

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

OA 502/90.

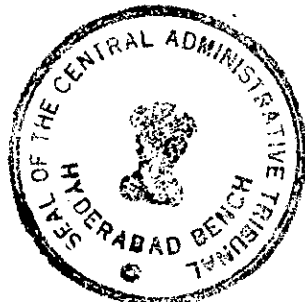
Dt. of Order:3-2-94.

A.R.Naidu

....Applicant

Vs.

1. Union of India, rep. by the
Secretary to Govt., of India
Ministry of Labour, Shramshakti
Bhavan, New Delhi-110 001.
2. Chief Labour Commissioner (Central),
Govt., of India, Ministry of Labour,
Shram Shakti Bhavan, New Delhi-1.



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|------------------------|---------------------------|
| 3. Shri MN.Dubey | 31.S.L.Jain |
| 4. Shri D.P.Srivastava | 32.D.M.Dhiwal |
| 5. V.K.Sorrick | 33.S.P.Sharma |
| 6. S.K.Mukhopadhyaya | 34.T.R.Srinivasan |
| 7. V.Sunderesan | 35.U.S.Verma |
| 8. K.P.Mahata | 36.Mrs.Mary Celino Jaiker |
| 9. L.P.S.Rathore | 37.K.L.Saha |
| 10.A.S.Raizada | 38.R.N.Sharma |
| 11.T.K.Rao | 39.J.S.Kapoor |
| 12.H.C.Pandey | 40.Gopalji Sinha |
| 13.S.K.PANDEY | 41.V.G.Phansalkar |
| 14.N.P.Sharma | 42.Kama Showry |
| 15.Mohammed Wajih | 43.Rajeshwar Prasad |
| 16.T.C.Girotra | 44.V.K.Sonawane |
| 17.Pramod Kumar | 45.B.N.Sinha |
| 18.B.D.Rai | 46.B.K.Bhise |
| 19.Dinesh Kumar | 47.P.C.Bhargava |
| 20.R.B.Chitre | 48.Abdus Salam |
| 21.R.B.Roy | 49.V.S.S.Shrivastava |
| 22.J.N.Rai | 50.N.K.Prasad |
| 23.R.K.Banerjee | 51.N.Narayan |
| 24.B.L.Mekwana | 52.V.S.Rao |
| 25.R.Ramalingam | 53.B.N.Pandy |
| 26.R.Shanti Gharan | 54.R.V.S.Rao |
| 27.Shafiq Ahamed | 55.Naresh Chandra |
| 28. V.P.Bhoraskar | 56.T.K.Rao |
| 29.Adem Prabhakar | 57.J.J.Naik |
| 30.H.R.Arora | 58.B.S.Kalsi |

J u d g e m e n t

X As per Hon'ble Shri A.B.Gorthi : Member(A) X

The Applicant claims that his ad-hoc service as Asst. Labour Commissioner (Central) X ALC(C) for short X w.e.f. 11.9.73 should be counted for determining his seniority and that he should be given consequential promotions and monetary benefits. He has since retired from service w.e.f. 31.1.91.

2. In 1973, when the Applicant was working as Labour Enforcement Officer (Central) X LEO(C) for short X he was promoted as ad-hoc ALC(C) on 11.8.73, after he was duly selected by a D.P.C. He was appointed as Welfare Commissioner with Mica Mines Labour Welfare Organisation in the scale of Rs.1100-1600 on 10.7.75. Later, he worked as Asst. Welfare Commissioner, Nagpur in the scale of Rs.700-1300. He was again appointed as Deputy Welfare Commissioner in the scale of Rs.1100-1600, after due selection, vide Ministry of Labour & Rehabilitation order dt. 12.3.83. While so, he was regularly appointed as ALC(C) vide Chief Labour Commissioner's office order dt. 14.12.83. The order states that the Applicant assumed charge as ALC(C) on 12.12.83.

3. The Respondents in their counter affidavit have brought out that in 1973, 6 regular vacancies and 29 ad-hoc vacancies were expected in the category of ALC(C) which were to be filled by promotion against the 50% quota. As per recruitment rules, the post of ALC(C) was a selection post and 50% of the vacancies were to be filled by way of promotion of officers in the

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101.M.P.N.Sivakumaraswamy
102.Suraj Prakash
103.C.Sivaramakrishna
104.R.K.Rastogi
105.R.Shanti Charan
106.Zahid Mohamed

...Respondents

Counsel for the Applicant : Shri C.Suryanarayana

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

CORAM:

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

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

.....4.

AS

- (3) Keshav Chandra Joshi & Ors. Vs. Union of India & Ors. AIR 1991 SC 284.
- (4) State of W.B. & Ors. Vs. Aghore Nath Dey & Ors. 1993 SCC (L&S) 783.
- (5) M.B. Joshi & Ors. Vs. Satish Kumar Pandey & Ors. 1993 SCC (L&S) 810.

5. All the aforesaid cases refer to seniority and promotion. For the purpose of the present case it will suffice if we discuss what has been laid down by a Constitution Bench of the Hon'ble Supreme Court in the Direct Recruit Class II Engineering Officers Association case which was subsequently reiterated and clarified in Keshav Chandra Joshi's case. In the Direct Recruit Class II Engineering Officers Association case it was held inter alia as under:-

- "(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 ad-hoc and not according to rules and made as 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. In Keshav Chandra Joshi's case, the controversy was as to which of the two propositions would apply to the facts of the case. In that case it was observed as under:-

"The proposition 'A' lays down that 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 latter part thereof amplifies postulating that where the initial appointment is only ad-hoc and not

grade of Labour Enforcement Officers (Central). The D.P.C. which was constituted drew up a panel of 35 persons out of 105 eligible LEOs(C). The Applicant's name figured at serial 25 in the said panel. Only the top 6 candidates were offered regular promotion whereas the remaining 29 candidates could be offered only ad-hoc promotion. The subsequent appointments/promotions of the Applicant as Asst. Welfare Commissioner/Welfare Commissioner/Deputy Welfare Commissioner were all granted to him while he was on deputation and not in his parent establishment. The Applicant was granted regular promotion as ALC(C) w.e.f. 12.12.83 which he accepted without protest. Thus, the Respondents contend that the ad-hoc service of the Applicant cannot be reckoned for counting his seniority in the grade of ALC(C), as such seniority would count only from the date of his regular promotion w.e.f. 12.12.8

4. We have heard learned counsel for both the parties. Shri C.Suryanarayana, learned counsel for the Applicant urged that the Applicant was fully eligible to be promoted to the grade of ALC(C) in 1973 when he was promoted to that post on ad-hoc basis. The promotion was given to him only after he was considered and selected by a duly constituted D.P.C. In the light of these facts he contends that the promotion of the Applicant should be treated as regular promotion and his entire service in that grade of ALC(C) should be counted for the purpose of seniority. In support of his contention he has referred to:-

- (1) Delhi Water Supply & Sewage Disposal Committee & Ors. Vs. R.K.Kashyap & Ors. [1989] 9 ATC 784.
- (2) Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra & Ors. 1990 SCC (L&S) 339.

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8. As the promotion of the Applicant was against a temporary post, the Respondents were justified in describing the promotion as ad-hoc only. In fact, there were 29 such employees who were promoted on an ad-hoc basis. One such employee cannot be singled out for a differential treatment. Shri C.Suryanarayana, learned counsel for the Applicant countered this aspect of the case by stating that all the 19 employees would be entitled to claim the benefit of their ad-hoc service for the purpose of their seniority. For obvious reasons we cannot grant such wholesale relief when the ^{other} employees concerned have not even come up before us.

9. The Respondents contended that the Applicant accepted his regular promotion to the grade of ALC(C) in 1983 and that he should not, therefore, be allowed to agitate the matter at this belated stage. In fact, a communication dt. 27/29.6.83 from the Director, & Rehabilitation Department of Labour/ would clearly indicate that the Applicant while working as a Deputy Welfare Commissioner in the Office of Labour Welfare Organisation at Barbil Dist., Keonshar, Orissa expressed his desire to be regularly appointed as ALC(C) in the Chief Labour Commissioner (Central) Organisation. His request was accepted and he was regularly promoted as ALC(C) w.e.f. 12.12.83. Granting him relief at this belated stage would result in upsetting the well settled interse seniority of employees holding the posts of ALCs(C) from a retrospective effect. Notwithstanding the same

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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 quintessence of the propositions 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. From the aforestated it can be said that it is now well settled that if the initial appointment made was de hors the rules, the entire length of such service cannot be counted for seniority. In the instant case, the Respondents have explained as to how 29 ad-hoc promotions were made to the grade of ALC(C) in 1973. Only 6 of the selected candidates could be regularly promoted because of the fact that there were only 6 regular vacancies. The other vacancies against which the Applicant and some others were promoted, were all temporary against which no regular promotions could be made. Under these circumstances, promoting the Applicant and the other candidates on a regular basis to the grade of ALC(C) would amount to promoting them de hors the relevant recruitment rules. In this context, we may refer to Rajbir Singh & Ors. Vs. Union of India & Ors. (1992) 19 ATC 315. Relevant portion of the judgement is reproduced below:-

"3. It is well settled by several decisions of this Court that an appointment against a purely temporary ad-hoc or fortuitous post does not entitle the holder of the post to be a member of the service and as such, such fortuitous or ad-hoc appointment does not entitle the holder of the post to get the benefit of the period of such ad-hoc or fortuitous service."

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we find from the merits of the case that the Applicant cannot claim the benefit of his ad-hoc service for the purpose of counting his seniority in the grade of ALC(C) or for any other consequential benefits arising therefrom. The O.A. is, therefore, dismissed but in the circumstances of the case there shall be no order as to costs.

CERTIFIED TO BE TRUE COPY
Date..... 10/3/84
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

Copy to:-

1. Secretary to Govt., of India, Ministry of Labour, Union of India, Min Shramshakti Bhavan, New Delhi-001.
2. Chief Labour Commissioner(Central) Govt. of India, Ministry of Labour, Shram Shakti Bhavan, New Delhi-1.
3. One copy to Sri. C.Suryanarayana, advocate, CAT, Hyd.
4. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-

att. enclosed
7/3/84