

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 286/92

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DATE OF DECISION

5.11.1993

Shri S.N.Misra & Anr. Petitioner

Shri M.S.Ramamurthy with Sh.G.P.Aiyer Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Sh. V.S.Masurkar & Sh.D.Purandare Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y.Priolkar, Member (A)

The Hon'ble Shri Smt. Lakshmi Swaminathan, Member (J)

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 ?
4. whether it needs to be circulated to other Benches of the Tribunal ? No

(SMT. LAKSHMI SWAMINATHAN)  
MEMBER (J)

(M.Y. PRIOLKAR)  
MEMBER (A)

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

OA.NO. 286/92

Shri S.N.Misra & Anr.

... Applicants

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri M.Y.Priolkar  
Hon'ble Member (J) Smt. Lakshmi Swaminathan

Appearance

Shri M.S.Ramamurthy  
with Shri G.P.Aiyer  
Advocate  
for the Applicant

Shri V.S.Masurkar  
Advocate  
for Respondents No.1 & 2

Shri Dinesh Purandare  
Advocate  
for Respondents No. 3 & 5.

JUDGEMENT

Dated: 5-11-1993

(PER: M.Y.Priolkar, Member (A))

The two applicants in this case were directly recruited through U.P.S.C. as Assistant Executive Engineers (Electrical), Class I, (A.E.E. for short) in the Ministry of Communications whereas Respondents Nos. 3 to 5 were recruited as Assistant Engineers (Electrical), Class II, (A.E. for short). All of them were subsequently promoted initially on adhoc basis and thereafter regularised as Executive Engineers Electrical (E.E. for short). The applicants are aggrieved by the letter dated 6.2.1992 and the seniority list issued under letter dated 20.2.1992 of the Department of Telecommunication, whereby the ad hoc services rendered by the Respondents 3 to 5 as E.E. from 25.5.1977, 21.2.1982 and 16.4.1982 respectively, have been treated as regular services and counted for seniority in that grade, consequently re-fixing

their position in the final seniority list of E.E. as on 1.4.1985 and thereby pushing down the seniority of the applicants.

2. Under the statutory recruitment rules of 1975, as amended in 1984, promotions to the post of E.E. are to be made from two categories, viz. (a) A.E.E. Class I with 5 years regular service on seniority-cum-fitness basis (non-selection) in the two thirds quota and (b) A.E. Class II with 8 years regular service on seniority-cum-merit basis (selection method) in the one third quota, selection being made by a D.P.C. with U.P.S.C. member as Chairman. According to the respondents, while regular promotions to the grade of E.E. from category (a) to which the applicants belong, were made regularly from 1976, the seniority list in respect of category (b) which is of the Respondents Nos. 3 to 5 could be finalised only in November 1987 in view of certain long disputes among the promotee cadre and the first D.P.C. for category (b) was held only in May 1988 when the D.P.C. selected the Respondents 3 to 5 for vacancies belonging to their quota for the years 1977 and 1982. The respondents 3 to 5 had thus worked for long periods varying from 11 to 6 years in the post of E.E. on ad hoc basis before the DPC for regular promotion could be held. The respondents have also stated that the revision of the seniority list under the impugned orders of the Department is the corrective action, though belated, to render justice to the affected persons and is in compliance of the judgment of the Madras Bench of this Tribunal dated 12.10.1990 in OA.NO. 113/89 directing disposal of the representation regarding his seniority of Respondent No. 5 (who was the applicant in that case), according to law, after taking into account the decision of the Principal Bench

in N.N.Chakraborty case (OA.NO. 978/87) and of the Supreme Court in the case of Direct Recruits Class II Engineering Officers Association v. State of Maharashtra (1990-2-SCC-715).

3. In the Direct Recruits case, a Constitution Bench of the Supreme Court after an exhaustive examination of the relevant decisions has summed up the settled principles of law relating to seniority. The two main principles enunciated in paragraph 47 of this judgment dated 2.5.1990 are as follows :-

"A. Once an incumbent is appointed to a post according to rules, 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 uninterrupted till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

4. In the case referred to above of N.N.Chakraborty, who belonged to Civil Engineering cadre of the same Department having identical Recruitment Rules, the Principal Bench of the Tribunal had directed by its judgment dated 9.7.1990 that the entire ad hoc service of Shri Chakraborty as Superintending Engineer should be counted for seniority relying on the principle laid down in para 47 (B) of the Supreme Court decision in the Direct Recruits case. The Principal Bench had observed that "there is nothing in the reply to show that the initial appointment to the promotional post of Superintending Engineer was not made in accordance with

Rules or was a mere stop gap arrangement... Even if the initial appointment is not by following the procedure laid down by the rules but the appointee continues in the post uninterrupted till the regularisation of the service in accordance with the rules, the period of officiating service will be counted according to para (B)." This very para (B) of the Supreme Court judgment is reproduced in para 55 (f) of the reply of the respondents dated 6.4.1993 as the relevant para on the basis of which the Department had taken the impugned decision of assigning seniority for ad hoc service to respondents 3 to 5 in compliance of the direction of the C.A.T., Madras Bench dated 12.10.1990 in OA.NO. 113/89. It is to be noted, however, that both the above judgments of the Principal Bench and of the Madras Bench of C.A.T. were delivered in the year 1990 itself soon after the judgment dated 2.5.1990 of the 5 judges Bench of the Supreme Court in the Direct Recruits case. But before the respondents had issued the impugned orders in February, 1992, the true import of para 47 (B) of the judgment in Direct Recruits case had come to be explained in the cases of Masood Akhtar Khan v. State of Madhya Pradesh (1990-4-SCC-24), K.C.Joshi v. Union of India (AIR 1991 SC 284) and several other judgments thereafter of the Supreme Court, which the respondents do not appear to have taken into account while issuing the impugned orders purportedly in obedience of the judgment of the C.A.T., Madras Bench in OA. 113/89.

5. In Masood Akhtar Khan's case (*supra*), decided after the Direct Recruits case, the question that came up for consideration was whether the subsequent selection would entitle an employee to the benefits of the entire temporary service for seniority. The Supreme Court held that when the rules of advertisements and the orders of appointments indicate

that the appointment is only for a limited period, subject to recruitment by Public Service Commission, the appointments are only emergency arrangements pending regular selection by the Public Service Commission. Therefore, the entire length of service cannot be counted for seniority.

6. In K.C.Joshi's case (supra), a three judges Bench of the Supreme Court has observed that para 47 (B) of the Constitution Bench judgement in the Direct Recruits case has to be read along with para 13 of that judgment "in which the ratio decidendi in Narendar Chadha v. Union of India was held to have considerable force. The latter postulated that if the initial appointment to a substantive post or vacancy was made deliberately, in disregard of the rule and allowed the incumbent to continue on the post for well over 15 to 20 years without reversion and till the date of regularisation of the service in accordance with the rules, the period of officiating service has to be counted towards seniority." It has been held that "the quintessence of the propositions (laid down in the Direct Recruits Case) is that 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."

7. Another three judges bench of the Supreme Court in the case of State of West Bengal and others v. Aghore Nath Dey and others (1993-3-SCC-371) decided on 2.4.1993, has

further explained the propositions in the Direct Recruits case, particularly the scope of applicability of corollary to conclusion (A) and of conclusion (B). They have observed that the Constitution Bench in Direct Recruits case while considering Narendar Chadha case laid emphasis on an unusual situation existing therein that promotees had worked continuously for a long period of nearly 15 to 20 years without being reverted and taking into account this fact, the Constitution Bench confirmed the principle of counting towards seniority the period of continuous officiation, but that this decision cannot be construed to apply to cases where the initial appointment was not according to rules. It is held that conclusion (B) in Direct Recruits case cannot cover cases which are expressly excluded by conclusion (A) and that "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 conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the latter 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 ..."

8. The question that emerges, therefore, for our consideration is whether Respondents 3 to 5 were rightly brought by the Department within the ambit of conclusion (B) in Direct Recruits case for giving them the benefit of seniority.

for ad hoc service. What needs to be examined, as explained in the Supreme Court judgment in Aghore Nath Dey's case (supra), is whether the initial ad hoc appointments to the posts of E.E. of Respondents 3 to 5 were otherwise regular, except for the deficiency of any procedural requirements laid down by the rules. In a recent judgment dated 14.9.1993 of a Full Bench of the C.A.T., Principal Bench, New Delhi in the case of I.K. Sukhija v. Union of India (O.A. 727/87), it is observed that "what has been ~~laid~~ down in Aghore Nath's case is that when there are regular vacancies and the employee who is duly qualified is appointed without any limit of time or purpose after following the procedure laid down for regular recruitment, the mere fact that the appointment is made subject to fulfilment of ~~some~~ procedural requirements, cannot deprive him of the benefit of the service rendered by him from the date of his appointment until the remaining procedural requirements are satisfied. This is subject to the condition that the delay is caused not by the employee but by the administration. Whether these conditions are satisfied or not has to be decided by examining the terms of the order of appointment and the rules governing appointment. What is therefore of the essence of the matter is that the process for regular appointment as per rules should have been undertaken. If in the process of making such appointment some procedural requirements are not immediately satisfied and the appointment is made subject to fulfilling of such requirement, the delay in fulfilling the remaining procedural requirements should not have the effect of denying the benefit of service rendered from the date of initial appointment till the remaining procedural requirements are satisfied. The order of appointment itself should normally indicate that the appointment is made subject to the satisfaction of certain

procedural requirements. Such procedural requirements may be like verification etc. which cannot be done immediately and are therefore deferred. In the absence of express stipulation in the order of appointment itself there must at least be materials to indicate that that was the clear intendment... The decision of the Supreme Court cannot be understood as contemplating deferment of the principal requirement of selection. What is contemplated is only fulfilment of minor procedural requirements..."

9. In the instant case before us, under the statutory recruitment rules, promotions to the post of E.E. were to be made from among A.E. Class II with 8 years regular service on seniority-cum-merit basis (selection method) in the one third quota, Selection being made by a DPC with UPSC member as Chairman. Admittedly, when respondents 3 to 5 were promoted on ad hoc basis as E.E. on 25.5.1977, 21.2.1982 and 16.4.1982, they had not been selected by any DPC, let alone a DPC chaired by UPSC member. Further, the relevant appointment orders specifically stated that these appointments were purely temporary and on ad hoc basis, were for a limited duration and that services on ad hoc basis will not confer any claim in the matter of seniority, confirmation, etc. Evidently, these ad hoc promotions were made in administrative exigencies since seniority lists of A.E.s could not be finalised in view of pending court cases and consequently DPC meeting for regular selection could not be arranged. It is clear, therefore, that respondents 3 to 5 were promoted on ad hoc basis purely as a stop gap arrangement pending finalisation of seniority lists of A.E.s. and regular selection thereafter by a duly constituted D.P.C. in accordance with the recruitment rules. Non-selection for a selection post can hardly be considered a minor procedural deficiency. We have,

therefore, no hesitation in holding that the two principal requirements laid down by the Supreme Court in Aghore Nath's case for applicability of conclusion (B) in the Direct Recruits case viz. selection by competent DPC and not limiting the ad hoc appointment to a fixed period of time in the appointment order itself have not been fulfilled when respondents 3 to 5 were promoted on ad hoc basis.

10. It was also contended on behalf of the respondents that respondents 3 to 5 had worked for long periods varying from 11 to 6 years in the post of E.E. on ad hoc basis before the DPC for regular promotion could be held and they were not responsible for this long delay in holding the regular selection. It is claimed that it is a well established principle consistently upheld by various benches of CAT and the Supreme Court that long ad hoc service will be counted for seniority. Moreover, clear vacancies in their quota were stated to be available for the respondents 3 to 5 for the years 1977 and 1982 against which they have been selected by the DPC and for which benefit of seniority is now being given to them. In K.C.Joshi's case, the Supreme Court held that ad hoc service would count for seniority where the initial ad hoc appointment is made de hors or in disregard of the rules and the incumbent is allowed to continue in the post for long period such as 15 to 20 years without reversion till the date of regularisation of service in accordance with the rules, there being power in the authority to relax the rules. Ad hoc service, thus, to count for seniority must be rendered continuously till the date of regularisation for 15 years or more. The period of ad hoc service rendered by the respondents 3 to 5 as E.E. on ad hoc basis is 11 years in the case of respondent No. 3 and 6 years in the other two cases. This falls considerably short of 15 to

20 years' service which is required for invoking principle (B) as laid down by the Supreme Court in K.C.Joshi's case. The learned counsel for respondents 3 and 5 argued that there was no sanctity for the 15 to 20 years yardstick and even the present period of 6 to 11 years was sufficiently long to justify in equity, the applicability of principle 'B' in the case of respondents 3 to 5 who were fully qualified under the rules and regular vacancies within their quota were available when they were promoted on ad hoc basis. We are unable to accept this contention. We have already given the finding that the ad hoc promotions of respondents 3 to 5 were not according to rules and were made as a stop gap arrangement. The corollary to principle (A) laid down in the Direct Recruits case, therefore, clearly governs the case of the respondents 3 to 5. It is in very special circumstances that such ad hoc service is permitted to be counted for seniority, a long period of 15 to 20 years being accepted by the Supreme Court as justifying such special treatment. This itself being an exception to the normal principle, we are of the view that the yardstick of 15 to 20 years should be rigidly followed and no further relaxation or dilution of this yardstick is warranted.

11. In the result, the application succeeds. Respondents 3 to 5 are not entitled to count their ad hoc service in the post of Executive Engineer (Electrical) for seniority, confirmation, promotion, etc. The impugned order dated 6.2.1992 as also the revised seniority list published on 20.2.1992 are quashed and set aside, and if, based thereon, any benefits of promotion etc. have been given to Respondents 3 to 5, such benefits shall be withdrawn by Respondents 1 and 2 within ~~two~~ <sup>three</sup> months from the date of receipt of a copy of this order. There will be no order as to costs.

*Lakshmi Swaminathan*  
(SMT. LAKSHMI SWAMINATHAN)

*M.Y. Priolkar*  
(M.Y. PRIOLKAR)  
MEMBER (A)