

: IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :

HYDERABAD BENCH : AT HYDERABAD

DA No.272/90.

Dt. of Order:3-9-93.

Damodar Rao

...Applicant

Vs.

1. The Director General of Works,
Central Public Works Department,
Nirman Bhavan, CPWD, New Delhi,
2. The Superintending Engineer (CO-
ordination), South Zone, Central
PWD, Madras.
3. The Superintending Engineer
(Electrical), Hyderabad Central
Electrical Circle, CPWD, Nirman
Bhavan, Hyderabad.

...Respondents

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Counsel for the Applicant : M/s. B.G. Ravindra Reddy &
Y.S. Venkat Rao

Counsel for the Respondents : Shri N.R. Devraj, Sr. CGSC

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CORAM:

THE HON'BLE SHRI A.B. GORTHI : MEMBER (A)

THE HON'BLE SHRI T. CHANDRASEKHAR REDDY : MEMBER (J)

(Order of the Divn. Bench passed by Hon'ble
Shri A.B. Gorthi, Member (A)).

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The applicant was appointed on 20-5-72 as a
Peon in the C.P.W.D. after he was sponsored by the

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special Employment Exchange for the physically handicapped. He having qualified in a departmental examination held in 1979 was promoted on adhoc basis to the post of LOC w.e.f. 20-5-80. His request for regularisation in the post was not considered by the Respondents but on the other hand he was threatened with reversion to his Group 'D' post. He represented against the same on 5-1-90 which was rejected by the impugned order dt.28.2.90 in which the Respondents reiterated that the applicant would have to face reversion to the post of Peon. Aggrieved by the same he has filed this application praying for a direction to the Respondents to regularise his services in the cadre of L.D.C. from the date of his original appointment. When the application came up for admission an interim order was passed staying that portion of the impugned order which relates to the reversion of the applicant to the post of Peon.

2. The applicant is a Matriculate and he appeared for the departmental examination in 1979 for recruitment against the 10% quota reserved for educationally qualified Group 'D' staff. He passed the said examination and his name appeared at Sl.No.50 in the list containing the results. On the basis of his passing

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the departmental examination and on the recommendation of the D.P.C. he was appointed as L.D.C. vide office order dt.20-5-80. The said promotion was adhoc but the applicant continued to function as L.D.C. till ~~xxx~~ 1990 when the Respondents threatened that he would be liable to be reverted to the post of Peon. The contention of the applicant is that ^{he} ~~xxx~~/having worked for a long period as L.D.C. ~~xx~~ is entitled to be regularised in that post from the date of his initial appointment.

3. The Respondents in their counter affidavit admitted that applicant qualified in the departmental examination held in 1979 and that he was promoted on adhoc basis as L.D.C. in 1980. They however assert that as a result of competitive examination held in 1979 only 10 candidates could be promoted and there were no more vacancies left. However as he qualified in the examination he along with certain other similarly situated employees were considered for promotion on adhoc basis against the vacancies in the quota meant for direct recruitment. It is therefore categorically stated (in) the appointment order dt.20-5-80 that the adhoc ~~promotion~~ would last till the posting of qualified candidates of clerks grade examination by the Staff Selection Commission. Thereafter the applicant could have again appeared for similar departmental

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examinations held during March, 1982, July, 1985 and May, 1989, ^{but} he did not do so, whereas several other group 'D' staff who had earlier qualified in the 1979 examination appeared for one of the subsequent examinations and got the benefit of promotion against the quota reserved for educationally qualified group 'D' employees. The applicant gave his willingness to appear for the examination scheduled to held on 27-4-89 but did not do so on the pretext that he ^{was} ~~was~~ not well. Thus the respondents' contention is that there is no scope for the applicant to be considered for promotion against the quota meant for educationally qualified Group 'D' staff. However by virtue of his seniority he would be considered for promotion in his own turn against the seniority quota. The Respondents further state that there are already nine other Group 'D' employees qualified in the examination held on 25-5-80 and are waiting for promotion. It would therefore be unfair if the applicant is regularly absorbed as L.D.C. merely on the basis of his having qualified in the 1979 examination and his having worked for a long period in the post of L.D.C.

4. We have heard learned counsel for both the parties. Shri B.G.Ravindra Reddy, counsel for the applicant has now informed us that the applicant has

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since been promoted to the post of L.D.C. on a regular basis in the seniority quota. He however vehemently contended that the Respondents are not justified in ignoring ^{the} / long and satisf^{tory} ac- / service rendered by the applicant in the adhoc post of L.D.C. for the purpose of giving him seniority from the date of his initial appointment. In this context he relies on the judgment of the Supreme Court in the case of Narendra Chadda Vs. Union of India (AIR 1986 page 638). It was held therein that petitioners promoted to higher post in contravention of rules but allowed to function for 15 to 20 years were entitled to claim seniority vis-a-vis direct recruitees taking into account the entire period of officiation in the promoted post.

5. As the applicant has since been regularly promoted to the post of L.D.C. the only question for our consideration is about his claim for seniority from the date of his initial promotion. In this context we would like to place reliance on the judgment of the Supreme Court in the case of Direct Recruit class-II Engineering Officer's Association & others Vs. State of Maharashtra and Other (ATR 1990 (2) SC 113). The relevent portion

of the judgment is reproduced below :-

47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, 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 adhoc 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 uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

6. The scope and true intent ~~xxxxx~~ of the observation at (B) above in the Direct Recruits, ~~XX~~ Class-II Engineering Officers case came up for detailed consideration in Keshav Chandra Joshi Vs. Union of India (AIR 1991 SC 284). The relevant passage therefrom is reproduced below :-

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" 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. Where the initial appointment is only adhoc 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 adhoc or stop-gap arrangement made due to administrative exigencies. If the initial appointment thus made was ~~dehors~~ the rules, the entire length of such service cannot be counted for seniority."

7. In the instant case the initial appointment of the applicant was on adhoc basis and made as a stop-gap arrangement/^{not} against the quota meant for Group 'D' employees but against the quota kept for direct recruits. The appointment order made it clear that the applicant would have to make room for candidates selected by the Staff Selection Commission. In view of this clear position and in view of the observations of the Supreme Court in the aforesaid case we have to express our

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M (A)

Dated: 3-9-1993

ORDER/JUDGMENT:

M.A/R.A/C.A.No.

in

O.A.No. 272/90.
T.A.No. (W.P.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered

No order as to costs.

