

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

O.A. / ~~Writ~~ NO.

939/90.

a) Applicant (s)

V.S.R. Murthy

Versus

b) Respondents

Chief of the Non-Staff, N. H. A. N. Delhi & anett

Sl.No.	Description of Documents	Page No.
1.	order sheet	1 to 3
2.	original application	4 to 18
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5.	order dt. 4/2/94	27 to 54
6.	Duplicate order sheet	
7.	" application	
8.	" M.F.	
9.	" counter	
10.	" order dt 4/2/94	
11.	vakalat	
12.	memo	
13.	Notice	

1

11

111

CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

(1)

O.A. No. 939/90 of 199

10

Applicant(s)

Versus

Respondent(s)

Date

Office Note

Orders

4/2/91

Recd from the Deptt.
Spald Cover.N.R. Dharwad
4/2

~~J. D. S. Prasad~~
in open air.
O.A. is dismissed
no cost. All papers
admitted

~~J~~
HASS.
H. M. A.

~~H~~
H. M. S.
H. M. C.

C. A. V. SLIP

CAV
21/1/4

1. Circulated to Hon'ble Sri H. M. A.

2. Case No.

CA 939/90

3. Date of Hearing.

21/1/4

4. Date when reserved for Judgement :

21/1/4

5. Cases cited by the Counsel for Applicants:

a.

b.

① 1990 (6) S.L.R. (CA) Enakur. 175

c.

d.

② 1969 (3) S.C. 633

e.

f.

g.

6. Cases cited by the counsel for Respondents:

a.

b.

c.

d.

e.

f.

g.

7. Books Circulated:

8. Departmental files if any:

Dpi Seaba Gar

Date:

21/1/4

A. J. S. S. S.

COURT OFFICER.

Mr. V. Aravindan

N. R. D. S.

CA 939/20 (C-85)

7A

Transcribed to A/C

(1969) B S C C (633):

Comparison of SRS with category of
officers → of the category for
R

28 - 4-11. But with many

ACRS

selected cases not

(1990) 68 L A (175):

30-6-89 deprived

Sept - Jan 1899.

for 1986; the case of ~~the~~ the affiliated in the

~~17.10.87~~

21.10.87. 22 hrs

16-10-87 as civil

Google ~~for~~ Me

Departures:

M. Vengopal

State and I - reunion
very.

Subpart | (1969) 3 sec

A-27 Rybní

P. N. Newberry Page 3

9/11

GA 932/20

Stone by post

(Stone - grade II)

21.2.58

Exhibit Nand amand

21.6.67 - Per and saw (Per and)

↓ (Stone - grade II)

Transferred to Di DG. Nand Purva

4.7.80 - P.A

W. S. S. S.

(Stone - grade II)
I

Per and saw

11.3.83

— Antia - G. S. S. S.

As per basis.

(Per and by S. S. S. S.)

Exhibit - S. S. S. S.

3 m. S. S. S. S.

extended for any 3 units.

Exhibit Nand amand

17.10.87

OA 939/90

Date

Office Note

Orders

23/4/93 Vandalat held by
Mr. V. A. Jayaraman
Adv, on 23/4/93.

12-10-1993

Print the name of Mr. N. V. Raghava
Reddy for the Respondents and list it
on 4-11-1993.

HPTT
7(A)

HWR.J
VC

By order.

Registration.

Per on 5/11/93 for dismissal.

HPRN
7(A)

HWR.J
VC

8/11/93

5-11-93

Print the name of Shri N. R. Devaraj
for the Respondents and list on
8-11-93 below admissions.

HPRN
7(A)

HWR.J
VC

By order.

DR.J. 8/11/93

Print the name of Mr. N. R. Devaraj
for Respondents and list for final hearing
on 9/11/93 below admissions.

HABG
7(A)

HWR.J
VC

8/11/93

8/11/93

OA 939/90

(41) (2)

Date	Office Note	Orders
9 ¹¹ / ₉₃		<p align="center"><u>9-11-93</u></p> <p>Post at 4-15 pm on 12-93 as Post-heard before this Bench.</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> HABG H(A) </div> <div style="text-align: center;"> HVRJ VC </div> </div>
<u>1/12/93</u>		<p>Post on 7/12/93 at 4 p.m. before the same bench.</p>
<u>7/12/93</u>		<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> HABG H(A) </div> <div style="text-align: center;"> HVRJ VC </div> </div> <p align="center">(30) AB</p> <p>Post on 20/12/93 at 4 p.m.</p>
<u>20/12/93</u>		<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> HABG H(A) </div> <div style="text-align: center;"> HVRJ VC </div> </div> <p align="center">(30) AB</p>
<u>20/12/93</u>		<p>Post on 21/12/93 at 4 p.m.</p>
<u>21/12/93</u>		<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> HABG H(A) </div> <div style="text-align: center;"> HVRJ VC </div> </div> <p align="center">(30) AB</p>
<u>21/12/93</u>		<p>H Candra v. Araya Kumar for apprehension and as N.A. Juries for remand.</p> <p align="right">OA is reserved</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> HABG H(A) </div> <div style="text-align: center;"> HVRJ VC </div> </div>

DATE	OFFICE NOTE	ORDERS
------	-------------	--------

11-2-91 Before the Dy. Registrar

For Counter.

Waited till 3-00 PM. 30 days time
Granted for filing Counter before the
date of filing of memo App. has
expired. Counter not filed. Hence
Per before the Court for orders.

Sd/-
11-2-91.
Dy Registrar.

13-2-91

Finally four weeks time
granted for filing counter at the
request of learned ~~extending~~
counsel for the respondents.

Thereafter post the matter for
final hearing in usual course.

Sd/-
(BVS)
YC

Sd/-
(DSR)
M(S)

3/6/91 Counter Affidavit
filed in the NR for
solved case. - 28/5/91.

MA 649/91 on dt 9/3/90

12-6-91

Delay condoned in filing counter.
Post for final hearing in usual
course.

Sd/-
(BVS)

3/10/91 Rejoinder filed
by M. Bala-
Krishna Murthy
Advocate.

①

Central Administrative Tribunal

HYDERABAD BENCH

O.A. No. / T.A. No. 239/90 -19

V-S.R. murthy

Applicant (S)

Versus

Chief Naval Staff
New Delhi

Respondent (S)

DATE	OFFICE NOTE	ORDERS
19-11-90		Admit. Issue notices to respondents returnable by 16 weeks. Post for counter after 16 weeks from the date of receipt of notices by the respondents.
	BEFORE THE REGISTRAR: For Steps 31-12-90:	Verify through RMS on R1 & R2. Call on 11-1-91.
10/1/91	Memo of Appearance filed by Mr. E. Madan Mohan Rao Adv. C.A.S.C. on 10/1/91.	Registrar 31-12-91
11-1-91	Before The Registrar For Counter	Memo of App filed by Mr E. Madan Mohan Rao, Adv. C.A.S.C. for R1 & R2 on 10-1-91 for for Counter on 11-2-91.

(BNS)
VL.

registrar's office

(P.T.O.)

Registrar 11-1-91

20/4

31/12/90

Central Administrative Tribunal

HYDERABAD BENCH : HYDERABAD

ORIGINAL APPLICATION No. 939 of 1990

MISCELLANEOUS APPLICATION No. _____ of 199

Shri V. S. N. Murthy Applicant (s)

Versus

Chief of Naval Staff, N. D. Dilli
& another

Respondent (s)

This Application has been submitted to the Tribunal by

M. M. B. K. Murthy, Advocate

under Section 19 of the Administrative Tribunal Act, 1985 and the same has been scrutinised with reference to the points mentioned in check list in the light of the provisions contained in the Administrative Tribunal (Procedure) Rules, 1987.

The Application has been in order and may be listed for admission on -11/90.


Scrutiny Officer

Deputy Registrar (J)

Particulars to be examined

Endorsement as to result of examination

8. Has the index of documents been filed and has the paging been done properly?
9. Have the chronological details of representations made and the outcome of such representation been indicated in the application?
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal?
11. Are the application/duplicate copy/spare copies signed?
12. Are extra copies of the application with annexures filed
- (a) Identical with the original
- (b) Defective
- (c) Wanting in Annexures
- No. /Page Nos. ?
- (d) Distinctly Typed?
- Have full size envelopes bearing full address of the Respondents been filed?
- Are the given addresses, the registered addresses?
- Do the names of the parties stated in the copies, tally with those indicated in the application?
- Are the translations certified to be true or supported by an affidavit affirming that they are true?
- Are the facts for the case mentioned under item No. 6 of the application
- a) Concise?
- b) Under Distinct heads?
- c) Numbered consecutively?
- d) Written in double space on one side of the
- (e) Particulars for interim order prayed for, reasons?

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

APPlicant (A)

RESPONDENT (B)

Particulars to be examined

Endorsement as to result
of examination

1. Is the application Competent?
2. (a) Is the application in the prescribed form?
(b) Is the application in paper book form?
(c) Have prescribed number complete sets of the application been filed?
3. Is the application in time?
If not, by how many days is it beyond time?
His sufficient cause for not making the application in time, stated?
4. Has the document of authorisation/Vakalat name been filed?
5. Is the application accompanied by B.D./I.P.O. for Rs. 50/-? Number of B.D./I.P.O. to be recorded.
6. Has the copy/copies of the order(s) against which the application is made, been filed?
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed?
(b) Have the documents referred to in (a) above duly attested and numbered accordingly?
(c) Are the documents referred to in (a) above neatly typed in double space?

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Central Administrative Tribunal
HYDERABAD BENCH

INDEX SHEET

OA No. 939/90 OF 19

CAUSE TITLE V-S-R. Murthy.

VERSUS

Chief Nava Staff New Delhi

Sl.No.	Description of Documents	Page No.
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2.	Material Papers	10 to 13
3.	Vakalat	1
4.	Objection Sheet	.
5.	Spare Copies	2
6.	Covers	2

My direction to the Asst to count the Applicant's Adhoc Service from 11-3-83 to date and promote him as CGO, when his junior is promoted

APPENDIX - A

BENCH CASE

FORM - I

DEFENCE

(See rule 4)

Application under section 19 of the Administrative Tribunals Act, 1985.

Title of the Case : Counting of Adhoc service for the purpose of seniority and promotion.

INDEX

Sr.No.	Description of documents relied upon	Page No.
D.1	Letter No.PIR/2287/VSR dated 28.11.89 conveying orders of Naval Headquarters, New Delhi.	10.
D.2	Representation of the applicant to respondent No.1 dated 01.09.89.	11.
D.3	Notice from Lawyer to Respondents dated 15.05.90.	12-13

M. S. Hooty
Advocate

Signature of the applicant

FOR USE IN TRIBUNALS OFFICE

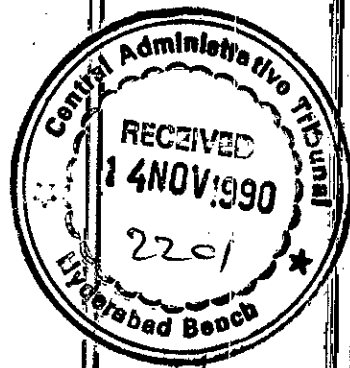
Date of filing:

Date of receipt

by post :

Registration No.:

Signature (for Registrar)



Received Copy
14.11.90
For E. M. M. H. D.
Sd/- E. S. S. C.

In the Central Administrative Tribunal

Hyderabad Bench

O.A. No. 939/90

Between

V.S.R. Murthy

.. Applicant.

And.

1. Chief of the Naval Staff
(for Director of Civilian Personnel)
Naval Headquarters
New Delhi - 11

2. Flag Officer Commanding-in-Chief
(for Staff Officer 'Civilians')
Headquarters, Eastern Naval Command
Visakhapatnam - 14

.. Respondents.

Details of the application.

1. Particulars of the applicant

- | | | | |
|------|---|-----|---|
| I. | Name of the applicant | ... | .. V.S.R. Murthy. |
| II. | Name of Father | ... | .. Shri V Rama Murthy . |
| III. | Age of the applicant | ... | .. 51½ yrs. (Fifty one and half years). |
| IV. | Designation and particulars of office, Name and Section in which employed/or was last employed before ceasing to be in service. | ... | .. Civilian Gazetted Officer, Office of Headquarters Eastern Naval Command Visakhapatnam - 14. |
| V. | Office Address | ... | .. As at item IV herein |
| VI. | Address for service of notices | ... | .. As at item IV herein and C/o his Advocate Shri M. Balakrishna Moorthy, B.A.B.L., Advocate, 49-35-27, Abid Nagar Akkayyapalem Visakhapatnam - 16. |

2. Particulars of the respondents

- | | | | |
|----|-------------------------|-----|--|
| I. | Name of the Respondents | ... | 1. The Chief of the Naval Staff, Naval Headquarters, New Delhi (for Director of Civilian Personnel) |
| | | | 2. The Flag Officer Commanding-in-Chief (for Staff Officer 'Civilians') Headquarters Eastern Naval Command Visakhapatnam - 14. |

- II. Name of father ... Not known.
- III. Age of the Respondents ... Not known.
- IV. Designation and Particulars of Office (name and station) in which employed.
1. Chief of the Naval Staff (for Director of Civilian Personnel), Naval Headquarters, New Delhi - 110011.
 2. Flag Officer Commanding-in-Chief, (for Staff Officer 'Civilians'), Headquarters Eastern Naval Command Visakhapatnam - 530 014.
- V. Office Address ... Same as at item IV herein.
- VI. Address for service of notices
3. Particulars of the order against which application is made.

I. Order No. with reference to annexure : PIR/2287/VSR

II. Date

28.11.1989

III. Passed by

: Naval Headquarters as intimated by Senior Administrative Officer, Personnel Department (R&P Section), Naval Dockyard, Visakhapatnam - 14.

IV. Subject in brief : The applicant herein was promoted as Civilian Gazetted Officer (CGO) under the Director General Naval Project, Visakhapatnam 'DGNP(V)' on adhoc basis with effect from 11-03-83 against a sanctioned post duly appointed by the President of India as communicated under Ministry of Defence letter F.No.DG/1057/E.1 D(N-IV) dated 05.01.87. The applicant, while continuously holding the post of C.G.O under DGNP, Visakhapatnam, was repatriated to Naval Dockyard, Visakhapatnam with effect from 17.10.87 from which date the applicant is continuing as C.G.O and since regularised as per Naval Headquarters letter No. CP(G)/2601 dated 28.06.1989. However, break in service as C.G.O of technical nature involving four days from 17.10.88 to 20.10.88 was imposed artificially in terms of Order No. CEO/G/97/88 dated 26.11.88 communicated by Manager (Personnel) for Admiral Superintendent, although the applicant shouldered defacto the duties of CGO for the said four days as is evident from the said order dated 26.11.88 which is subsequent to the said four days.

This applicant represented to the Chief of the Naval Staff (for Director of Civilian Personnel), New Delhi on 01.09.89 to accord sanction for reckoning his adhoc service towards seniority as C.G.O from 11.03.83 to-date notwithstanding the technical and artificial break of four days (17.10.88 to 20.10.88) during which period the duties of C.G.O were defacto shouldered by him. Naval Headquarters intimated through Senior Administrative Officer, Naval Dockyard, Visakhapatnam in terms of letter No.PIR/2287/VSR dated 28.11.89 that as per Department of Personnel and Training instructions in vogue service rendered on adhoc basis in a post is not counted for the purpose of seniority in that post/grade or for eligibility for promotion to the next higher grade. This applicant represented personally in the matter without any result and hence the applicant got issued lawyer's notice dated 15.05.90 pointing out the authoritative decisions of different benches of Hon'ble Central Administrative Tribunals in this regard but to no effect and hence this application is filed praying for directing the respondents herein to count the period of adhoc service as C.G.O from 11.03.83 to-date towards seniority in the cadre of Civilian Gazetted Officer II. and Promotion.

4. Jurisdiction of the Tribunal : I declare that the subject matter of the order against which I want redressal is within the jurisdiction of this Hon'ble Tribunal under S.14(1)b(iii) and that I am working as a civilian staff in the Naval Dockyard, establishment at Visakhapatnam.
5. Limitation : I further declare that the application is within the limitation prescribed in S.21(1)(b) of the A.T. Act 1985 (13 of 85) in that Lawyer's notice was got issued in May 90 on counting adhoc service as C.G.O from

1983 to-date towards seniority in that cadre (C.G.O II) which was not acceded to by Naval Headquarters in terms of letter dated 28.11.89.

6. Facts of the Case: The applicant was promoted and posted as Civilian Gazetted Officer (CGO) from 11.03.83 on adhoc basis under the Director General, Naval Project, Visakhapatnam against a sanctioned post in terms of orders issued by the President of India under letter F.No.DG/1057/E1 D(N-IV) dated 05.01.87. The applicant continued to officiate as C.G.O from 11.03.83 up to 16.10.87 on which latter date, the applicant was repatriated to his parent department, Naval Dockyard, Visakhapatnam.

6-2

That incidentally, the applicant submits that when his pay as C.G.O was not admitted in internal audit for the period 20.07.85 to 16.10.87, even though it was admitted for the previous period from 11.03.83, he approached this Hon'ble Tribunal through O.A.135/89 and on admission of the O.A, payment of Pay and Allowances for the said period as C.G.O was paid.

6-3

That after repatriation to his parent department, Naval Dockyard, Visakhapatnam, the applicant was allowed to officiate from 17.10.87 as CGO (Adhoc) and was regularised as CGO with effect from 30.06.89 as per Naval Headquarters letter No.CP(G)/2601 dated 28.06.89.

6-4

That this applicant made a representation to respondents herein on 01.09.89 to accord sanction for

D.2

- i) Counting date of seniority as C.G.O.II from 11.03.83, the initial date of promotion on adhoc basis by regularising his service with retrospective effect, and
- ii) to reckon the period of technical break from 17.10.88 to 20.10.88 to count as service in the cadre of C.G.O. Orders of Naval Headquarters

in this connection conveyed through Naval Dockyard letter No. PIR/2287/VSR dated 28.11.89 (D.1) are that "as per D.9 P&T instructions in vogue service rendered on adhoc basis in a post is not counted for the purpose of seniority in that post/grade or for eligibility for promotion to the next higher grade" and the technical break of four days (17.10.88 to 20.10.88) is presumed revoked. This applicant personally presented in this connection to no avail and as such caused lawyer's notice issued citing authoritative decisions of several benches of Central Administrative Tribunal in support of reckoning continuous service rendered on adhoc basis in a post for counting towards seniority in that cadre (C.G.O).

D.3

6-5 That in absence of favourable orders subsequent to letter dated 28.11.89 (D.1) from respondents herein to reckon adhoc service as C.G.O from 11.03.83 to-date rendered by this applicant noted under the foregoing para, as also despite his representation and lawyer's notice having proved of no avail, this applicant seeks orders of the Hon'ble Tribunal directing the respondents herein to reckon the continuous adhoc service of this applicant as C.G.O from 11.03.83 to-date to count towards seniority in the cadre of C.G.O ^{and for Promotion} in view of the facts noted in the foregoing paras including briefly:

That the applicant had been appointed on promotion as C.G.O from 11.03.83 and officiated as such continuously to-date duly appointed so, by the President of India through an order dated 05.01.87 and his services as C.G.O have been regularised in terms of letter from Naval Headquarters bearing No. CP(G)/2601 dated 28.06.89

notwithstanding technical break of four days (17.10.88 to 20.10.88) during which period of four days the applicant did shoulder the duties of C.G.O which is borne out by the fact that the orders by Naval Headquarters regarding technical break of four days as C.G.O were communicated subsequent to the said four days on 26.11.88 (Headquarters Eastern Naval Command, Visakhapatnam letter CE/0718 dated 17.11.88) and, therefore, evidently the said break is merely artificial and ~~xxx~~ as such the period of break for four days is not sustainable. Accordingly, orders of the Central Administrative Tribunal relevant in this connection are noted as under to sustain the claim of this applicant to count adhoc service towards seniority in the cadre and for Promotion:

- a) The Hon'ble Supreme Court in their celebrated judgement in Narendra Chadha Vs. Union of India and others, AIR 1986 SC.638; ATR 1986(1)SC.49, 1986(2) SCC.157, has put the position beyond the pale of any doubt whatsoever that the entire period of adhoc officiation followed by regular appointment has been declared to be valid for the purposes of seniority.

Further, the Hon'ble Supreme Court allowed the concession of counting the entire period of adhoc officiation for seniority not only of those who had officiated for 15 to 16 years but also those who has officiated for 5 to 6 year

In S.S. Grover Vs. Union of India, 1986 ATC 473 it is decided that continuous and uninterrupted officiation in a post for a long time confers a claim for seniority and confirmation eventhough the initial promotion might have been on an adhoc basis.



- b) Adhoc promotion - Cabinet Secretariat - Department of Personnel and Administrative Reforms - Memo. of 29.10.75 providing continuous service as eligibility qualification for promotion to next higher grade - Continuous service was deemed as adhoc service without break was ordered to count for promotion to the next higher grade C.M.Henry Vs. Union of India - ATR.1987(1)- CAT 107 - CAT Jodhpur.
- c) Following the view expressed by this Tribunal (CAT Principal Bench, Delhi in S.C.Jain Vs. Union of India "A.T.R.1986(2) CAT.346" and decision of Bombay bench in Kunral Laxminarayan Nayak Vs. Union of India (A.T.R.1987(1) CAT.458), the Bench held that entire adhoc service rendered by the petitioners from the respective dates of their appointment till they were absorbed shall also count as approved and regular service in the said cadre and their seniority shall also be reckoned from the date of their initial appointment to adhoc service followed by regular appointment in the cadre ATR.1989(1) CAT.211 - Delhi Principal Bench.
- d) There is no distinction between adhoc and regular appointment for purpose of seniority. Adhoc appointment followed by regular appointment would relate back to the date of adhoc appointment. The adhoc service counts for seniority and confirmation CAT Delhi - 346 (CAT Reporter Oct 86).

This applicant, therefore, prays the Hon'ble Tribunal to issue direction to the Respondents herein to count this applicant's adhoc service as Civilian Gazetted Officer from 11.03.83 to-date towards seniority in the cadre of C.G.O which is denied to him in terms of

impugned order dated 28.11.89 (D.1) and further Promotion

7. Details of the remedies exhausted:

The applicant declares that he has availed of all remedies available to him under the relevant service rules etc.

<u>Srl.No.</u>	<u>Date</u>	<u>Details</u>	<u>Outcome</u>
D-1	28.11.89	Letter No.PIR/2287/VSR turning down request of applicant regarding service rendered on adhoc basis in a post is not counted towards seniority in that Post/Grade.	Impugned order.
D-2	01.09.89	Representation of the applicant to respondent No.1 to count adhoc service as C.G.O towards seniority in that cadre.	Representation not acceded to under the impugned order (D.1) (D.1).
D-3	15.05.90	Lawyer's notice to respondents for reckoning adhoc service as C.G.O towards seniority in the cadre quoting orders of several Central Administrative Tribunals.	Nil.

8. Matters not previously filed or pending with any other court.

The applicant further declares that he has not previously filed any application, Writ Petition or Suit regarding the matter in respect of which this application has been made before any Court of Law or any other authority or any other Bench of the Tribunal and/nor application, Writ Petition or Suit is pending before any of them.

9. Relief(s) sought.

In view of the facts mentioned and orders from several Central Administrative Tribunals noted in para 6 herein, this applicant prays the Hon'ble Tribunal be pleased to issue directions to the Respondents:

a) to count the applicant's adhoc service from 11.03.83

...9/-

23

to-date rendered as Civilian Gazetted Officer and since regularised towards seniority in the cadre of C.G.O.

b) To consider the applicant's promotion as upgraded C.G.O from the date his junior is promoted with consequential benefits.

c) Payment of Costs.

d) Such other relief or reliefs the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

10. Interim orders, if any, prayed for:

The applicant does not seek any interim orders.

11. In the event of the application being sent by registered post. Application is being submitted through his Advocate.

12. Particulars of Bank draft in respect of the application fee.

i) Name of the bank on which drawn : SBI Dwarakamagan Branch
Visakhapatnam, 530016 (No. 3060)

ii) Demand draft No. 6940/2 - 16 dt- 26.9.90

13. List of enclosures.

i) Demand draft

ii) Vakalatnama

iii) An index in duplicate containing the details of the documents to be relied upon.

iv) Material papers, three enclosures.

I.P.O./B.C./D.D./Removed

Verification:

I, V.S.R. Murty, son of Sri V. Rama Murthy aged fifty one and half years (51½ yrs.) presently working as C.G.O in Headquarters, Eastern Naval Command, Visakhapatnam resident of Door No.49-29-3, Madhuranagar, Visakhapatnam-16 do hereby verify that the contents from Para 1 and 3 to 13 are true to my personal knowledge and belief and contents of Para 2 are believed to be true on legal advice and that I have not suppressed any material facts.

Visakhapatnam.

14-09-1990.

Signature of the applicant.

M. Murthy
Advocate

-16.

NOTE

PERSONNEL DEPARTMENT
(R & P SECTION)

PIR/2287/VSR

28 Nov 89

FORWARDING OF APPLICATION-SHRI VSR MURTY, CGO

1. Refer to the application dated 01 Sep 89 forwarded by the above mentioned officer regarding counting of seniority in CGO grade.
2. Naval Headquarters have intimated that "the submission dated 01 Sep 89 in respect of Shri VSR Murty, CGO has been examined and it is stated that as per DOP&T instructions in vogue service rendered on ad-hoc basis in a post is not counted for purpose of seniority in that post/grade or for eligibility for promotion to the next higher grade".
3. It is requested that the Officer be informed of the position accordingly.

/the

28/11
Pay-II
343

M P S

MULLU
(PV Subba Rao)
CGO
Sr. Administrative Officer

True copy

M. Balakrishna Moorthy
ADVCCATE
P. A. B. L.
VISAKHAPATNAM-530016

- 11 -

D. 2

(Through Proper Channel)

DATE OF SENIORITY IN CEO CADRE

2. I have been holding the CGO appointment as follows:

From 17.10.87 ND(V) Adhec-cum-regular CGO (.)
To: todote NHQ letter No.CP(G)/2601
dated 28.6.89 refers.

4. It is understood that the Honourable Central Administration Tribunal has issued judgement on similar cases and awarded seniority from the date of initial appointment in the higher cadre and also waived the break period.

by regularising the services with retrospective effect.

- a) The date of seniority in the CGO cadre may please be reckoned from 11-3-83. ✓
- b) The break period of 4 days viz. from 17 to 20 Oct 88 may please be revoked so as to enable the audit to admit my pay in the CGO Cadre.

True copy

MAHESHWARI SHANMUGATHY

Yours faithfully,

Encl: 11-21-68
Copy to: 11-21-68

Edw. Ruffin

FOC - INC - EAST (V)

-12- D.3

M. BALAKRISHNA MOORTHY

AK/2001

1. NARAYANAM-12301

15 MAY 90

**The Chief of the Naval Staff
Naval Headquarters (for Director Civilian Personnel)
New Delhi - 110 011**

**The Flag Officer Commanding-in-Chief
Eastern Naval Command (for Staff Officer (Civilians)
Visakhapatnam - 530 014**

On instructions from my client Sri Voleti Sitarama Murthy (VSR Murthy) S/o Sri Voleti Rama Murthy presently working as Civilian Gazetted Officer (CGO), in HQ ENC, I give you notice as under:

1. That my client represented to you on First Sept 1989 requesting you to treat the period 11.3.1983 till date, that is for about seven years that he has been continuously working as adhoc CGO, to count his seniority as CGO from 11.3.1983.
2. That the period of break for four days from 17.10.88 to 20.10.88 as CGO was technical in nature since the said break period was shown through a Naval Dockyard, Visakhapatnam CE Order passed subsequent to the said period of break after having shouldered the responsibilities as CGO which is therefore null and void and required to be reckoned as an incumbent in the cadre of CGO only.
3. That my client was promoted as CGO on adhoc basis as ordered by no less an authority than the President of India as noted under letter F.No.DG/1057/EI D(N-IV) dated 5.1.1987 and continued so till date except the said fictitious break of four days.
4. That the Naval Headquarters intimated my client through letter No.FIR/2287/VSR dated 28.11.1989 by Personnel Department R&P Section, Naval Dockyard, Visakhapatnam that as per instructions in vogue service rendered on adhoc basis in a post is not counted for the purpose of seniority in that post/grade for eligibility for promotion to the next higher grade.
5. That the said orders noted under para four ibid said to be "as per instructions in vogue" is vague and devoid of authority and therefore that said orders are invalid and void in view of decision of the Hon'ble Central Administrative Tribunal, Principal Bench - Delhi in O.A 41 of 1986 and 79 of 1986 decided on 22nd August 1986 that so long as the promotion was against long term or substantive vacancies and not against short term or fortuitous vacancies, the period of continuous service in CGO cadre is to be reckoned for determining seniority.

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- 2 -

6. That it is ^{be} noted in the case of Dr. Shri Kant Rao Vs State of Rajasthan, (1975)2 SLR 94 (97) (Raj) is also relevant in this regard.

7. It is also decided by Central Administrative Tribunal, Jodhpur Bench ATR 187(1) CAT 107, decided on 12.8.85 (Mr C. Henry Vs. Union of India) that continuous service as eligibility qualification for promotion to next higher grade.

(a) It is also decided vide SLT Vol 1, 1989 that continuous service (7 years) could not be allowed to be treated merely as 'ad hoc' and the said service should be treated towards seniority.

(b) Further, it may be noted regarding promotion, that ad hoc service followed by regular appointment in the cadre shall also be reckoned for purpose of seniority. ATR 1989(1) CAT 211 CAT Principal Bench, Delhi refers.

8. That in view of the foregoing, the total period of about seven years service as CGO (viz. 11.3.83 to date) put in by my client be reckoned for the purpose of seniority and also for promotion to the next higher promotional post by awarding seniority from 11.3.83. In case favourable orders are not received in this connection within three months, my client has reluctantly to seek redress legally.

True copy

M. Balakrishna Moorthy
ADVOCATE
VISAKHAPATNAM 530016

M. Balakrishna Moorthy
(M. Balakrishna Moorthy)
Advocate
M. BALAKRISHNA MOORTHY
ADVOCATE
VISAKHAPATNAM 530016

Central Administrative Tribunal
HYDERABAD BENCH

6th Floor, Insurance Building
Tilak Road, Abids,
Hyderabad.

Date : 15-11-90.

O.A. Regd. No. 2201/90

To *Mr. M. B. K. Murthy,*
Admn.

◀ Sir,

I am to request you to remove the defects mentioned below in your application, within 14 days from the date of issue of this letter; failing which your application will not be registered and action U/R 5 (4) will follow.

- done* 1. Court fee of Rs 5/- *of Adm will be found* *should be affixed to the envelope*
2. Material papers in support of the OA, as given in para-6, *should be filed.*
- done* 3. Envelopes with Adms. with addressing details *should be filed.*
- done* 4. Where ever material papers are suggested in the facts of the case, *Page Nos. should be furnished.*
5. *Copies of impugned Order only to be attached to the OA and the other material papers are to be filed separately.*

16-11-90.

10.

Ambr
Deputy Registrar (Judl)

(19)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD
O.A.NO.939/90

Between :

Shri VSR Murthy

And

1. The Chief of the Naval Staff
Naval Headquarters
New Delhi
2. The Flag Officer Commanding-in-Chief
Eastern Naval Command
Visakhapatnam



COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS

I, Captain Vinod Kumar Thakur, son of Late Shri Jugal Kishore Thakur, aged about 46 years, working as Officiating Chief Staff Officer(Personnel and Administration), Headquarters Eastern Naval Command, Naval Base Visakhapatnam, do hereby solemnly affirm and state on oath as follows:-

1. I am working as Officiating Chief Staff Officer (Personnel and Administration) in the office of the Flag Officer Commanding-in-Chief, Eastern Naval Command, the Respondent No.2 herein and as such I am well acquainted with the facts of the case.
2. It is submitted, a brief history of the case is that Shri VSR Murthy was appointed as Steno-typist w.e.f. 21-2-58

(T. V. K. RAO)
Civilian Gazetted Officer
Staff Officer (Civilians)
Attestor

V. K. Thakur
(VK Thakur)
Captain
Offg. Chief Staff Officer (P&A)
Deponent

Page : 1

Corres:

Received Copy in person

Murthy
22.8.91

(VSR Murthy)

for Mr. M. B. K. Murthy

Mr. Narayana Bhaskar Rao, Dadda Case identified

in the Eastern Naval Command of the Indian Navy and was promoted as Stenographer and posted to DGNP(V) where he had held the following appointments from time to time:-

- (a) Permanent Stenographer from 1-4-67 to 31-3-70
- (b) PA from 1-4-70 to 30-6-77
- (c) Office Superintendent Gr.I from 1-7-77 to 3-7-80 in the scale of Rs.550-750/-
- (d) ^{PA} (Higher Grade) from 4-7-80 to 10-3-83 in the pay scale of Rs.550-900/-
- (e) Adhoc CGO from 11-3-83.
- (f) Reverted as Stenographer Gr.I from 16-10-87 in the pay scale of of Rs.1640-2900/- and transferred to HQ ENC(V).

It may be mentioned here that DGNP(V) is not a unit directly under control of the Eastern Naval Command ^{and} the cadres held in the DGNP are not controlled either by the HQ ENC(V) or NHQ. During his tenure in DGNP, Shri Murthy was working outside the Navy although he was on the rolls of Command Headquarters and continued to be kept in the seniority rosters of the HQ ENC and NHQ. Since he was working in an organisation holding ex-cadre posts he was considered to be on deputation to the DGNP(V).. To this effect, necessary PTO No.4/10/69 dated 24-11-69 was also published for information of the applicant and for recording the same in his service documents. In this connection, following extract from page 7 of part II of his service documents, is relevant:-

Ref: DGNP(V) CEO No.2/1/67 of 3-10-67

Under Col. 'particulars'

Add : "Services as PA in DGNP(V) organisation will be treated as on deputation."

(T. V. K. RAO)
Civilian Gazetted Officer
Staff Officer (Civilians)

Attestor

Harman
(VK Thakur)
Captain
Offg. Chief Staff Officer (P&A)

Deponent

Authy: Flag Officer, East Coast, Naval Base,
Visakhapatnam (Now FOC-IN-C, Eastern Naval
Command, Visakhapatnam) Lr.No.CE/0184 dated
14 Feb 68 and our PTD No.40/10/69 dated
24 Nov 69

SD/-AO II
for DGNP(V)

The borrowing department had given him appointments/
promotions to ex-cadre posts of the Navy which his counter-
parts in the parent department of the ENC did not get viz.,
Office Supdt. Grade I. According to the recruitment rules in
the Navy the Stenographers are not considered for promotion as
Office Supdt. Grade I. In other words the petitioner enjoyed
the benefits of Ex-cadre posts during his tenure in the DGNP
i.e. the borrowing department including the adhoc appointment
of CGO from 11-9-83 which has nothing to do with the cadres of
the Indian Navy.

3. So far as the Navy is concerned the status of Shri VSR
Murthy at the time of termination of his deputation from DGNP(V)
was stenographer Gr.I as may be seen from the following entry
recorded at page 6 of the Service Document(Part-IV) :-

" 16 Oct 87 - Reverted to the post of Stenographer
Grade I in the pay scale of Rs.1640-60-2600-EB-75-
2900-~~75~~ w.e.f. 16 Oct 87.

4. On repatriation from DGNP(V) where Shri VSR Murthy was
on deputation, and on joining in Naval Dockyard, Visakhapatnam
i.e. one of the Establishments in Eastern Naval Command, he was
appointed to the post of CGO on adhoc basis and assumed the
duties w.ef. 17-10-87 for one year.

(T. V. K. RAO)
Civilian Gazetted Officer
Staff Officer (Civilians)

Attestor

(VK Thakur)
Captain
Offg. Chief Staff Officer (P&A)

Deponent

5. On termination of his adhoc appointment as CGO he was reverted to the post of Stenographer Gr.I during the period 17-10-88 to 20-10-88 he was again re-promoted as CGO on adhoc basis w.e.f. 21-10-88. Making it clear that the services rendered by Shri VSR Murthy on adhoc basis will not count for the purpose of seniority in the grade. In fact Shri VSR Murthy had submitted necessary to this effect(copy enclosed) and on the basis of undertaking undertaking given he was allowed to assume charge as CGO on adhoc basis w.e.f. 21-10-88. His services as CGO were regularised w.e.f 30-6-89 when a regular vacancy of CGO fallen to the quota of stenographer Gr.I was available. As per the DOP & T instructions in vogue, service rendered on adhoc basis in a post is not counted for the purpose of seniority in that post/grade or for eligibility for promotion to the next higher grade. The same decision was communicated to the applicant through his Department say that the break in adhoc service as CGO from 17-10-88 to 20-10-88 was of technical nature and was imposed artificially although he shouldered the duties of CGO for the said period. It is emphasized that the break was neither technical nor artificial. He was actually reverted to the post of Stenographer Grade ~~II~~ I and assumed the duties of the lower post w.e.f. 17-10-88 as is apparent from the following extract of page 9 of volume IV of his service documents:-

- i. Refer to CEO/G/38/88 of 30 Apr 88.
- ii. Reverted to the Grade of Stenographer Gr.I (GP 'B' Non-Gazetted) w.e.f. 17-10-88.
- iii. Assumed duties of Stenographer Gr.I and taken on strength against existing higher vacancy of

(T. V. K. RAO)
Civilian Gazetted Officer
Staff Officer (Civilians)

Attestor

(V.K. Thakur)
Captain
Offg. Chief Staff Officer (P&A)

Deponent

CGO contained Govt. of India, Min. of
Defence letter CS/4086/83/NHQ/85/DDI/D
(N-II) dated 28 Apr 86 with effect from
17 Oct 88.

(Authy: HQ ENC (v) letter CE/0718 dated
17 Nov 88) (CEQ/G/97/88 dated 26 Nov 88)

Notwithstanding the aforesaid facts, there is no provision in any Govt. order to count adhoc service for the purpose of seniority in that post or for claiming the promotion on regular basis to that post. To this effect, a mention was also made in the order itself while giving adhoc promotion and also undertaking was given by the applicant as explained earlier. As such the applicant has no right to claim now for counting the adhoc service in the post of CGO, for the purpose of seniority or promotion. His representation dated 1-9-89 was referred to higher authorities and the decision thereon was communicated to further, as already explained the service as CGO in adhoc basis rendered in DGNP(V), ~~the~~ i.e. borrowing department where he was on deputation, has nothing to do with Navy. As far as Navy is concerned, the status of Shri Murthy at the time of termination of his depuration from DGNP(V) was Stenographer Gr.I as explained earlier. His Adhoc service in Navy as CGO started only from 17-10-87 and therefore, he should confine his present case only to the extent of the service rendered on adhoc basis in Navy as CGO w.e.f. 17-10-87 as the Navy is not connected to the service rendered by him in the DGNP(V) which is a unit under the control of Army and where he was on deputation.

(T. V. K. RAO)
Civilian Gazetted Officer
Staff Officer (Civilians)
Attestor

(VK Thakur)
Captain
Offg. Chief Staff Officer (P&A)
Deponent

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6. In reply to para 6(1) it is submitted that all the particulars furnished by the applicant are factual except that he continued as Adhoc CGO from 11-3-1983 to 16-10-87 in DGNP, a borrowing department. As already stated earlier, the applicant was reverted from Adhoc CGO to Stenographer Gr.I w.e.f. 15-10-87 on ceasing of the adhoc appointment. Similarly, again from 17-10-88 to 20-10-88 also he was reverted to the post of Stenographer Gr.I for the same reason (ceasing of the adhoc promotion) and also assumed the duties of Stenographer Gr.I as is apparent from the relevant extracts from the service documents, reproduced earlier.
7. It is true that on repatriation from DGNP(V) to Navy he was appointed as Adhoc CGO w.e.f. 17-10-87 and assumed duties of the higher post.
8. In reply to para 3. it is submitted that it is true that on repatriation to ND(V), he was promoted as CGO on adhoc basis. It is reiterated here that he was reverted to the post of Stenographer Gr.I during 17-10-88 to 20-10-88 as explained earlier. However, it is true that he was again promoted as CGO on adhoc basis in the Navy w.e.f. 21-10-88 and finally promoted to the post on regular basis w.e.f. 30-6-89.
9. In reply to para 6(4) it is submitted that the position with regard to his representation dated 1-9-89 has already been explained earlier. The decision of higher authorities on the said representation was communicated to him through his department.
10. Since it was not permissible to count adhoc service for seniority in the higher post or for claiming regular promotion to that post, the request of the applicant could not be accepted.

(T. V. K. RAO)
Civilian Gazetted Officer
Staff Officer (Civilians)
Attestor

Thakur
(VK Thakur)
Captain
Offg. Chief Staff Officer (P&A)
Deponent

11. In reply to para 6(5) it is submitted that the rule position has already been explained earlier. Hence the applicant is not entitled to claim counting of the adhoc service for any purpose/benefit. Hence it is prayed that the Hon'ble Tribunal may please appreciate the aforesaid facts and rules and reject the prayer/request of the applicant.

12. As already stated earlier, his adhoc promotion as CGO was not continues w.e.f. 11-3-83. He was reverted as Stenographer on 15-10-87 and again from 17-10-88 to 20-10-88. It is not true that the applicant shouldered the duties of CGO during the said period. He actually assumed the duties of Stenographer Gr.I during this period as is apparent from the extracts of the service documents reproduced earlier. The date of publication of Civilian Establishment ~~Order~~ Part II orders cannot be linked with the effective date of the casualty that took place long before. Administrative decisions are taken in time and implemented immediately. However, for promulgating the departmental/local orders (CE Orders etc) it takes some time which is inevitable due to administrative formalities to be completed and time schedule followed by the unit for promulgating such orders. On the contrary, if his argument that CEO date is the effective date for any casualty, the employee concerned would be at loss; for example, in his own case of regular promotion as CGO, as per Administrative decision, he was promoted as CGO on regular basis w.e.f. 30-6-89 and also assumed duties accordingly, but the said casualty of his regular promotion as CGO w.e.f. 30-6-89 was published in CE Order dated 19-7-89. As per the argument of the applicant the regular promotion as CGO should take effect from 19-7-89 i.e.

(T. V. K. RAO)
Civilian Gazetted Officer
Staff Officer (Civilians)
Attestor

(VK Thakur)
Captain
Offg. Chief Staff Officer (P&A)
Deponent

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date of promulgation of the CE Order, and not earlier. But such contention is altogether incorrect. Any casuality, say appointment, regularisation, promotion, confirmation etc., is given effect immediately as per the decision ~~CE~~/orders of the competent authority and latter on necessary ^{CE} orders are published promulgating the casuality. So also the casuality relating to his regularisation to the post of Stenographer. The reversion to the post of Stenographer Gr.I took place from 17-10-88 to 20-10-88 i.e. immediately as per the decision of the competent authority and however, CEO was published later on. This does not mean that he was shouldering the responsibilities of the higher post during this period of reversion. Hence all the contentions of the applicant in this regard are not correct and therefore, they are denied.

13. The applicant quoted various judgement to strengthen his argument that adhoc service should be counted for seniority and next promotion. It is relevant to emphasize that court judgements in cases filed by others cannot be implemented in the case of the applicant as he is not a petitioner therein. As per administrative instructions, judicial pronouncements are always implemented only to the petitioners concerned and not non-petitioners. Notwithstanding all this, there is no provision in any Govt. directive to count the adhoc service for the purpose of seniority/promotion to the higher post. But to the contrary, there are specific Govt. instructions to the effect that adhoc service cannot be counted for seniority/promotion etc., and in fact the petitioner had given an undertaking to this effect at the time of his adhoc appointment w.e.f. 21-10-88.

(T. V. R. RAO)
Civilian Gazetted Officer
Sr. Officer (Civilians)
Attestor

[Signature]
(V. K. Thakur)
Captain
Offg. Chief Staff Officer (P&A)
Deponent

The provisions of the said Govt. instructions and the decision of the competent authority on the representation dated 01 Sep 89 have already been communicated to the applicant through his department.

14. In view of the above, the applicant is not entitled for claiming any benefit like seniority/regular promotion on the basis of his past adhoc service in the grade of CGO.

15. In reply to para 9 it is submitted that the applicant has prayed in the reliefs:-

- (a) to count his adhoc service from 11-03-83 towards seniority in the cadre of CGO.
- (b) to consider his promotion as Upgraded CGO from the date his junior was promoted, with consequential benefits.

In this connection, the following is submitted:-

Seniority :- a) As already explained above at length the adhoc service rendered by the applicant as CGO cannot be counted for seniority in that post. Moreover during the period from 11-3-83 to 16-10-87 he was holding the post of CGO on adhoc basis in an ex-cadre post which has nothing to do with the Indian Navy.

b) Promotion: Shri VSR Murthy had been on the seniority roll of the SG Gr.I belonging to Navy. However, as he has been working in an establishment outside the Navy. i.e. DGNP(V), he was shown as on deputation to that organisation. In any case ^{Two} ~~their~~ had not affected his inter-se

(T. V. K. RAO)
Civilian Gazetted Officer
Staff Officer (Civilians)
Attestor

[Signature]
(V. K. Thakur)
Captain
Offg. Chief Staff Officer (P&A)
Deponent

(28)

seniority vis-a-vis his juniors, Shri M Venugopal and others. Accordingly, Shri Murthy was shown at Sl.No.I of the seniority roll of Stenographer Gr.I, circulated under NHQ letter No.CP(G)/012 dated 18th Nov 86. The DPC had also considered Shri VSR Murthy, duly keeping in view his seniority, for regular promotion as CGO. However, the post of CGO being a selection post the panel was drawn on the basis of inter-se merit of those who were in the consideration zone. Shri M Venugopal, even though junior to Shri VSR Murthy as S/G Gr.I, had been recommended by the DPC for promotion to the grade of CGO on the basis of better merit as compared to all other stenographers Grade I including Shri Murthy.

16. In view of the aforesaid facts and rule position, it is submitted that the individual/applicant has not made out any case either on facts or in law worthy of consideration by the Hon'ble Tribunal as there was no injustice done to his and hence it is humbly prayed that the Hon'ble Tribunal may be pleased to dismiss the application with costs.

(T. V. K. RAO)
Civilian Gazetted Officer
Sr. Officer (Civilians)
Attestor

[Signature]
(VK Thakur)
Captain
Offg. Chief Staff Officer (P&A)
Deponent

VERIFICATION

I the Officiating Chief Staff Officer(P&A) of Headquarters Eastern Naval Command, Visakhapatnam do hereby state that what all stated in the Counter Affidavit is true to the best of my knowledge, belief and information. Hence verified on this 20th day of May 1991.

T. V. K. RAO
(T. V. K. RAO)
Civilian Gazetted Officer
Staff Officer (Civilians)
Attestor

VK Thekur
(VK Thekur)
~~Captain~~
Officiating Chief Staff
Officer(P&A)
(Deponent)

DECLARATION

I am willing to accept the ad-hoc appointment afresh in the cadre of OGO with effect from 21 Oct '88 for a period of six months or till a regular incumbent is positioned whichever is earlier subject to the condition that the services rendered by me on ad-hoc basis as OGO will not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade.

hand
(VSR Murthy)
Adhoc OGO
24 Nov '88

Attested

T. V. Rao
24/11/88

CE/0718 Vd. II (P2-18.3)

(31)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD

O.A.NO: 939/90

Between
V.S.R.MURTHY

Applicant

and
Chief of the Naval Staff,
(for Director of Civilian Personnel),
Naval Head Qrs, NEW DELHI-II.

Flag Officer Commanding-in-Chief,
(for Staff Officer, "Civilians"),
Head Qrs, Eastern Naval Command,
V I S A K H A P A T N A M-14

Reply statement to the counter affidavit dated
20th day of May 1991 from officiating Chief Staff Officer
(P&A) on behalf of respondents and received on 22-8-1991.

I Para 1 No reply is needed

II Para 2

It may be that DGNP(V) is not a unit directly
under control of the Eastern Naval Command but it is not
true that the applicant was working outside the Navy since
the DGNP(V) and ENC, Visakhapatnam and Naval Head Qrs are
under the Ministry of Defence and directions from the
Ministry of Defence in regard to posting Civilian staff
interse prove that the cadre of civilian staff is unitary
as is evident from the order of appointment of this applicant
as ad-hoc civilian Gazetted Officer(CGO) w.e.f. 11-3-83
conveying sanction of President of India by under Secretary
to the Government of India in the Ministry of Defence in
terms of letter NO: F.NO: DG/10571E-1-D(NO IV) ^{of 5-1-87 (copy enclosed) noted} under para
6.1 at page 4 of O.A. 939/90. President of India ordered the
Naval Head Quarters to post regular incumbent in place of
this applicant promoted as ad-hoc ^{CGO} who was to continue until
replaced by a regular staff to be appointed by Naval Head
Quarters. It is thus evident that the cadre of civilian
staff of DGNP(V) and Hd Qrs Eastern Naval Command, Visakha-
patnam is controlled by Naval Hd Qrs. The applicant is not
therefore posted as ad-hoc CGO at DGNP(V) as an EX;cadre
staff but only against regular cadre post. As further proof,
it is submitted that promotion of this applicant as ad-hoc
CGO was referred by Defence Ministry to Naval Hd Qrs/Delhi

Received
21/2/91
Dr. V. Raman
Asstt. Commr. C551

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under file bearing NO: DG/1057/E.I-D(N.IV) and sanction was accorded on 5-1-87 after getting concurrence from Naval Hd Qrs which is available with Director General Naval Project(V) DGNP(V) in connection with giving covering sanction to meet Audit objection as noted under para 6.2 of this O.A. Contention of respondents that the applicant was considered to be on deputation to DGNP(V) is not true in as much as there is no specific letter to the applicant on promotion and posting to DGNP(V) that he was sent on deputation laying down terms and conditions of deputation and entry said to have been made at page 7 of part II of his service documents⁶⁶ services as PA in DGNP(V) organisation will be treated as on deputation⁷⁷ is obviously an after thought and further no deputation allowance was paid to the applicant considering this applicant's service on various scales in DGNP(V) including that of CGO, he has been allowed to continue as CGO by Naval Hd Qrs/Delhi and that he was regularised as CGO in Eastern Naval Command^{below} 30-6-89 in terms of Naval Hd Qrs letter NO: CP(G)/2601 dated 28-6-1989 (Para 6.3 of O.A. 939/90).

III Para 3 & 4

It is fact that on reporting back to Eastern Naval Command, (Naval Dockyard, Visakhapatnam) this applicant was allowed to continue as ad-hoc CGO w.e.f. 17-10-1987 for one year without break, since he had officiated as ad-hoc CGO in DGNP(V) from 11-03-1983 to 16-10-1987.

IV Para 5

The statement of respondent in para 5 (Page 4 of counter) ~~that~~ the break of four days as CGO from 17-10-88 to 20-10-88 was neither technical nor artificial etc is contradicting the statement made in para 4 (Page 3) of counter that he (This applicant) was appointed to the post of CGO on ad-hoc basis and assumed the duties w.e.f. 17-10-87 for one year. It is thus evident that the said break of four days 17-10-88 to 20-10-88 as CGO is only artificial and technical in nature as has been submitted in para 6.5 at page 5 of this application. In further proof of this, it is submitted that the orders imposing the said break of four days are conveyed on 26-11-1988

ie ,more than a month subsequently as could be kindly seen from letter of ENC NO E/0718 dated 17-11-1988. It is pertinent to submit that an order passed adversely to an employee could become affective from the date of communication as decided in S. Chandrasekharan, District Officer, Madras Telephones 1 LLJ 54(57)(MAD) (1972). Incidentally, the ruling of the Hon'ble Supreme Court in state of Punjab V Amoke Singh Harika AIR 1966(SC) 1313(1316) per GajendraGadkar C.J is submitted that the mere passing of an order of dismissal is not effective ~~until~~ it is published or communicated to the office concerned,

Accordingly, what all is stated under para 5 of counter on page 5 regarding deputation etc and the Navy Hd Qrs/Delhi having nothing to do, are not true as submitted in ~~for~~ ^{the} foregoing paras.

V. ~~Para 6~~ ⁷. It is submitted that the respondent admitted in para 7 to the same admission in para 3 that this applicant from DGNP(V) was appointed as ad-hoc CGO w.e.f. 17-10-87 and assumed duties of higher post from that date proves the contention of this applicant in the application that his service as ad-hoc CGO from 11-3-1983 irrespective of deputation till date is continuous having been ordered by Naval Hd Qrs/Delhi as directed by the Ministry of Defence the controlling Ministry for all defence organisations conveying ~~of~~ the sanction of the President of India for ~~appointment~~ of this applicant as ad-hoc CGO in DGNP(V), Visakhapatnam. Consequently, the entire service of this applicant as ad-hoc and regular CGO from 11-3-83 till date irrespective of the imposed artificial break for four days from 17-10-88 to 20-10-88, proves beyond any doubt that the applicant is entitled to reckon his service as CGO from 11-3-83 till date with all consequential benefits such as promotion to higher post etc, which may kindly be ordered by this Hon'ble tribunal as prayed for in the application.

VI. Para 8

The statement that this applicant was reverted for

for four days from 17-10-88 to 20-10-88 is contradicting what is stated under para 7 of counter^{as} the orders were communicated ^{as} subsequently which are not sustainable noted under para 5 herein.

VII Para 9,10,&11

In support of the statement that it was not permissible to count ad-hoc service for seniority in the higher post, it was stated in the letter dated 28-11-89, annexure 'D' to the application, intimating Naval Hd Qrs instructions that as per DO (P&T) instructions in vogue that ad-hoc service in a post is not ^{counted} connected for seniority ----- for promotion to next higher grade did not mention that ad-hoc service in DGNP(V) was on deputation and the specific instructions of DO(P&T) in this connection were not quoted and as such, the statement is devoid of authority. However, several decisions including those from Hon'ble Supreme Court in support of this applicants request in this regard noted in brief at para 6, ^{(0. A939/90) are} submitted for kind appreciation by this Hon'ble Tribunal to order the reliefs prayed for.

VIII Para 12

What is stated in this para is not true but is a repetition of that stated in earlier ^{Paras.} However, in regard to delay in communication of administrative decisions, it is submitted factual assumption of duties of a higher post cannot be taken up by employees promoted ^{and not} without authority though formal orders may issue subsequently, but in regard to an order adverse to an employee, such as reduction it has only to take effect from the date of communication as per decision in S. Chandrasekharan v. District Officer, Madras Telephones 1 LLJ 54(57) (MAD) (1972) noted under para 14 herein above which is relevant here and further it is a fact that this applicant did perform the duties of CGO from 17-10-88 to 20-10-88 but not the duties of Stenographer since the said orders were conveyed about one month later and the contentions of the respondent in this regard are therefore far from true and are not therefore sustainable. In line 3

of ~~this~~ para of the ~~counter~~ that this applicant was
reverted as stenographer on 15-10-1987 is not ~~is not~~ correct,
^{as this applicant}
^ worked as CGO at DGNP(V) till 16-10-87(AN).

IX Para 13

It is submitted that various judgements of courts regarding ad-hoc service to be counted for seniority and next promotion are quoted to seek orders from this Hon'ble tribunal on the analogy of those Precedents quoted and more over judgments of Supreme Court in this regard cannot be brushed aside by respondents for implementation. Further, specific Government instructions to the effect that ad-hoc service cannot be counted for seniority/promotion etc stated by respondent are not supported quoting by relevant rules and as such do not stand to scrutiny and therefore deserves to be ignored and an undertaking taken from this applicant is thus illegal being contradictory to orders of the courts quoted in the application as it was demanded to deny ~~para (B) under~~ legitimate benefits to the staff.

~~Para (B) under seniority on page 9 of counter two had not affected his interse seniority to be clarified.~~

X IX Para 14

In view of his submissions under paras IV, V, VII ^{and consequential benefits} herein this applicant is entitled to claim seniority for regular promotion on the basis of his past ad-hoc service in the grade of CGO.

XI X Para 15(a).

As submitted in para X herein above, ad-hoc service of this applicant as CGO is to be counted for seniority and further promotion, as has been adequately explained under paras IV, V and VII. Further this applicant's service in DGNP(V) is not against ex-cadre post has been explained under para II herein (B) a panel has already been drawn up recently for promotion to selection grade and several juniors are included in the panel ignoring the seniority of this applicant as CGO from 1983 to which he is entitled as submitted in the foregoing paras herein.

The Hon'ble tribunal be pleased to order the reliefs

36
prayed for under para 9 of this application including issue of direction to the respondents to consider applicants promotion as upgraded CGO from the date his junior is promoted with all consequential benefits with costs.

VERIFICATION

I.V.S.R. MURTHY, S/O. V. RAMA MURTHY aged about 52 years presently working as CGO under Hd Qrs Eastern Naval Command, Visakhapatnam do hereby verify and state that what all is stated herein is true to the best of my knowledge, belief and information and hence verified this day of ^{fourth day of} Nov '1991 at Visakhapatnam.

V.S.R. Murthy
V.S.R. MURTHY (applicant)

MR. M. S. R. Murthy
Counsel for the applicant

O.A. 939/90.

Reply to counter

Filed by counsel

for applicant

M. Balakrishna Murthy

Advocate 2-12-91



37
F.NO:DG/1057/E-I D(N-IV)

GOVERNMENT OF INDIA
MINISTRY OF DEFENCE
NEW DELHI, THE 05 JAN'87

APPOINTMENT OF CGO-DGNP(V)

Refer to this Ministry's Memo NO: 587/D(N-IV)
dated 04th March, 1983.

2. Sanction of the President is hereby conveyed for
ad-hoc promotion of Shri. VSR Murthy to the cadre of CGO in
the DGNP(V) organisation, with effect from 11 March'83 until
a regular incumbent is appointed by Naval HD QRS.

(Sd/ p p p p)

Under Secretary to the Government of India

TO

DGNP/VISAKHAPATNAM

COPY TO:

NHQ(DCP)- with a request to appoint a regular CGO in the DGNP(V) organisation at an early date.

(38) (1)

DRAFT CIVILIAN ESTABLISHMENT ORDER
VISHAKHAPATNAM

D.C.E.O. No. 5 /67.

S.No.	Name & Desgn.	Estt.	Particulars	Date
1.	Shri V.S.R. Murty, Stenographer	NAVY OFFICE	Promoted to the post of Personal Assistant against the sanction contained in Govt. of India, Ministry of De- fence letter No.F.11 (2)/66/1112-S/D(N-II) dated 9th May 1967, and transferred to Directorate General, Naval Project (V) Organisation, Vishakhapatnam.	21.6.67

*Congratulations
well done
Yashraj!*

*Seen by
re. reply*

See 20/6

Navy Office,
Vishakhapatnam.

File No. CE/0184,
Dated: 28 June, 1967.

[Signature]
Captain

Distribution:

The Director General, Naval Projection (Vishakhapatnam) Orgn.,
Vishakhapatnam.

The Base Supply Officer, Navy Office, Vishakhapatnam.

The Controller of Defence Accounts (Navy), Bombay.

The Secretary to the Commodore East Coast, Navy Office,
Vishakhapatnam.

Akr/-

[Signature]

Telephone: 7321/515

Mukhyalaya
Poornu Nausena Kaman
Nausena Base
Visakhapatnam

24 Jul 80

CE/2750

The Flag Officer Commanding
Eastern Fleet, Visakhapatnam

The Director General
Naval Project, Visakhapatnam

The Financial Adviser to Director General
Naval Project, Visakhapatnam

The Commanding Officer
INS Chilka

The Commanding Officer
INS Circars

**PROMOTION OF PAs (Rs. 425-700) TO THE POST OF PAs
TO THE REAR ADMIRALS AND ABOVE (Rs. 550-900)**


1. The following promotions/transfers of Personal Assistants (in the pay scale of Rs. 425-700) as Personal Assistants to the Officers of the Rank of Rear Admiral and above (in the pay scale of Rs. 550-900) are ordered with immediate effect :-

Sl. No.	Name	Unit where serving	Unit where transferred	Remarks
<u>S/Shri</u>				
1.	VSR Murthy	DGNP(V)	DGNP(V)	Promoted and retained
2.	M Vemigopal	CIRCARS	HQENC (C-in-C)	Promoted and transferred against an existing vacancy.
3.	S Swaminathan	POCKF	POCKF	Promoted and retained
4.	DK Sinha	CHIKA	DGNP(V) (for PA)	Promoted as PA to PA to DG and transferred against an existing vacancy.

2. The above promotions are on ad-hoc basis for a period of six months.

3. Transfer of individual at Sl. No. 4 is in public interest and he will be entitled to normal joining time, TA/DA etc. Reliefs where necessary are being posted separately.

4. It is requested that the receipt of this letter be acknowledged.


(G. N. Wadhawani)
Commander
Chief of Staff
for Flag Officer Kaman-in-Chief

Copy to:-

Internal - NA to C-in-C

CCN(PDA)

OFFICE ACQUAINT NO 3/83

OFFICE OF THE DIRECTOR GENERAL
NAVAL PROJECT
VISAICHAPATNAM-14

11th MAR 83

PROMOTION TO THE POST OF CGO : DGNP(V)

Shri. VSR MURTHY, PA to RADN is promoted to the post of CGO in the pay scale of Rs 650-1200 against an existing vacancy in the DGNP(V) Organisation.

2. The above promotion is ordered on ad-hoc basis for a period of 3 months from the date of issue of this order or till a regular Officer joins, whichever is earlier.

3. This issues with the approval of Ministry of Defence vide their U.O No. 587/D/ (M-IV) dated 04-3-83.

Sd/-X X X X X X X X X
(SHN SINGH)
REAR ADMIRAL
DIRECTOR GENERAL

DG/1057/E1

DISTRIBUTION

1. DDA Pay Office
MH Compound
Secundrabad-15
2. Group I, II, III, IV, V & VI

Copy to :-

Ministry of Defence (D/N-IV)

F.No.10/1057/E1 D(N-IV)
Government of India
Ministry of Defence
New Delhi, the 05 Jan 87

APPOINTMENT OF CGO - DGNP (V)

Refer to this Ministry's u.o. No. 587/D(R-IV)
dated 04th March, 1983.

2. Sanction of the President is hereby conveyed for
ad-hoc promotion of Shri VSR Murty to the cadre of CGO
in the DGNP (V) organisation, with effect from 11 Mar 83
until a regular incumbent is appointed by Naval Hqs.

H. N. NAYLOR (H. N. NAYLOR)
Under Secretary to the Government of India

To

DGNP Visakhapatnam

Copy to :-

MHA (DCP) - with a request to appoint a regular
CGO in the DGNP (V) organisation at
an early date.

Srs/-

Copy recd.

5/1/87

NH&A


Rep -

CIVILIAN ESTABLISHMENT ORDER - 1988
CIVILIAN OFFICERS - NAVAL DOCKYARD(V)

26 Nov 88

CEO: G/97/88

Sl. No.	Name & Designation	Particulars	Date
1.	Shri VSR Murthy, Stenographer Gr.I/ CGO (ad-hoc)	i) Refer to CEO:G/38/88 dated 30 Apr 88. ii) Reverted to the grade of Stenographer Gr.I (Gp.'C' Non-Gazetted) w.e.f. . . . 17 Oct 88 (Authy:- NHQ letter CP(G)/2190/1 dated 13 Jul 88) iii) Assumed duties of Stenographer Gr.I and taken on strength against the existing higher vacancy of CGO contained in Govt. of India, Min. of Defence letter CS/4066/83/NHQ/851/DOI/ D(N-II) dated 28 Apr 86 with effect from 17 Oct 88 (Authy:- HQENC(V) letter CE/0718 dated 17 Nov 88)	


(CK Sarker)
Manager (Personnel)
for Admiral Superintendent

Distribution:

The Chief of the Naval Staff
Naval Headquarters (for DCP)
New Delhi

The Flag Officer Commanding-in-Chief
Eastern Naval Command (for SO(Civ.))
Visakhapatnam

The Controller of Defence Accounts (Navy)
Bombay

The Area Accounts Officer
CD*(N), Visakhapatnam

The NL*O(*), Visakhapatnam

Internal: SO to ASD, MPS, MFS, CSO

AM(Advances), AM(SDs), AM(Pay) & AM(Estt.)

7

2. The applicants herein were appointed as temporary casual non-industrial employees in Clerical categories in different establishments of Eastern Naval Command, Visakhapatnam. They were appointed through the Regional Employment Exchange, Visakhapatnam after observing the formalities of test/interview etc., on par with regular employees. They were given artificial breaks after every 89th day of service thereby depriving their annual increments and other service benefits. Subsequently they were regularised on a subsequent date and their grievance is that their services have to be regularised from the date of initial appointment by condoning artificial breaks in service.

3. Several employees came to this Tribunal seeking some relief and the Tribunal had allowed a few applications. The respondents had been given the benefit of implementing the orders of this Tribunal in batch of O.As 402, 514/86, 127, 131, 230, 231, 247, 266, 290 & 303/87 dt. 14.5.87 and O.A. 288/88 and some other cases. Two persons S/Shri A.Krishna Murthy & P.Subba Rao who are very much junior to the applicants had been given the benefit of regularisation from the date of initial appointment. Subsequently other persons who are senior to the above two persons S/Shri A.Krishna Murthy & P.Subba Rao filed O.A. 654/88 seeking extension of the benefit of regularisation. This O.A. was allowed by a judgement dt. 21.6.89 of this Bench. The applicants want the benefit of the judgement of this Bench to be extended to them also.

4. The respondents have filed a counter affidavit and oppose the application. The facts of the case are not disputed. But the main objection on the part of the respondents is contained in para 9 of the counter wherein it is stated that the applicants cannot claim the benefits of the judgement in other court cases, as the judgements are to be implemented only in the case of the petitioners/applicants therein. Hence the applicants herein are not entitled for relief as prayed for by them.

.....

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD.

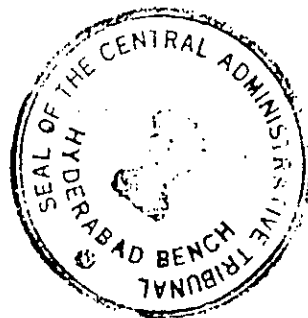
O.A.No.699/89.

Date of Judgement 22.4.89

1. J.Dharma Rao
2. R.V.L.N.Rao
3. Smt. Y.Bhagya Lakshmi .. Applicants

Vs.

Flag Officer Commanding-in-Chief,
Eastern Naval Command,
Visakhapatnam-14. .. Respondent



Counsel for the Applicants : Shri P.B.Vijaya Kumar

Counsel for the Respondents : Shri N.Bhaskara Rao, Addl. CGSC

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri C.J.Roy : Member(J)

I Judgement as per Hon'ble Shri R.Balasubramanian, Member(A) I

This application has been filed by Shri J.Dharma Rao

& 2 others against the Flag Officer Commanding-in-Chief,

Eastern Naval Command, Visakhapatnam-14 under section 19 of the

Administrative Tribunals Act, 1985. The prayer herein is for

direction to the respondents to regularise their services

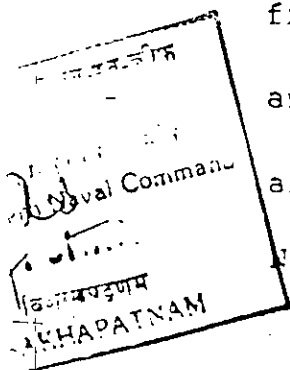
from the date of initial appointment, restore their seniority

and also give them all consequential and attendant benefits

as has been extended to the juniors covered by the Orders

No.CE/0762 dt. 17.9.87 and other connected CE orders.

.....2



Handwritten signature and date:
9/30/89

Cell

8

5. We have examined the case and heard the rival sides. In the first instance we wish to state that the benefits of any court judgement should be extended to persons similarly placed. We have also seen the judgement dt. 21.6.89 in O.A. 654/88. The facts and circumstances of the case covered in that O.A. are applicable to the applicants before us in this O.A. and hence following the judgement dt. 21.6.89 in O.A. 654/88 we direct the respondents to regularise the services of the applicants herein from the date of initial appointment, restore their seniority and also give them all consequential benefits as have been extended to the juniors, covered by the Orders No.CE/0762 dt. 17.9.87 of the Flag Officer Commanding-in-Chief, Eastern Naval Command, Visakhapatnam. We, ^{we, however,} however, notice that the applicants before us have not cared to agitate earlier alongwith other applicants. ^{Hence we} Hence we also direct the respondents to restrict any arrears by way of difference ^{between} from the orders directed to be issued and the orders already issued to a period subsequent to 14.9.88 i.e., one year prior to the date of registration of this O.A. on 14.9.89.

6. The application is disposed of thus with no order as to costs.

CERTIFIED TO BE TRUE COPY

[Signature]

Date..... *5/10/89*
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

Copy to:-

1. Flag Officer Commanding-in-Chief, Eastern Naval Command, Visakhapatnam-14.
2. One copy to Sri. P.B.Vijaya Kumar, advocate, cat Hyd.
3. One copy to Sri. N.Bhaskara Rao, Addl. CGSC, CAT, Hyd.
4. One spare copy.

Rsm/-

retire voluntarily. There is nothing constitutionally wrong in the respondents fixing the date 10-9-1983, from which the new concept and the new benefit were made available to those wanting to elect to be governed by them.

Viewed as above, the applicant's prayer for extension to him of the benefit of the provisions of the new Rule 48-B inserted in the Pension Rules made applicable from 10-9-1983, cannot be allowed as the applicant had retired with effect from 1-10-1979.

[*Ravjibhai K. Sarodia and another v. Union of India and others*, 1992 (1) SLJ (CAT) 58 (Ahmedabad), date of judgment 15-4-1991.]

79

A direct recruit to a post cannot be reverted to a lower post

Held: The applicant was directly recruited to post of Boot Maker (Civilian) and had been confirmed in the said post in 1965. He had been continuing ever since as Boot Maker, although serving at different places. The right of the respondents to abolish the post of Boot Maker is not in dispute. But what is at issue is whether the permanent incumbent of such a post, who was directly recruited to that post can be reverted to a lower post. It was held by the Supreme Court in *Hussain Sasansaheb Kaladgi v. State of Maharashtra*, AIR 1987 SC 1627, that a direct recruit to a post cannot be reverted to a lower post. It is only a promotee who can be reverted from the promotion post to the lower post from which he was promoted. These propositions are so elementary that the same are incapable of being disputed and have not been disputed.

The opening sentence of the impugned order says that the post of Boot Maker having been rendered surplus on one establishment under the same Army Establishment, adjustment was being made with deficiencies in another unit. This was, however, being "initially adjusted in the lower grade". The intention, however, seems to be that the applicant should apply for restoration of his higher grade and thereafter the respondent would pass suitable orders. Whatever might be the intention, the fact remains that the impugned order amounts to reversion of the applicant to a lower grade, with immediate effect. We, therefore, hold that the action of the respondent would attract the ruling of

the Supreme Court, referred to supra. Hence the order of reversion has to be set aside.

[*T. Ganesan v. Union of India*, 1992 (1) SLJ (CAT) 121 (Madras), 1992 (1) ATJ 153, date of judgment 22-8-1991.]

80

Period of ad hoc service in substantive vacancy must be counted for seniority on subsequent regularisation

The appellants were appointed in 1971 in Class IV posts and they were promoted to a higher grade in 1975. They were further promoted to Class III posts after holding selection test on *ad hoc* basis. On September 26, 1986, the services of the appellants were regularised and in determining their seniority the entire period of *ad hoc* service since 1975 was not taken into consideration. The order of seniority was challenged before the Central Administrative Tribunal and the Tribunal relying upon the decision in *Ashok Gulati v. B.S. Jain*, [1986 Supp SCC 597], held that the *ad hoc* service in the promoted post of Class III cannot be taken into account in determining the seniority of the appellants. Hence the present appeal to the Supreme Court.

Held: It is well settled by several decisions of the Supreme 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. Nevertheless, if a person is appointed against substantive vacancy and is subsequently promoted to continue on *ad hoc* basis to hold such post for a number of years, then, in that case the appointment though made on *ad hoc* basis has to be taken into consideration in reckoning the seniority of the holder on that basis. In the instant case, there is no dispute that the appellants who were already members of the service by being appointed in Class IV posts since 1971, were subsequently promoted in 1975 on *ad hoc* basis to Class III service and their services were subsequently regularised in the said posts in 1986. In such circumstances, it cannot be said that such *ad hoc* service for a period of about 11 years will not be taken into account in determining the seniority of the holders of Class III posts.

Considering all the facts and circumstances of the case and also the well-settled decisions of the Supreme Court, we are constrained to hold that the period of 11 years of *ad hoc* service has to be taken into consideration in determining the seniority of the appellants. The decision of *Ashok Gulati's* case referred to above, has no semblance of application to this case as the facts of that case are totally different from the facts of this case.

[*Rajbir Singh and others v. Union of India and others*, (1992) 19 ATC 315 (SC), date of judgment, 12-11-1990.]

81

Benefit of revised pay should be given to suspended employee but no increment can be given

Held: It is an acknowledged proposition of law that suspension is no punishment unless it is tainted by *mala fides* or resorted to without authority of law or for extraneous considerations. Suspension only deprives and debars the Government servant from the discharge of his duties as such Government official in the interest of administration and to prevent the abuse of his position but does not, in any way, amount to his having been removed from service. Removal from service has to be distinguished from suspension from service. The suspended employee continues to remain bound by the service rules and under an obligation to follow them till he is removed from service. A corresponding obligation is, therefore, cast upon the administration to treat the suspended employee as in service of the Government and treat and confer upon him such benefits to which he would have been entitled, had the order of suspension not been passed against him. Revision of grades is a benefit conferred upon the State employees which cannot be denied to a particular employee only on the ground of his suspension. Depriving the suspended employee of the salary benefits to which the other employees similarly situated are entitled, without holding a proper enquiry may amount to punishment not permissible under the service rules applicable without holding a proper enquiry. There is, therefore, no justification for the respondents to deprive the petitioner of the benefit of revised pay scale while making the payment of subsistence allowance as per decisions of court issued from time to time in this behalf.

However, payment of increment cannot be claimed by the suspended employee as a matter

of right. Increment is paid on account of record of service and is in the discretion of authority in accordance with the rules applicable on appreciation of his work and conduct discharge of his official duties. When an employee is suspended to perform the work, is no possibility of appreciating his conduct entitling him to the grant of increment. Petitioner was, therefore, rightly not paid amount on the basis of his claim of increment during the period of suspension. Right of petitioner to claim the benefit of increment be decided and disposed of if he is ultimately reinstated and the authorities in their discretion and under the rules hold entitled to such ment.

[*Sumer Chand Khajuria v. State and or* 1991 (3) SLJ 168 (J&K H.C.), dated of judgment 17-7-1990.]

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CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

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

ORIGINAL APPLICATION NO.

939

OF 19 90

~~TRANSFER APPLICATION NO.~~

~~OLD PETN. NO.~~

CERTIFICATE

Certified that no further action is required to be taken
and the case is fit for consignment to the Record Room
(Decided)

Dated:

7/2/94.

Counter Signed:

Signature of the Dealing Asst.

Section Officer/Court Officer,

Pre-delivery judgement in O.A.No.939/90

prepared by Hon'ble Shri A.B.Gorthi,

Member(A) for concurrence pl.

To

Hon'ble Shri Justice
V.Neeladri Rao,
Vice-Chairman.

2
21 Jan 94

Post at 4.40 P.M on
4.2/94 for delivery file
✓

(42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.939/90.

Date of Judgement : 4/2/94

V.S.R.Murthy

.. Applicant

Vs.

1. Chief of the Naval Staff
(for Director of Civilian
Personnel), Naval HQrs.,
New Delhi-11.
2. Flag Officer
Commanding-in-Chief
(for Staff Officer 'Civilians'),
HQrs.; Eastern Naval Command,
Visakhapatnam-14. .. Respondents

Counsel for the Applicant :: Shri V.Ajay Kumar

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

C O R A M

Hon'ble Shri Justice V.Neeladri Rao : Vice-Chairman

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

J u d g e m e n t

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

The Applicant's grievance is against the Respondents' refusal to count his ad-hoc service w.e.f. 11.3.83 towards his seniority in the cadre of Civilian Gazetted Officer (C.G.O. for short). In this application, he prays for a direction to the Respondents to grant him seniority as C.G.O. w.e.f. 11.3.83 and also to promote him as upgraded C.G.O. from the date when his junior was so promoted, with all consequential benefits.

.....2

2

2. The Applicant joined service in Eastern Naval Command as Steno-typist on 21.2.58. On his promotion as Stenographer he was posted to Director-General, Naval Project, Visakhapatnam (D.G.N.P.(V) for short). During his service with the D.G.N.P.(V) he was promoted as P.A. and as Office Superintendent Grade-I. He was further promoted as C.G.O. on 11.3.83, on an ad-hoc basis. While being an ad-hoc C.G.O. he was repatriated to Eastern Naval Command. On repatriation he was posted to Naval Dockyard, Visakhapatnam on 17.10.87. He, however, continued to hold the grade of C.G.O. on an ad-hoc basis till 17.10.88 when he was reverted to his substantive grade of Stenographer Grade-I. After a gap of 4 days, he was re-promoted as C.G.O. on 21.10.88, again on ad-hoc basis. He was regularly promoted as C.G.O. on 30.6.89.

3. The Applicant claims that his seniority as C.G.O. should count from the date when he was initially promoted, though on ad-hoc basis, as C.G.O. The explanation offered by the Respondents is that the Applicant got his promotion as ad-hoc C.G.O. while on deputation with the D.G.N.P.(V), which is a separate establishment outside Eastern Naval Command and under the control of the Army. Regular promotions could be given to him depending on his seniority and the availability of vacancies in Eastern Naval Command. When a regular vacancy in the grade of C.G.O. became available after his repatriation to Naval Dockyard, the case of the Applicant along with other eligible candidates was considered by a D.P.C. held in 1987. The D.P.C. selected Shri M.Venugopal^{on} comparative merit, in preference to the Applicant who was admittedly senior. Again, when

the next vacancy came up in 1989, another D.P.C. was held and the Applicant was selected. He was accordingly promoted as C.G.O. on regular basis on 30.6.89.

4. Shri V.Ajay Kumar, learned counsel for the Applicant urged that the Applicant was duly promoted as C.G.O. as early as on 11.3.83 while working with the D.G.N.P.(V). Though the promotion was said to be on ad-hoc basis, there was no justification for the Respondents not to count the ad-hoc service for the purpose of seniority. In support of his contention, the Applicant's counsel heavily relied on Rajbir Singh & Ors. Vs. Union of India & Ors. (1992) 19 ATC 315 (SC). In that case, the Appellants were promoted to Class III posts on ad-hoc basis against substantive vacancies after due selection. They were subsequently promoted on a regular basis. Consequently, it was held that such ad-hoc service would count for reckoning seniority. At the same time, the general principle, which is now well established by a catena of judgements, that ad-hoc service should not ordinarily count for purpose of seniority, is reiterated in the same judgement, in the following words:-

"It is well settled by several decisions of the Supreme 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."

5. In the instant case, the promotion of the Applicant as ad-hoc C.G.O. was fortuitous in the sense it was given to him while he was on deputation with the D.G.N.P.(V). No regular selection was made by a duly constituted D.P.C. as such a course of action could have been undertaken

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only in his parent establishment. In Keshav Chandra Joshi & Ors. Vs. Union of India & Ors. (AIR 1991 SC 284) this aspect of the matter was further clarified with reference to the earlier decision of the Supreme Court in Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra (1990) 2 SCC 715. In the Direct Recruit Class II Engineering Officers Association case, the following propositions were laid down:-

"(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. Clarifying, yet reiterating the above, it was observed in Keshav Chandra Joshi's case 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 that where the initial appointment is only ad-hoc 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 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 dehors the rules, the entire length of such service cannot be counted for seniority."

7. In view of the above, we have no hesitation in holding that the Applicant's promotion as ad-hoc C.G.O. being fortuitous and dehors the rules, he cannot claim the benefit of such ad-hoc promotion for the purpose of counting his seniority.

8. The next issue strongly agitated by the learned counsel for the Applicant is that the denial of regular promotion to the Applicant in 1987 when his junior was so promoted was unjustified. We called for the record of the relevant D.P.C. proceedings. Those indicate that the Applicant along with other eligible candidates was considered but could not be selected on a due evaluation of comparative merit of the candidates. Consequently Shri M.Venugopal, immediate junior to the Applicant, was promoted as he had secured a higher merit grading. Learned counsel for the Applicant assailed the validity of the D.P.C. proceedings on the ground that the confidential reports of the Applicant pertained to his performance as ad-hoc C.G.O. whereas those of his junior related to his performance in the substantive grade of Stenographer Grade-I. Undisputedly the confidential reports of the past 5 years were evaluated, irrespective of the posts held by the eligible candidates. According to the Applicant's counsel, unequally placed candidates were sought to be treated as equals and their confidential reports were so evaluated, which is not correct. In support of his plea, he has referred to:-

- (1) State of Mysore Vs. P.N.Nanjundiah (1969(3) SCC 633).
- (2) A.Damodran Nambiar Vs. Secy., Min. of Home Affairs, New Delhi & Ors. (1990(6) SLR 175).

9. In P.N.Nanjundiah's case, reliance was placed on Rule 53(b)(i) of Mysore Jail Service Rules under which the service of an officer on deputatuon to another Department is treated as equivalent to the service in the parent Department. Accordingly it was held that "so long as the service of the employee in the new Department is satisfactory and he is obtaining the increments and promotions in that Department, it stands to reason that the satisfactory service and the manner of its discharge in the post he actually fills,

should be deemed to be rendered in the parent Department. Also, so as to entitle him to promotions which are open on seniority-cum-merit basis". It is not clear as to how this judgement will be of any assistance to the Applicant's case. No statutory rule or instruction has been brought to our notice to equate the service of the Applicant while on deputation with that of the service in the parent Department. Notwithstanding the same, the service of the Applicant while on deputation was taken into consideration by the D.P.C. and based on the confidential reports that the Applicant earned while on deputation he was appropriately graded. He could not, however, be selected as another candidate junior to him secured a higher grading.

10. In the case of A.Damodran Nambiar it was seen that the petitioner was the recipient of Indian Police Medal for meritorious service but that fact was not brought to the notice of the D.P.C. The Tribunal perused the D.P.C. proceedings and made certain observations, one of which is that the D.P.C. recorded the overall assessment of each candidate and that in the absence of individual assessment for each year the Tribunal could not further examine the appropriateness of the overall assessment. In the instant case, the D.P.C. considered the cases of 18 Office Superintendents Grade-I and 5 Stenographers Grade-I (including the Applicant). In all their cases the D.P.C. recorded the overall final grading as "Outstanding", "Very Good" and "Good". By doing so, the D.P.C. does not seem to have committed any such irregularity as would warrant our interference. On facts, the present case is easily distinguishable from that of A.Damodran Nambiar (supra).

Copy to:-

1. Chief of the Naval Staff (for Director of Civilian Personnel Naval HQrs, New Delhi-11.
2. Flag Officer, Commanding-in-Chief, (for Staff Officers 'Civilians') HQrs, Eastern Naval Command, Visakhapatnam-14.
3. One copy to Sri. V. A. Jay Kumar, advocate, Advocates Associations, High Court Buildings, Hyd.
4. One copy to Sri. N. R. Devaraj, Sr. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

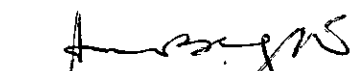
Rsm/-


Prasad
18/2/62

(53)

- 7 -


11. There is nothing on record to show that the Applicant's confidential reports earned by him while he was functioning as an ad-hoc C.G.O. should not have been taken into consideration by the D.P.C. vis-a-vis the confidential reports earned by other candidates holding different appointments. We have considered the case from all its angles but are unable to accept any of the contentions raised on behalf of the Applicant. The Applicant was indeed promoted as a C.G.O. purely on ad-hoc basis, that too, while he was on deputation with the D.G.N.P.(V). By virtue of such fortuitous promotion outside his parent establishment he cannot acquire seniority over his seniors in his parent establishment. The Applicant was correctly considered for regular promotion as C.G.O. along with his colleagues who were all in the substantive post of Stenographer Grade-I, maintaining their interse seniority. In the matter of his non-selection to the post of C.G.O. in the year 1987, we find that the D.P.C. having selected another candidate of higher merit, the Applicant cannot make a grievance out of it. The application is, therefore, dismissed but in the circumstances of the case there shall be no order as to costs.


(A.B.Gorthi)
Member(A).


(V.Neeladri Rao)
Vice-Chairman.

Dated: 4 Feb., 1994.

br.


21-24-94
DY. Registrar (J.A.) cc

Contd. -- 81 -

MAA

O.A. 939/90

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE J. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

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

AND

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

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER
(ADMN)

Dated: 4/2/-1994.

ORDER/JUDGMENT: _____

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

O.A. No.

~~T.A. No.~~

~~(W.F. No.)~~

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

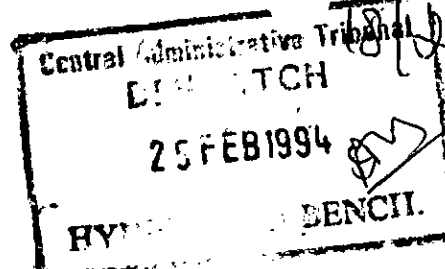
Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

pvm



Supreme Court File No. 56/94

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

CIVIL APPEAL

SUPREME COURT LEAVE PETITION

NO.

26225/95

Petition/~~Appeal~~ was filed in the SUPREME COURT OF INDIA
BY Sri VSR Murthy Against Chief of Naval Staff & Ors.

Department seeking leave to appeal/appeal against the
Order/Judgment of this Hon'ble Tribunal dated 9-3-95

and made in ^{12/95 in} R.A./O.A. No. 939/90. The Supreme Court was
pleased to dismiss the leave to ~~appeal~~/petition/~~stay the~~
~~operation of judgment~~ on 17-11-95.

The Judgment of the Tribunal in ^{12/95 in} R.A./O.A. NO. 939/90
and the ~~letter~~/order of the Supreme Court of India are
enclosed herewith for perusal.

Submitted.

Deputy Registrar (J)

Registrar

Hon'ble Vice-Chairman

Hon'ble Member (A)

Hon'ble Member (A) II

Hon'ble Member

D.No. 2254/95
Sec. XIA
SUPREME COURT OF INDIA

DATED: 29/11/95

From: The Registrar
Supreme Court of India

To: The Registrar
High Court of Andhra Pradesh
at Hyderabad.

The Registrar
Andhra Pradesh High Court
Central Administrative
Tribunal/
Tribunal (Hyderabad-
Bench) at Hyderabad.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 2622/95
(Petition under Article 136(1) of the Constitution of India
from the Judgment and Order dated 9-3-95
of the High Court of Andhra Pradesh/Andhra Pradesh Administrative
Tribunal/Central Administrative Tribunal (Hyderabad
Bench) at Hyderabad in RA No. 12/95-IM of A.M.

Petitioner(s)

versus

Respondent(s)

Chief Minister of Andhra Pradesh

Sir,

I am directed to inform you that the Petition

above-mentioned filed in the Supreme Court was dismissed

by the Court on 17-11-95.

Yours faithfully,

Central Administrative Tribunal
HYDERABAD BENCH
20 DEC 1995
RECEIVED
TAPPAI SECTION

880
20/11/95
Sc. Secy
88/10
File
20/11/95

Central Administrative Tribunal : Hyderabad Bench

Endt. No. CAT/Hyd/Jud/SE/56/94 Date: 29-12-95

The Order of the Supreme Court
of India in SLP No. 26225/95, dt. 17-11-95,
may be communicated to the concerned.

29/12/95
S.O.

DR(J)

Registrar

- To
1. The Chief of Naval Staff,
Naval Headquarters
(For DCPO DHA (A),
New Delhi - 11.
 2. The Flag Officer, Commanding-in-Chief,
Eastern Naval Command, Naval Base,
Visakhapatnam - 14.
 3. Mr. P. Bhasker, Advocate, CAT, Hyd.
 4. Mr. N. R. Deraraj, Sr. Clerk, CAT, Hyd.
 5. One spare copy. -

Supreme Court File No. 56/94

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD.

~~CIVIL APPEAL~~

SUPREME COURT LEAVE PETITION

N.C. 9186 of 1994

Petition/Appeal was filed in the SUPREME COURT OF INDIA
BY Sri V. S. R. Murthy Vs. Chief of Naval Staff, N. Delhi & Anr.
~~Department~~ seeking leave to appeal/~~appeal~~ against the
Order/Judgment of this Hon'ble Tribunal dated 4-2-94
and made in L.A./D.A. No. 939/90. The Supreme Court was
pleased to dismiss the leave to appeal/petition/stay the ~~with~~
directions
~~operation of judgment~~ on 8-8-94.

The Judgment of the Tribunal in L.A./D.A. NO. 939/90
and the letter/order of the Supreme Court of India
are enclosed herewith for perusal.

Submitted.

Deputy Registrar (J)

~~Registrar~~

Hon'ble Vice Chairman

Hon'ble Member (I)

Hon'ble Member (A-I)

Hon'ble Member (A-II)

D.No. 1317/94/Sec. XII-A

SUPREME COURT OF INDIA
NEW DELHI.

DATED: 17th August, 1994

From:-

Mr. R.K. Talwar,
Assistant Registrar.

To

The Registrar,
~~High Court of Judicature~~
Central Administrative Tribunal,
Hyderabad Bench,
At Hyderabad.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 9186 OF 1994

(Petition under Article 136 of the Constitution of India for
Special Leave to Appeal to the Supreme Court from the Judgment
and Order dated the 4th Feb., 1994 of the ~~High Court of~~
~~Judicature Andhra Pradesh~~ Central Administrative Tribunal, ~~Hyderabad~~ Bench
~~at Hyderabad~~)

IN O.A.No. 939 of 1990

V.S.R. Murty

...Petitioner

VERSUS

Chief of Naval Staff, N.Delhi & Anr.

...Respondents

28
29/8/94
Sir,

I am to inform you that Petition above-mentioned for
Special Leave to Appeal to this Court was filed on behalf of the
Petitioner above-named from the Judgment and Order above-noted
and that the same was dismissed with some directions by this Court
on the 8th day of August, 1994, . A Certified copy
of the Order of this Court as contained in the Record of Proceedings
dated 8.8.1994 in the matter is enclosed herewith for your
information and record.

Yours faithfully,

ASSISTANT REGISTRAR

ITEM No.

COURT No.

SECTION

XIIIA

9
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition (s) for Special Leave to Appeal (Civil/Cr.) No. (s) 9186/94

(From the judgment and order dated 4.2.94 of the High Court of
CAT Hyderabad Bench in O.A. N. 939/90)

V S R Murty

Petitioner (s)

Chief of Naval Staff, ^{Versus} N. Delhi & Anr.

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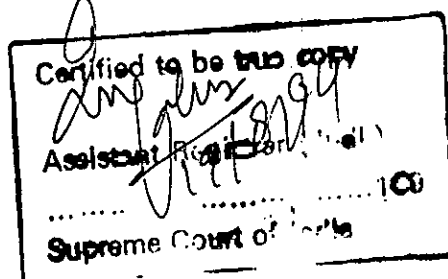
Respondent (s)

Date: 8.8.94

The petition (s) was/were called on for hearing today.

CORAM :

Hon'ble Mr. Justice E P Jeevan Reddy
Hon'ble Mr. Justice S C Sen
Hon'ble Mr. Justice



For the petitioner (s)

Ms. K Sharda Devi, adv.

For the respondent (s)

UPON

The Court made the following
ORDER

We ~~do~~ ^{see} no ground to interfere. The
Special Leave Petition is dismissed.

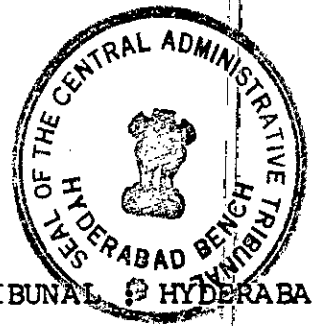
Learned counsel for the petitioner states
that she had advanced an argument based upon the
decision of this Court in the Direct Recruit Class II
Engineering Officers Association's case, but the
Tribunal has not dealt with it. In such a case, the
procedure is well known, which it is open to the
petitioner to adopt in accordance with law.

Kanchan
(Kanchan Jain)
Court Master

(D.D. Jindal)
Court Master

2. The Applicant joined service in Eastern Naval Command as Steno-typist on 21.2.58. On his promotion as Stenographer he was posted to Director-General, Naval Project, Visakhapatnam X D.G.N.P.(V) for short X. During his service with the D.G.N.P.(V) he was promoted as P.A. and as Office Superintendent Grade-I. He was further promoted as C.G.O. on 11.3.83, on an ad-hoc basis. While being an ad-hoc C.G.O. he was repatriated to Eastern Naval Command. On repatriation he was posted to Naval Dockyard, Visakhapatnam on 17.10.87. He, however, continued to hold the grade of C.G.O. on an ad-hoc basis till 17.10.88 when he was reverted to his substantive grade of Stenographer Grade-I. After a gap of 4 days, he was re-promoted as C.G.O. on 21.10.88, again on ad-hoc basis. He was regularly promoted as C.G.O. on 30.6.89.

3. The Applicant claims that his seniority as C.G.O. should count from the date when he was initially promoted, though on ad-hoc basis, as C.G.O. The explanation offered by the Respondents is that the Applicant got his promotion as ad-hoc C.G.O. while on deputation with the D.G.N.P.(V), which is a separate establishment outside Eastern Naval Command and under the control of the Army. Regular promotions could be given to him depending on his seniority and the availability of vacancies in Eastern Naval Command. When a regular vacancy in the grade of C.G.O. became available after his repatriation to Naval Dockyard, the case of the Applicant along with other eligible candidates was considered by a D.P.C. held in 1987. The D.P.C. selected Shri M.Venugopal^{on} comparative merit, in preference to the Applicant who was admittedly senior. Again, when



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No.939/90.

Date of Judgement : 4/2/94

V.S.R.Murthy

.. Applicant

Vs.

1. Chief of the Naval Staff
(for Director of Civilian
Personnel), Naval HQrs.,
New Delhi-11.
2. Flag Officer
Commanding-in-Chief
(for Staff Officer 'Civilians'),
HQrs., Eastern Naval Command,
Visakhapatnam-14. .. Respondents

Counsel for the Applicant :: Shri V.Ajay Kumar

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

C O R A M

Hon'ble Shri Justice V.Neeladri Rao : Vice-Chairman

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

J u d g e m e n t

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

The Applicant's grievance is against the Respondents' refusal to count his ad-hoc service w.e.f. 11.3.83 towards his seniority in the cadre of Civilian Gazetted Officer (C.G.O. for short). In this application, he prays for a direction to the Respondents to grant him seniority as C.G.O. w.e.f. 11.3.83 and also to promote him as upgraded C.G.O. from the date when his junior was so promoted, with all consequential benefits.

only in his parent establishment. In Keshav Chandra Joshi & Ors. Vs. Union of India & Ors. (AIR 1991 SC 284) this aspect of the matter was further clarified with reference to the earlier decision of the Supreme Court in Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra (1990) 2 SCC 715. In the Direct Recruit Class II Engineering Officers Association case, the following propositions were laid down:-

- "(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. Clarifying, yet reiterating the above, it was observed in Keshav Chandra Joshi's case 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 that where the initial appointment is only ad-hoc 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 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 dehors the rules, the entire length of such service cannot be counted for seniority."

7. In view of the above, we have no hesitation in holding that the Applicant's promotion as ad-hoc C.G.O. being fortuitous and dehors the rules, he cannot claim the benefit of such ad-hoc promotion for the purpose of counting his seniority.

the next vacancy came up in 1989, another D.P.C. was held and the Applicant was selected. He was accordingly promoted as C.G.O. on regular basis on 30.6.89.

4. Shri V.Ajay Kumar, learned counsel for the Applicant urged that the Applicant was duly promoted as C.G.O. as early as on 11.3.83 while working with the D.G.N.P.(V). Though the promotion was said to be on ad-hoc basis, there was no justification for the Respondents not to count the ad-hoc service for the purpose of seniority. In support of his contention, the Applicant's counsel heavily relied on Rajbir Singh & Ors. Vs. Union of India & Ors. (1992) 19 ATC 315 (SC). In that case, the Appellants were promoted to Class III posts on ad-hoc basis against substantive vacancies after due selection. They were subsequently promoted on a regular basis. Consequently it was held that such ad-hoc service would count for reckoning seniority. At the same time, the general principle, which is now well established by a catena of judgements, that ad-hoc service should not ordinarily count for purpose of seniority, is reiterated in the same judgement, in the following words:-

"It is well settled by several decisions of the Supreme 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."

5. In the instant case, the promotion of the Applicant as ad-hoc C.G.O. was fortuitous in the sense it was given to him while he was on deputation with the D.G.N.P.(V). No regular selection was made by a duly constituted D.P.C. as such a course of action could have been undertaken

should be deemed to be rendered in the parent Department. Also, so as to entitle him to promotions which are open on seniority-cum-merit basis. It is not clear as to how this judgement will be of any assistance to the Applicant's case. No statutory rule or instruction has been brought to our notice to equate the service of the Applicant while on deputation with that of the service in the parent Department. Notwithstanding the same, the service of the Applicant while on deputation was taken into consideration by the D.P.C. and based on the confidential reports that the Applicant earned while on deputation he was appropriately graded. He could not, however, be selected as another candidate junior to him secured a higher grading.

10. In the case of A.Damodran Nambiar it was seen that the petitioner was the recipient of Indian Police Medal for meritorious service but that fact was not brought to the notice of the D.P.C. The Tribunal perused the D.P.C. proceedings and made certain observations, one of which is that the D.P.C. recorded the overall assessment of each candidate and that in the absence of individual assessment for each year the Tribunal could not further examine the appropriateness of the overall assessment. In the instant case, the D.P.C. considered the cases of 18 Office Superintendents Grade-I and 5 Stenographers Grade-I (including the Applicant). In all their cases the D.P.C. recorded the overall final grading as "Outstanding", "Very Good" and "Good". By doing so, the D.P.C. does not seem to have committed any such irregularity as would warrant our interference. On facts, the present case is easily distinguishable from that of A.Damodran Nambiar (supra).

8. The next issue strongly agitated by the learned counsel for the Applicant is that the denial of regular promotion to the Applicant in 1987 when his junior was so promoted was unjustified. We called for the record of the relevant D.P.C. proceedings. Those indicate that the Applicant along with other eligible candidates was considered but could not be selected on a due evaluation of comparative merit of the candidates. Consequently Shri M.Venugopal, immediate junior to the Applicant, was promoted as he had secured a higher merit grading. Learned counsel for the Applicant assailed the validity of the D.P.C. proceedings on the ground that the confidential reports of the Applicant pertained to his performance as ad-hoc C.G.O. whereas those of his junior related to his performance in the substantive grade of Stenographer Grade-I. Undisputedly the confidential reports of the past 5 years were evaluated, irrespective of the posts held by the eligible candidates. According to the Applicant's counsel, unequally placed candidates were sought to be treated as equals and their confidential reports were so evaluated, which is not correct. In support of his plea, he has referred to:-

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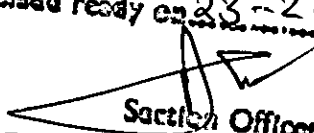
9. In P.N.Nanjundiah's case, reliance was placed on Rule 53(b) (i) of Mysore Jail Service Rules under which the service of an officer on deputation to another Department is treated as equivalent to the service in the parent Department. Accordingly it was held that "so long as the service of the employee in the new Department is satisfactory and he is obtaining the increments and promotions in that Department, it stands to reason that the satisfactory service and the manner of its discharge in the post he actually fills,

: 8 :

Copy to:-

1. Chief of the Naval Staff (for Director of Civilian Personnel Naval HQrs, New Delhi-11).
2. Flag Officer, Commanding-in-Chief, (for Staff Officers 'Civilians') HQrs, Eastern Naval Command, Visakhapatnam-14.
3. One copy to Sri. V. Ajan kumar, advocate, Advocates Associations, High Court Buildings, 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/-

Case Number 04-989/920
Date of Judgement 4-2-94
Copy made ready on 23-2-94

Section Officer (I)

11. There is nothing on record to show that the Applicant's confidential reports earned by him while he was functioning as an ad-hoc C.G.O. should not have been taken into consideration by the D.P.C. vis-a-vis the confidential reports earned by other candidates holding different appointments. We have considered the case from all its angles but are unable to accept any of the contentions raised on behalf of the Applicant. The Applicant was indeed promoted as a C.G.O. purely on ad-hoc basis, that too, while he was on deputation with the D.G.N.P.(V). By virtue of such fortuitous promotion outside his parent establishment he cannot acquire seniority over his seniors in his parent establishment. The Applicant was correctly considered for regular promotion as C.G.O. along with his colleagues who were all in the substantive post of Stenographer Grade-I, maintaining their interse seniority. In the matter of his non-selection to the post of C.G.O. in the year 1987, we find that the D.P.C. having selected another candidate of higher merit, the Applicant cannot make a grievance out of it. The application is, therefore, dismissed but in the circumstances of the case there shall be no order as to costs.

CERTIFIED TO BE TRUE COPY

[Signature]
Date.....
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

22/2/87

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Administrative Tribunal : Hyderabad Bench.

Adt. No. CAT/Hyd/Judl/SC/56/94.

Date : 2-9-94

Communicate

Dy. Registrar (J).C.C.

INL 8/9/94
S.O. (J)

To:

1. The Chief of Naval Staff
(for Director of Civilian Personnel)
Naval Headquarters,
New Delhi-11. —
2. Flag Officer, Commanding-in-Chief,
(for Staff Officers 'Civilians')
Hqs, Eastern Naval Command,
Vilakshapatnam-14. —
3. Mr. V. Vijay Kumar, Advocate
Advocates Association, High Court Buildings,
Hyderabad. —
4. Mr. N. R. Devaraj, Sr. Case, CAT, Hyd.
5. One Spare Copy. —

Court No. 9
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Civil) No. 9186/94
From the Judgment and Order dated 4-2-94 of the
C.A.T., Hyderabad Bench in O.A.No.939/90.

V.S.R.Murthy

...Petitioner

Versus

Chief of Naval Staff, New Delhi & Anr....Respondent(s).

Date: 8.8.94. The Petition was called on for hearing today.

CORAM:

Hon'ble Mr. Justice B.P. Jeevan Reddy

Hon'ble Mr. Justice S.C. Sen

Hon'ble Mr. Justice

For the Petitioner(s) Ms. K. Sharada Devi, Adv.

For the respondent(s)

UPON hearing counsel the Court made the following

O R D E R

We see no ground to interfere. The Special
Leave Petition is dismissed.

Learned counsel for the petitioner states that
she had advanced an argument based upon the decision of
this Court in the Direct Recruit Class II Engineering
Officers Association's case, but the Tribunal has not
dealt with it. In such a case, the procedure is well
known, which it is open to the petitioner to adopt in
accordance with law.

Sd/-
(Kanchan Jain)
Court Master

Sd/-
(D.O. Jindal)
Court Master

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

No. CAT/Hyd/Jud1/SC/56/94

Date: 2-9-94

Communicate.

Sd/-
Dy. Registrar (J) c.c.

S.O. (J)

//True copy//

To

1. The Chief of Naval Staff,
(For Director of Civilian Personnel),
Naval Headquarters, New Delhi-11.

2. Flag Officer, Commanding-in-Chief,
(For Staff Officers 'Civilians'),
HQ, Eastern Naval Command,
Visakhapatnam-14.

3. Mr. V. A. Jay Kumar, Advocate,
Advocates Association,
High Court Buildings, Hyd.

4. Mr. N. R. Devaraj, Sr. CGSC

Central Administrative Tribunal
DESPATCH
23 SEP 1994
HYDERABAD BENCH.

RA 12/95

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

RECORD SECTION INDEX SHEET

C.A.No. 939 /1990

a) Applicant (s) V. S R. Murthy
Versus

b) Respondent (s) Chief of Naval Staff
Naval HQ New Delhi of and by

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	Reply Affidavit		
	Order dated		
	Part. II		
	Duplicate Order Sheet.		
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	" Material Papers		
	" Order dt.		
	" Counter Affidavit		
	" Reply Affidavit		
	" Order dt.		
	Part. III		
	Vakalat		
	Notice Papers		
	Memo of Apperjance.		

10/11/95

(80)

CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH:AT HYDERABAD

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

~~THE HON'BLE MR.A.V.HARIDASAN: MEMBER(JUDL)~~
AND

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

~~AND~~
~~THE HON'BLE MR.R.RANGARAJAN: MEMBER(ADMN.)~~

MA-854/94 (Coordinate delay)
in

REVIEW APPLICATION/NO. 2597 OF 1994

in

ORIGINAL APPLICATION NO. 939 OF 1990

The above Review Application has been filed against the Judgement of the Bench dated 4-2-1994 of the Tribunal consisting of Hon'ble Mr.Justice V.Neeladri Rao, Vice-Chairman and ~~Hon'ble Mr.A.V.Haridasan, Member(J)~~ and Hon'ble Mr.A.B.Gorthy Member(A) and ~~Hon'ble Mr.R.Rangarajan, Member(A)~~ in Original Application No. 939 of 1990

Circulated as per Rule 17(3) of the Central Administrative Tribunal (Procedure) Rules, 1987.

Submitted.

MA
24/10/94

25 Oct 94

Post it for hearing

d

May be listed
before the HABH.
B/o HABH
25/10

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

R.A.No. 12 / 95 in OA.No. 939/90 of 1994.

V.S.R. Murthy Applicant (S)
VERSUS

Chief of Naval Staff, Naval HQ, New Delhi Respondent (S)

Date	Office Note	Orders
		<p><u>20.2.95</u></p> <p>MA 854/94 is ordered, vide orders on the MA. Register the R.P.</p> <p>Heard. both the learned Counsels. C.A.V.</p> <p><u>HABG</u> M(A)</p> <p><u>H.V.R.J</u> VC</p> <p>Jugum pronounced in open court. R.P. is dismissed w/o costs. (vide separate order)</p> <p><u>HABG</u> M(A)</p> <p><u>H.V.R.J</u> VC</p>

9/3/95

U/R 17 OF THE CAT (P) RULES, 1987

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD.

R.A.No. 12 of 1995

in

O.A.No. 939 of 1990

Between:

V.S.R. Murthy S/o. V. Ramamurthy
aged about 56 years, Civilian
Gazetted Officer, Indian Navy
Distributing Authority, Naval Base,
Visakhapatnam-14.

.. Applicant/
Applicant.

and

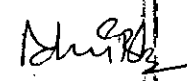
1. The Chief of Naval Staff
Naval Head Quarters (For DCP0
DHQ (PO) New Delhi-110 011.
2. The Flag Officer Commanding-in-Chief,
Eastern Naval Command,
Naval Base,
Visakhapatnam-530 014.

U/R 17 OF THE CAT (P) RULES, 1987

For the reasons stated in the accompanying affidavit,
the applicant prays that this Hon'ble Tribunal may be pleased
to review the judgement dt: 4-2-1994 in O.A.939/90 by giving
an opportunity of hearing and allow the O.A. as prayed for
and to pass such other or further orders as it is deemed
just and proper in the circumstances of the case or else the
applicant will suffer irreparable loss and injury.

Hyderabad,

Dt: 25-9-1994.


Counsel for Applicant.



(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD.

R.A.No. 12 of 1995

O.A.No. 939/90

BETWEEN:

V.S.R. Murthy

.. Applicant.

and

The Chief of Naval Staff
and another

.. Respondent.

A F F I D A V I T

I, V.S.R. Murthy, S/o. V. Ramamurthy, aged about 56 years, Civilian Gazetted Officer, Indian Navy Distributing Authority, Naval Base, Visakhapatnam do hereby solemnly and sincerely affirm and state as follows:

1. I am the applicant herein and applicant in O.A. and as such well acquainted with the facts of the case.
2. I filed the above O.A. for a direction to grant me seniority as civilian Gazetted Officer (CGO for short) w.e.f. 11-3-1993 i.e. from the date I was promoted on adhoc basis and also promote me as upgraded CGO from the date my junior was so promoted. But the O.A. was dismissed as follows:

"There is nothing on record to show that the applicant's confidential reports earned by him while he was functioning as an adhoc C.G.O. should not have been taken into consideration by the D.P.C. vis-avis the confidential reports earned by other candidates holding different appointments. We have considered the case from all its angles but are unable to accept


Deponent.

any of the contentions raised on behalf of the Applicant. The Applicant was indeed promoted as a C.G.O. purely on adhoc basis, that too, while he was on deputation with the D.G.N.P.(V). By virtue of such fortuitous promotion outside his parent establishment he cannot acquire seniority over his seniors in his parent establishment. The Applicant was correctly considered for regular promotion as C.G.O. along with his colleagues who were all in the substantive post of Stenographer Grade-I maintaining their interse seniority. In the matter of his non selection to the post of C.G.O., in the year 1987, we find that the D.P.C. having selected another candidate of higher merit, the Applicant cannot make a grievance out of it. The application is, therefore, dismissed but in the circumstances of the case there shall be no order as to costs.

3. The matter was carried to supreme Court and filed petition for special leave to appeal (Civil) No.9186/94 and the Special leave petition was dismissed by the following order:

"We see no ground to interfere. The Special Leave Petition is dismissed.

Learned counsel for the petitioner states that she had advanced an argument based upon the decision of this Court in the Direct Recruit Class II Engineering Officers Association case, but the Tribunal has not dealt with it. In such a case, the Procedure is well known, which it is open to the petitioner to adopt in accordance with law.

4. When the learned Counsel appearing for me made a plea that the Direct Recruit Class-II Engineering Officers Association's case was not dealt by the Hon'ble Central Administrative Tribunal, the Hon'ble Supreme Court observed in the order

Deponent.

(4)

that "In such a case, the procedure is well known, which it is open to the petitioner to adopt in accordance with law". In other words, I was advised to file a Review Petition before this Hon'ble Tribunal.

5. I crave leave of this Hon'ble Tribunal to submit the following among other.

GROUNDS

- a) The judgement of this Hon'ble Tribunal is contrary to law and evidence and probability of the case.
- b) This Hon'ble Tribunal erred in holding that the applicant got promotion as adhoc C90 while on deputation with DGNP(V), which is a separate establishment outside Eastern Naval command and under the control of Army. Infact the DGNP is not an establishment outside Eastern Naval Command and under the control of Army but very much part and parcel of the Navy. He was never sent on deputation to DGNP(V) but was only transferred since it was an establishment under the control on Naval. Thus there was an error apparent on the face of the record.
- c) The Hon'ble Tribunal while discussing direct Recruit Class-II Engineering Officers' Association case, (1990) 2 SEC 715 it was stated that the following propositions were laid:
- "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.

Contd...4


DEPONENT

6

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".

The Hon'ble Tribunal gave its findings only on proposition (A) but failed to discuss and give its findings on the proposition (B). Proposition (B) makes it amply clear that though the initial appointment was not made in accordance with the rules, the period of officiating service will be counted. If proposition (B) has been discussed the tribunal would have certainly allowed the O.A. Thus there was an error apparent on the face of the record.

d) . The Honourable Tribunal Committeed an error apparent on the face of the record by holding the respondents are justified in comparing the confidential recores of the applicant who is holding a higher post with those of others who are holding a lower post.



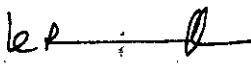
DEPONENT
Contd....5



In view of the above, the Hon'ble Tribunal may be pleased to review the judgement dt: 4-2-1994 in O.A. No.939/90 by giving an opportunity of hearing and allow the O.A. as prayed for and to pass such other or further orders as it is deemed just and proper in the circumstances of the case.

Solemnly and sincerely
affirmed on this the 28th day of
September, 1994 and signed.

Before me,


Advocate, Vizag.


DEPONENT.

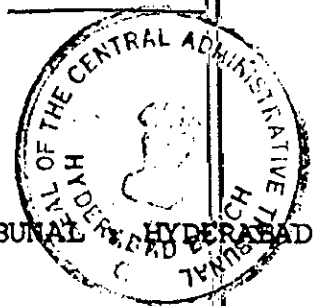
Annexure

8

6

-1-

O/c



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No.939/90.

Date of Judgement : 4/2/94.

V.S.R.Murthy

.. Applicant

Vs.

1. Chief of the Naval Staff
(for Director of Civilian
Personnel), Naval HQrs.,
New Delhi-11.
 2. Flag Officer
Commanding-in-Chief
(for Staff Officer 'Civilians'),
HQrs., Eastern Naval Command,
Visakhapatnam-14.
- .. Respondents

Counsel for the Applicant :: Shri V.Ajay Kumar

Counsel for the Respondents:: Shri N.R.Devaraj, Sr. CGS

C O R A M

Hon'ble Shri Justice V.Neeladri Rao : Vice-Chairman

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

J u d g e m e n t

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

The Applicant's grievance is against the Respondent's refusal to count his ad-hoc service w.e.f. 11.3.83 towards his seniority in the cadre of Civilian Gazetted Officer (C.G.O. for short). In this application, he seeks for a direction to the Respondents to grant him seniority as C.G.O. w.e.f. 11.3.83 and also to promote him as an upgraded C.G.O. from the date when his junior was so promoted, with all consequential benefits.

.....2

- 2 -

2. The Applicant joined service in Eastern Naval Command as Steno-typist on 21.2.58. On his promotion as Stenographer he was posted to Director-General, Naval Project, Visakhapatnam X D.G.N.P.(V) for short X. During his service with the D.G.N.P.(V) he was promoted as P.A. and as Office Superintendent Grade-I. He was further promoted as C.G.O. on 11.3.83, on an ad-hoc basis. While being an ad-hoc C.G.O. he was repatriated to Eastern Naval Command. On repatriation he was posted to Naval Dockyard, Visakhapatnam on 17.10.84. He, however, continued to hold the grade of C.G.O. on an ad-hoc basis till 17.10.88 when he was reverted to his substantive grade of Stenographer Grade-I. After a gap of 4 days, he was re-promoted as C.G.O. on 21.10.88, again on ad-hoc basis. He was regularly promoted as C.G.O. on 30.6.89.

3. The Applicant claims that his seniority as C.G.O. should count from the date when he was initially promoted, though on ad-hoc basis, as C.G.O. The explanation offered by the Respondents is that the Applicant got his promotion as ad-hoc C.G.O. while on deputation with the D.G.N.P.(V), which is a separate establishment outside Eastern Naval Command and under the control of the Army. Regular promotions could be given to him depending on his seniority and the availability of vacancies in Eastern Naval Command. When a regular vacancy in the grade of C.G.O. became available after his repatriation to Naval Dockyard, the case of the Applicant along with other eligible candidates was considered by a D.P.C. held in 1987. The D.P.C. selected Shri M.Venugopal ^{on} comparative merit, in preference to the Applicant who was admittedly senior. Again, when

.....

the next vacancy came up in 1989, another D.P.C. was held and the Applicant was selected. He was accordingly promoted as C.G.O. on regular basis on 30.6.89.

4. Shri V.Ajay Kumar, learned counsel for the Applicant urged that the Applicant was duly promoted as C.G.O. as early as on 11.3.83 while working with the D.G.N.P.(V). Though the promotion was said to be on ad-hoc basis, there was no justification for the Respondents not to count the ad-hoc service for the purpose of seniority. In support of his contention, the Applicant's counsel heavily relied on Rajbir Singh & Ors. Vs. Union of India & Ors. (1992) 19 ATC 315 (SC). In that case, the Appellants were promoted to Class III posts on ad-hoc basis against substantive vacancies after due selection. They were subsequently promoted on a regular basis. Consequently it was held that such ad-hoc service would count for reckoning seniority. At the same time, the general principle, which is now well established by a catena of judgements, that ad-hoc service should not ordinarily count for purpose of seniority, is reiterated in the same judgement, in the following words:-

"It is well settled by several decisions of the Supreme 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."

5. In the instant case, the promotion of the Applicant as ad-hoc C.G.O. was fortuitous in the sense it was given to him while he was on deputation with the D.G.N.P.(V). No regular selection was made by a duly constituted D.P.C. as such a course of action could have been undertaken

only in his parent establishment. In Keshav Chandra Joshi & Ors. Vs. Union of India & Ors. (AIR 1991 SC 284) this aspect of the matter was further clarified with reference to the earlier decision of the Supreme Court in Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra (1990) 2 SCC 715. In the Direct Recruit Class II Engineering Officers Association case, the following propositions were laid down:-

“(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. Clarifying, yet reiterating the above, it was observed in Keshav Chandra Joshi's case 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 that where the initial appointment is only ad-hoc 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 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 dehors the rules, the entire length of such service cannot be counted for seniority.”

7. In view of the above, we have no hesitation in holding that the Applicant's promotion as ad-hoc C.G.O. being fortuitous and dehors the rules, he cannot claim the benefit of such ad-hoc promotion for the purpose of counting his seniority.

8. The next issue strongly agitated by the learned counsel for the Applicant is that the denial of regular promotion to the Applicant in 1987 when his junior was so promoted was unjustified. We called for the record of the relevant D.P.C. proceedings. Those indicate that the Applicant along with other eligible candidates was considered but could not be selected on a due evaluation of comparative merit of the candidates. Consequently Shri M.Venugopal, immediate junior to the Applicant, was promoted as he had secured a higher merit grading. Learned counsel for the Applicant assailed the validity of the D.P.C. proceedings on the ground that the confidential reports of the Applicant pertained to his performance as ad-hoc C.G.O. whereas those of his junior related to his performance in the substantive grade of Stenographer Grade-I. Undisputedly the confidential reports of the past 5 years were evaluated, irrespective of the posts held by the eligible candidates. According to the Applicant's counsel, unequally placed candidates were sought to be treated as equals and their confidential reports were so evaluated, which is not correct. In support of his plea, he has referred to:-

- (1) State of Mysore Vs. P.N.Nanjundiah (1969(3) SCC 633).
- (2) A.Damodran Nambiar Vs. Secy., Min. of Home Affairs, New Delhi & Ors. (1990(6) SLR 175).

9. In P.N.Nanjundiah's case, reliance was placed on Rule 53(b)(1) of Mysore Jail Service Rules under which the service of an officer on deputation to another Department is treated as equivalent to the service in the parent Department. Accordingly it was held that "so long as the service of the employee in the new Department is satisfactory and he is obtaining the increments and promotions in that Department, it stands to reason that the satisfactory service and the manner of its discharge in the post he actually fills,

.....6

should be deemed to be rendered in the parent Department. Also, so as to entitle him to promotions which are open on seniority-cum-merit basis. It is not clear as to how this judgement will be of any assistance to the Applicant's case. No statutory rule or instruction has been brought to our notice to equate the service of the Applicant while on deputation with that of the service in the parent Department. Notwithstanding the same, the service of the Applicant while on deputation was taken into consideration by the D.P.C. and based on the confidential reports that the Applicant earned while on deputation he was appropriately graded. He could not, however, be selected as another candidate junior to him secured a higher grading.

10. In the case of A. Damodran Nambiar it was seen that the petitioner was the recipient of Indian Police Medal for meritorious service but that fact was not brought to the notice of the D.P.C. The Tribunal perused the D.P.C. proceedings and made certain observations, one of which is that the D.P.C. recorded the overall assessment of each candidate and that in the absence of individual assessment for each year the Tribunal could not further examine the appropriateness of the overall assessment. In the instant case, the D.P.C. considered the cases of 18 Office Superintendents Grade-I and 5 Stenographers Grade-I (including the Applicant). In all their cases the D.P.C. recorded the overall final grading as "Outstanding", "Very Good" and "Good". By doing so, the D.P.C. does not seem to have committed any such irregularity as would warrant our interference. On facts, the present case is easily distinguishable from that of A. Damodran Nambiar (supra).

- 7 -

11. There is nothing on record to show that the Applicant's confidential reports earned by him while he was functioning as an ad-hoc C.G.O. should not have been taken into consideration by the D.P.C. vis-a-vis the confidential reports earned by other candidates holding different appointments. We have considered the case from all its angles but are unable to accept any of the contentions raised on behalf of the Applicant. The Applicant was indeed promoted as a C.G.O. purely on ad-hoc basis, that too, while he was on deputation with the D.G.N.P.(V). By virtue of such fortuitous promotion outside his parent establishment he cannot acquire seniority over his seniors in his parent establishment. The Applicant was correctly considered for regular promotion as C.G.O. along with his colleagues who were all in the substantive post of Stenographer Grade-I, maintaining their interse seniority. In the matter of his non-selection to the post of C.G.O. in the year 1987, we find that the D.P.C. having selected another candidate of higher merit, the Applicant cannot make a grievance out of it. The application is, therefore, dismissed but in the circumstances of the case there shall be no order as to costs.

CERTIFIED TO BE TRUE COPY

Date.....

Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

Con 12-81-

: 8 :

Copy to:-

1. Chief of the Naval Staff (for Director of Civilian Personnel Naval HQrs, New Delhi-11.
2. Flag Officer, Commanding-in-Chief, (for Staff Officers 'Civilians' HQrs, Eastern Naval Command, Visakhapatnam-14.
3. One copy to Sri. V. Aja Kumar, advocate, Advocates Associations, High Court Buildings, 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/-

true copy

N.R. Devaraj

Counsel for applicant

N.R. Devaraj

Case Number 04-939/90

Date of Judgment 4-2-94

Copy made ready on 23-2-94

A.W.
Secretary Officer (II)

14
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Annexure RA 2

(16)

Petition (s) for Special Leave to Appeal (Civil/Orig No. (s) 9186/94

(From the judgment and order dated

4.2.94

of the High Court of

CAT Hyderabad Bench in O.A. N. 939/90)

V S R Murty

Petitioner (s)

Versus
Chief of Naval Staff, N. Delhi & Anr.

Respondent (s)

Date: 3.3.94

This/these petition (s) was/were called on for hearing today.

CORAM:

Hon'ble Mr. Justice B P Jeevan Reddy
Hon'ble Mr. Justice S C Sen
Hon'ble Mr. Justice

For the petitioner (s)

Ms. K Sharda Devi, adv. ✓

For the respondent (s) ✓

UPON hearing counsel the Court made the following
ORDER

We see no ground to interfere. The
Special Leave Petition is dismissed.

Learned counsel for the petitioner states
that she had advanced an argument based upon the
decision of this Court in the Direct Recruit Class II
Engineering Officers Association's case, but the
Tribunal has not dealt with it. In such a case, the
procedure is well known, which it is open to the
petitioner to adopt in accordance with law.

Kanchan
(Kanchan Jain)
Court Master

(D.D. Jindal)
Court Master
5/8

Returned RASR 2597/94

Reg? - Review application
In the Central Administrative
Tribunal, Hyderabad Bench

RANo. of 1994
in
OANo. 939 of 1990.

1. Affidavit in Review and
condone delay application
should be attested by an
advocate.
2. Vakalat duly affixed by
court fee (Rs 5/-) and
Advocate clerk's association
fee Rs 8/-
3. No objection should be
obtained from previous
advocate on the vakalat.

in days time

Ar
28/9/94
for DRCJ



u/R 17 of the CAT (P) Rules.



Represented
as objections complied
with
Dm/19/10

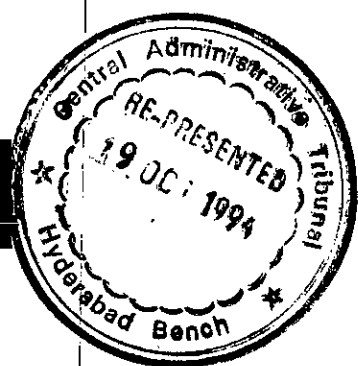
Recd
27.9.94
R. R. Denny
Jm

Filed by

Mr. P. Bhaskar,
Advocate,
Hyderabad

Counsel for applicant

May be filed
Ar
19/10/94



.....

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

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

12/95

ORIGINAL APPLICATION NO.

939/90

OF 19

TRANSFER APPLICATION NO.

OLD PETN. NO.

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (decided)


Dated

16/3/95

Counter Signed.

Court Officer/Section Officer.

pvm


Signature of the Dealing Asst.

....

(18)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

R.A.No. 12/95
in
O.A.No.939/90.

Dt. of Decision : 09-03-95.

V.S.R. Murthy

.. Applicant.

Vs

1. The Chief Of Naval Staff
Naval Headquarters (For DCPO
DHQ (PO) New Delhi-110 011.
2. The Flag Officer Commanding-in-Chief,
Eastern Naval Command, Naval Base,
Visakhapatnam-530 014.

.. Respondents.

Counsel for the Applicant : Mr. P. Bhaskar

Counsel for the Respondents : Mr. N.R.Devaraj, SR.CCSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

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

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R.A.No.12/95
in
OA.No.939/90

Date of Order: 9-3-95

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

- - -

This Review Petition is from the applicant in OA.939/90 which was dismissed for the reasons stated in our judgement dated 4.2.94.

2. Heard learned counsel for both the parties. Mr.P.Bhaskar, learned counsel for the review applicant has stated that aggrieved by the judgement in OA.939/90 the applicant approached the Supreme Court in S.L.P.9186/94 but it was dismissed vide order dated 8.8.94. While dismissing the S.L.P. the Supreme Court observed as under:-

"Learned counsel for the petitioner states that she had advanced an argument based upon the decision of this Court in the Direct Recruit Class II Engineering Officers Association's case, but the Tribunal has not dealt with it. In such a case, the procedure is well known, which it is open to the petitioner to adopt in accordance with law".

3. In the review petition, it is now stated that the case of the applicant was covered by proposition B stated in para 47 of the judgement in Direct Recruit Class II Engineering Officers Association's case (AIR 1990 SC 1381). From a perusal of para 5 of the judgement, it would be noticed that the relevant portion of the judgement in Direct Recruits case was duly considered in the light of the subsequent judgement of the Supreme Court in the case of Keshav Chandra Joshi v. Union of India AIR 1991

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Pr J

(90)

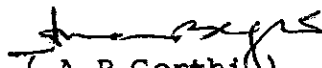
SC 284. In Joshi's case the same Court clearly stated propositions A and B in the Direct Recruits' case covered different aspects of the situation. In the case of the applicant, as we found that his promotion as adhoc CGO was purely fortuitous and de hors the rules, we held that proposition A in Direct Recruits' case would squarely apply. The question of applying Proposition B to the case of the applicant would not arise because admittedly he did not continue as adhoc CGO uninterruptedly till his regular promotion to that post. After his repatriation to Eastern Naval Command he was reverted to the substantive grade of Stenographer Grade-I before he was again promoted as CGO on adhoc basis.

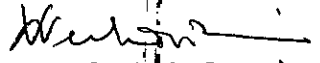
4. Another issue raised by the learned counsel for the review applicant is that Director General, Naval Project (Visakhapatnam) is not outside Eastern Naval Command. In the counter filed by the respondents in OA.939/90 the respondents categorically stated that the DGNP (V) is not a unit directly under the control of Eastern Naval Command. In the rejoinder filed by the applicant, it was merely stated that though DGNP (V) is not a unit directly under control of Eastern Naval Command it cannot be said to be outside the Navy, since the DGNP, Eastern Naval Command and Naval Headquarters are all under the Ministry of Defence. It was therefore, rightly held by us that the promotion of the applicant as adhoc CGO was on his deputation with DGNP (V) and not in his parent cadre.

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5. Nothing has now been stated in the Review Petition to show how our aforesaid view can be said to be erroneous

6. In the result, we find no merit in this Review Petition and the same is dismissed. No order as to costs


(A.B.Gorthi)
Member(A).


(V.Neeladri Rao)
Vice-Chairman.

Dated: 9 March, 1995.

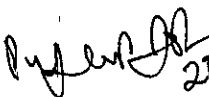
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21-3-95
Deputy Registrar(J)CC

To

1. The Chief of Naval Staff, Naval Headquarters
(For DCPO DHQ (PO) New Delhi-11.
2. The Flag Officer, Commanding-in-Chief,
Eastern Naval Command, Naval Base,
Visakhapatnam-14.
3. One copy to Mr.P.Bhaskar, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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

AND

A. B. G. S. S.
THE HON'BLE MR. R. RANGARAJAN M. (ADMN)

DATED. - 9 - 3 1995.

ORDER/JUDGMENT:

M.A./R.A./G.A. No. 12/95

in

O.A. No.

939/90

T.A. No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No. order as to costs.

20/3/95

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