

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A. NO: 194/87

DATE OF ORDER: 1-11-1989

Between:

Smt. A. Dhabri and 3 others



...Applicants

versus

1. The Director General, Geological Survey of India,
27, Jawaharlal Nehru Road, Calcutta - 700 016.
and another

...Respondents

FOR THE APPLICANTS : MR. V. VENKATESWARA RAO : ADVOCATE

FOR THE RESPONDENTS : MR. PARAMESWARA RAO FOR MR. P. RAMA KRISHNA RAJU,
SR. CGSC

CORAM:

THE HONOURABLE MR. B. N. JAYA SIMHA : VICE CHAIRMAN
AND
THE HONOURABLE MR. D. SURYA RAO : MEMBER (JUDICIAL)

contd...

Officer, Hyderabad and interview call letters were sent to them. A Committee constituted for interview and selection of the candidates conducted interviews during the period from 22.7.1981 to 25.7.1981. After the written test and typewriting test, interview was conducted for personality and General Knowledge purpose. In all 94 candidates appeared for the interview. The Committee prepared a merit list and the applicants herein were given rankings 3, 11, 13 and 23. Thereafter the first Respondent appointed the applicants and others on ad hoc basis as L.D.Cs. by his order dated 14.9.1981. The applicants state that they were appointed against clear vacancies and have been functioning as L.D.Cs with effect from the date of their respective appointments. In the year 1982 when the Respondents attempted to terminate the services of the ad hoc L.D.Cs, the applicants and others filed W.P.No.157 of 1982 before the High Court and obtained a direction that they were entitled to continue in the posts held by them so long as the vacancies existed. When an examination for regularisation of the services of the ad hoc L.D.Cs who had put in one year service as on 1.8.1982 was conducted on 12.12.1982 by the Staff Selection Commission in accordance with the guidelines contained in the Ministry of Home Affairs O.M.No.6/5/1982 dated 7.8.1982, the applicants and others submitted their applications and the same were forwarded to the Staff Selection Commission. The Staff Selection Commission / while informing the applicants

that they were falling short of one year service as on 1.8.1982 by a few days, they, however, appeared for the examination conducted on 12.12.1982 and all the applicants were successful. In all nine candidates were successful out of sixteen L.D.Cs. who appeared for the test. Because none of the applicants had fulfilled the requisite conditions, their results were not announced. Subsequently the Staff Selection Commission held another examination on 18.12.1983 for regularisation of services of the ad hoc L.D.Cs. etc. The applicants appeared for this examination also and were declared successful and the results of the examination were intimated by the Staff Selection Commission on 9.5.1984. The Central Headquarters Calcutta sent proposals for regularisation of services of the ad hoc LDCs who were successful in the examination by its letter 21.11.1984. By order dated 4.12.1985 issued by the 2nd respondent, the applicants were appointed as regular LDCs with effect from 9.5.1984, the date on which the results were received in his office. This order was issued on 4.12.85. The applicants were put on probation for a period of two years with effect from the date of their appointments on the basis of the office order dated 4.12.1985. A provisional seniority list of LDCs as on 1.12.1985 in the Geological Survey of India, Southern Region was prepared. The applicants were shown at Serial Nos. 107 to 116, treating their date of commencement of continuous service as 9.5.1984. It is contended that the applicants inter se seniority between themselves is based upon merit list prepared by the Selection Committee

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held in 1981, that the examination conducted by the Staff Selection Committee in 1982-83 is only for the purpose of regularisation of their services and that in as much as the examinations were conducted in 1982-83 and that the order dated 4.12.1985 is bad and illegal as it treats the applicants as fresh appointees. The provisional seniority list prepared on the basis of such an order is illegal. Reliance is placed upon certain decisions (Baluwandas Case) (G.P. Guwahati) (1) AIR 1981 SC 41 and (2) 1984 (2) AISLJ 167. It is contended that the seniority should be on the basis of continuous officiation on a post. The applicants state that they are entitled to positions in the seniority list between Serial Nos. 75 and 76. It is contended that the applicants are deemed to have been appointed in relaxation of the Recruitment Rules 1981 and they are entitled to have their services regularised and put on probation with effect from the date of their initial appointments. It is further contended that their initial appointment was done in consultation with the Government and the Staff Selection Commission and that the Government is competent to regularise their services from the date of their continuous officiation. It is further stated that in the meantime a Circular dated 11.8.1986 was issued for conducting departmental competitive examination for promotion to the posts of UDCs as 20% of them are reserved to be filled up by LDCs. On a clarification sought by the 2nd respondent from the

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1st respondent a letter dated 2.12.1986 was issued clarifying that the LDCs who have completed five years of regular service in the L.D. grade are eligible to sit for departmental competitive examination and that ad hoc LDCs of 1981 regularised in 1984 cannot be permitted to sit for the examination. The applicants reiterate that they are entitled to regularisation of their services in 1981 and consequently have a right to sit for the examination.

2. On behalf of the respondents, a counter has been filed denying the various averments made by the applicants. It is stated that the Geological Survey of India decided to regionalise Group 'C' and Group 'D' services in the year 1981 that this regionalisation scheme was challenged in the High Court and interim orders were obtained by the Service Association and, therefore, the respondents-authorities decided to give ad hoc promotion to certain employees without following the rules of reservation. This was purely a temporary measure. The Department decided to fill up the resultant vacancies which had arisen consequent upon promotion for a period of six months. The Employment Exchange was notified to sponsor the candidates for the posts of LDCs. The applicants were appointed purely on ad hoc basis for a period of six months. They were informed that their appointments are purely ad hoc and liable to be terminated at any time without notice and that the appointments would not confer on them any claim or right for retention in service or for regularisation of their services in the Department. It is stated that the respondents are competent to make regular

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appointment and that a regular vacancy in the clerical grade of the Central Government including the Geological Survey of India would be filled up only by a candidate recommended by the Staff Selection Commission. It is contended that before their services could be terminated, they filed a Writ Petition No.157 of 1982 in the High Court of A.P. and obtained orders stating that they should be continued as long as the temporary vacancies existed. In the meanwhile the Ministry of Home Affairs issued a Circular dated 7.8.1982 directing regularisation of the services of the ad hoc employees who had rendered at least one year service as on 1.8.1982. This scheme was not applicable to the applicants as they had not completed the prescribed period of one year stipulated and as they were continuing in service beyond 12.1.1982 only by virtue of the interim orders of the High Court, their applications were, however, forwarded to the Staff Selection Commission with these objections. While communicating the results of the said qualifying examination, the Staff Selection Commission made it clear that the results were provisional and regularisation of the services of the candidates who passed the examination was subject to fulfilment of all the conditions as regards age, qualifications, length of service etc. Since none of the applicants fulfilled the requisite conditions, results were not announced. When the Staff Selection Commission announced another qualifying examination to be held on 18.12.1983, The applicants again submitted their applications. They could not be forwarded as they were not qualified. The applicants thereupon filed

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another Writ Petition in the High Court and obtained an interim order to forward their applications. Thereafter the Staff Selection Commission announced the results of the examination on 9.5.1984. Thereafter the applicants represented to the 1st respondent to regularise their services on the basis of their results of the Staff Selection Commission examination and also expressed their desire to withdraw W.P. No.157 of 1987. Their representations were sympathetically considered and their services regularised with effect from 9.5.1984. The applicants thereafter withdrew W.P.157/82. After transfer of the W.P. to this Tribunal and on being numbered as O.A.272 of 1985, the inter se seniority and date of commencement of regular services were decided in accordance with the provisions of O.M.No.6/7/83-CS-II dated 17.8.1983 issued by the Ministry of Home Affairs. It is stated that the Staff Selection Commission did not conduct any qualifying examination for regularisation of services retrospectively in 1981 as contended by the applicants. It is further stated that inspite of the applicants continuing in service purely on account of stay order, the Department took a sympathetic view and gave regular appointment with effect from 9.5.1984. It is further stated that the applicants and other LDCs nominated by the Staff Selection Commission were appointed on regular basis against clear vacancies and their legitimate seniority would be effected if the applicants' petition is allowed. As regards citations referred to above, it is stated that the (1) applicants

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were appointed on ad hoc basis against the resultant and temporary vacancies only (2) that the appointment was made for a specific period of six months which fact was made known to them and (3) that the Department had no intention to continue them beyond six months but for the interim orders issued by the High Court of A.P. in W.P. No. 157 of 1982. In these circumstances, it is prayed that the W.P. may be dismissed with costs.

MDJ/k M

3. We have heard the arguments of the learned counsel for the applicant Sri Venkateswara Rao and Sri Parameshwara Rao, advocate on behalf of Sri Ramakrishna Raju, Senior Standing Counsel for the Central Government, for the department.

4. The matter relating to initial adhoc appointment followed by regular appointment and the effect on seniority was considered by the Supreme Court in G.P. Doval Vs. Chief Secretary, Govt. of U.P. reported in 1984(2) SLR 555. It held therein, as Under:

"Now if there was no binding rule of seniority it is well settled that length of continuous officiation prescribes a valid principle of seniority. The question is: from what date the service is to be reckoned? It was urged that any appointment of a stop-gap nature or pending the selection by Public Service Commission cannot be taken into account for reckoning seniority. In other words, it was urged that to be in the cadre and to enjoy place in the seniority list, the service rendered in a substantive capacity can alone be taken into consideration

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We find it difficult to accept this bald and wide submission. Each case will depend upon its facts and circumstances. If a stop-gap appointment is made and the appointee appears before the Public Service Commission when the latter proceeds to select the candidates and is selected, we see no justification for ignoring his past service. At any rate, there is no justification for two persons selected in the same manner being differently treated. That becomes crystal clear from the place assigned in the seniority list to petitioner No.1 in relation to respondent No.7. In fact, if once a person appointed in a stop-gap arrangement is confirmed in his post by proper selection, his past service has to be given credit and he has to be assigned seniority accordingly unless a rule to the contrary is made. That has not been done in the case of all the petitioners. The error is apparent in the case of petitioner 1 and respondent No.7. These errors can be multiplied but we consider it unnecessary to do so. In fact a fair rule of seniority should ordinarily take into account the past service if the stop-gap arrangement is followed by confirmation. This view which we are taking is borne out by the decision of this Court in Baleshwar Dass Vs. State of U.P., 1981 (1) S.C.R. 449, wherein this court observed that the principle which has received the sanction of this court's pronouncement is that "officiating service in a post for all practical purposes of seniority is as good as service on a regular basis. It may be permissible, within limits for government to ignore officiating service and count only regular service when claims of seniority come before it, provided the rules in that regard are clear and categorical and do not admit of any ambiguity and cruelly arbitrary cut off of long years of service does not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of posts." It was said that service rules will have to be reasonable, fair and not grossly unjust if they are to survive the test of Articles 14 and 16. It is thus, well settled that where officiating appointment is followed by confirmation unless a contrary rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning length

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length of continuous officiation for determining the place in the seniority list. Admittedly, that has not been done and the seniority list is drawn up from the date of which the approval/selection was made by the Public Service Commission in respect of each member of the service which is clearly violative of Article 16 and any seniority list drawn up on this invalid basis must be quashed."

The Supreme Court has rejected the submission that since the initial appointment was only on adhoc basis, it would follow that the service rendered in substantive capacity can alone be taken into consideration for determining seniority. Further in Doval's case, the proposition laid down in Baleshwar Dass's case was approved namely ignoring officiating service and counting only regular ^{service} ~~side~~ for purpose of seniority would be permissible provided the rules ~~in~~ that are clear and categorical. In the instant case, no rule has been cited by the Respondents which directs that officiating or adhoc service rendered by the applicants is liable to be ignored and only regular service should count for seniority. Apart from Doval's case, the Principal Bench of the Tribunal in ATR 1989(1) CAT 2811 (Sham Sunder Vs. Union of India) has held that adhoc service followed by regular appointment may be counted for seniority.
The Principal Bench in Sham Sunder's case They have followed ~~therein~~ the dicta laid down by the Supreme Court in Doval's case and took into consideration the views of the Tribunal in ATR 1986 (2) CAT 346 (S.C.Jain Vs. Union of India), 1978 (2) SLR 379 (Narendra Chadda Vs. Union of India) and the decision of the Full Bench of the Tribunal in ATR 1987 (1) CAT 458. In all these decisions

officiating or adhoc service followed by regular appointment was allowed to be counted for the purpose of seniority.

In view of the well established legal position, it follows that the applicants are entitled to count seniority from the date of initial appointment. Consequently, the interim order allowing them to sit in the departmental competitive examination for promotion to the post of U.D.C. was made absolute and they would be entitled to the benefit of the result of the examination. The application is accordingly allowed and in the circumstances there will be no order as to costs.

(B.N.Jayasimha)
Vice-Chairman

(D.Surya Rao)
Member (J)

Dated: 11th October, 1989.

mhb/

To

1. The Director General, Geological Survey of India, 27, Jawaharlal Nehru Road, Calcutta-700016.
2. The Senior Deputy Director General, Southern Regional Office, Geological Survey of India, Mojam Jahi Road, Hyderabad -500001.
3. One copy to Mr.V.Venkateswara Rao, Advocate 1-1-284/2, Chikkamapalli, Hyderabad
4. One copy to Mr.P.Ramakrishna Raju, Sr.CGSC., CAT., Hyderabad.
5. One spare copy.

YLKR

Sd/-x x x
(B.N.JAYA SIMHA)
VICE CHAIRMAN

// true copy //

Sd/-x x x
(D.SURYA RAO)
MEMBER (JUDL)

CERTIFIED TO BE TRUE COPY

15. COURT OFFICER 15/11/89
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.