ad hoc selection was followed by regular selection, it has to be deemed to be regular service w.e.f. the date of ad hoc promotion. This point was argued at some length.

7. Learned Counsel, Shri Suresh Kumar, stated that the record had been seen and first took us to the position of rules relying upon para 215 and 219 of I.R.E.M. (Volume-I). He argued that, as per rules, it was envisaged that such promotion shall be conducted after the process which would involve either written test and viva or only viva. A decision had been taken by the Administration for the present selection that only viva will be held. Accordingly, Learned Counsel stated that as per the records with him, in the selection process held prior to 1995 also i.e. in 1994, a viva only had been held. Also, in 1997 selection process, where indeed the present Applicants were selected, a viva had been held.

8. Upon consideration of all facts with the case law applicable, we have a well settled legal position before us in

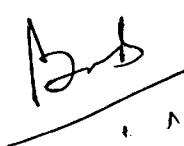
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regard to the issue as to when ad hoc service has to be counted as regular service. In fact, what we have to see is whether it is merely labelling as ad hoc or is there truly ad hoc appointment. For this purpose, in the settled law, as was lucidly discussed in the judgement of P.K.G. Kurup V/s. Union of India & Others made by this Bench (O.A. No. 386/97 decided on 01.12.1998) we have to see if the following ingredients are satisfied.

- (i) Whether ad hoc promotion is made on seniority basis?
- (ii) Whether the process laid down in the rules or being followed in usual course has been followed at the time of ad hoc promotions?
- (iii) Other comparisons, if relevant.

9. In the present case, undoubtedly, the Applicants were promoted as per seniority. What is however to be observed is that, as described above, the process of viva test or any test etc. was not conducted when Applicants were promoted on ad hoc basis in 1995. This, in our view, clearly establishes the fact that an important ingredient of the requirement of selection process was not followed. This will be enough and very substantial reason for deciding that the ad hoc promotion was not as per rules and, therefore, the interim period not likely to be counted.

10. Learned Counsel for Applicant, in his argument, had sought to depend on the matter of T. Vijayan & Others (supra) to state that in this case it was settled that where ad hoc



selections were followed by regular selection of the same Applicants in the same order without any changes, then as per ratio decided in T. Vijayan's case, the Applicants deserve the counting of ad hoc period as regular period. We have seen Vijayan's case in the matter as also the case of Swapan Kumar Pal v/s. Samitabhar Chakraborty reported at 2001 (5) SCC 581, the latter cited by Respondents Counsel. It is importantly to be noted that in Vijayan's case the ratio states that ad hoc promotion made in accordance with rules followed by regularisation would count for seniority. The important point to be noted here is that the ad hoc promotion in the first place should be made according to rules; only then will the ratio of ad hoc promotion being followed by regular selection provides a support to the case of the Applicants. Here, when we have seen that the ad hoc promotion itself was not as per rules, in that, the viva process which is normally conducted, was not conducted, we are not convinced that the ratio in the matter of T. Vijayan's case will not apply. In fact, this has been discussed in the matter of Swapan Kumar Pal which was decided on 09.05.2001. The case law is against the applicant.

11. In the circumstances, we are not persuaded that any interference is called for in the matter. The O.A. is, therefore, dismissed with no order as to costs.

S.L.JAIN

(S.L. JAIN)
MEMBER (J).

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B.N.BAHADUR

(B.N. BAHADUR)
MEMBER (A).