

(31)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.509/91.

Date of Judgement 5th June/992.

1. Smt. R.Sukanya
2. " B.Radhakumari
3. M.Sathyanaarayana
4. Mohd. Jaffar
5. Smt. P.Savithri
6. " V.Hemalatha
7. " G.Victoria Rani
8. S.K.Jaiswal .. Applicants

Vs.

1. Union of India,
Rep. by the
Secy., to Govt.,
Min. of Steel & Mines,
Govt. of India,
New Delhi.
2. The Director-General of
Geological Survey of India,
27, Jawaharlal Nehru Road,
Calcutta-700016.
3. The Dy. Director-General,
Southern Regional Office,
Geological Survey of India,
Bandlaguda, Hyderabad. .. Respondents

Counsel for the Applicants : Shri V.Venkateswara Rao

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

CORAM:

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

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

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

This application has been filed by Smt. R.Sukanya & 7 others under section 19 of the Administrative Tribunals Act, 1985 against the Union of India, Rep. by the Secy., to Govt., Min. of Steel & Mines, Govt. of India, New Delhi & 2 others with a prayer to direct the respondents to implement the judgement and order dt. 1.11.89 passed in O.A.No.194/87 in respect of the applicants herein also and to reckon their seniority in the category of Lower Division Clerks (LDCs for short) with effect from the dates shown in the Office Order dt. 14.9.81 with all consequential

benefits such as promotion, arrears of emoluments, seniority etc.

2. The applicants were initially appointed as LDCs vide Office Order dt. 14.9.81 by the 3rd respondent on adhoc basis. It is stated that this was done by the 3rd respondent after getting the sponsorship from the Regional Employment Officer, Hyderabad. However, in the year 1982 the respondents are stated to have attempted to terminate the services of the adhoc LDCs without assigning any reasons whereupon the affected parties approached the High Court of Andhra Pradesh in W.P.No.157/82. The High Court of Andhra Pradesh directed that they should be continued as long as the vacancies existed. Thereafter, the Staff Selection Commission conducted an examination for regularising the services of the adhoc LDCs who have put in one year of service as on 1.8.82. The applicants cases were also forwarded for this examination eventhough they fell short of the qualifying adhoc service of one year as on 1.8.82. The 3rd respondent also approached the 2nd respondent for relaxing the one year condition which was not acceded to. The results of the applicants in the 12.12.82 examination were not taken into account by the respondents. In a subsequent examination conducted in 1983 by the Staff Selection Commission the applicants appeared and based on the results declared on 9.5.84 they were given appointment as LDCs vide order dt. 4.12.85 appointing the applicants and others as regular LDCs w.e.f. 9.5.84. Based on this seniority order a provisional/list of LDCs as on 1.12.85 was issued. In that list the adhoc service of the applicants had not been taken into account and direct recruits, who were recruited subsequent to the adhoc appointment of the applicants had been given higher places. 4 LDCs who are similarly placed as the applicants herein approached the Tribunal through O.A.No.194/87 in which the judgement was pronounced

on 1.11.89. In the judgement the Bench held that the applicants therein were entitled to count seniority from the date of initial appointment and further directed the respondents to let them appear for the departmental competitive examination for promotion to the post of Upper Division Clerks (UDCs for short). The applicants herein want the order as in that case (O.A.No.194/87) to be applied to them also. The 3rd respondent by his letter dt. 29.8.90 addressed to the 2nd respondent sought permission to implement the judgement of this Tribunal in O.A.No.194/87 to the applicants herein also but the 2nd respondent vide his letter dt.21.11.90 expressed his inability to implement the judgement in respect of all the similarly situated employees in the absence of a policy decision of the Govt. of India. It is against this that the applicants are approaching us on the ground that Articles 14 and 16 of the Constitution of India have been violated.

3. The respondents have filed a counter affidavit and oppose the application. The initial appointment of the applicants vide order dt. 14.9.81 was purely on adhoc basis and it was only for a period not exceeding six months. They approached the Employment Exchange for this adhoc appointment and in the adhoc appointment order it was abundantly made clear that it was only for a short duration and that it does not confer any right on the applicants. It is submitted that the ~~respondents~~ applicants are not at all competent to make appointments to direct recruitment of clerical posts on their own. The ~~regular~~ ^{the direct} vacancies against ~~regular~~ recruitment quota in clerical cadre are to be filled on recommendation by the Staff Selection Commission. When they attempted to follow the approved procedure, the High Court of Andhra Pradesh intervened in W.P.No.157/82 and directed the respondents to continue the applicants therein so long as the vacancies existed. Thus, though the Department had no intention to continue the services of

Vb

adhoc LDCs beyond six months they had to be retained in service in pursuance of the direction given by the High Court of Andhra Pradesh. For the 12.12.82 examination the applicants did not have the requisite one year adhoc service as on 1.1.82. There was no relaxation of this clause also. Still, to meet any eventual decision their applications were forwarded to the Staff Selection Commission for consideration with the object-
 announced another qualifying examination for the adhoc employees. The applicants once again submitted the applications for the above examination but the Department did not forward the same due to the fact that they do not fulfil the required conditions. Since there was no relaxation, they could not act on the results of the 12.12.82 examination. The results of the 18.12.83 examination in which the applicants appeared were eventually published on 9.5.84 and they were later appointed on that basis. It is admitted that 4 adhoc LDCs approached this Tribunal and got relief in O.A.No.194/87. It is their contention that the Tribunal had given a specific direction in respect of those 4 only and as of now it is not proposed to extend that direction to the others similarly placed, *in the absence of a policy decision.*

4. We have examined the case and heard the learned counsels for the rival sides. We have seen the judgement dt. 1.11.89 of this Bench in O.A.No.194/87 relating to the applicants similar to the ones before us. This Bench relied on a judgement of the Hon'ble Supreme Court in the case of G.P.Doval & others Vs. Chief Secretary, Govt. of U.P. & others reported in 1984(2) SLR 555. They had also relied on a judgement of the Principal Bench of this Tribunal in the case & others of India of Shyam Sunder Vs. Union reported in ATR 1989(1) CAT 211. Relying upon the above judgements the Bench held that adhoc service followed by regular appointment may be counted for seniority. In the case before us which is virtually the same

as the one disposed of by this Bench earlier we find that the appointment vide order dt. 14.9.81 was purely adhoc and not (emphasis supplied) in accordance with recruitment rules. It had been averred by the respondents that the direct recruitment to the post of LDCs cannot be made by the respondents on their own. It has to be through the Staff Selection Commission. Such being the case, their appointment w.e.f. 9.5.84 is the only regular appointment in accordance with rules. The earlier order dt. 14.9.81 was only adhoc ~~and~~ as a stop gap arrangement and not according to rules. When the respondents attempted to follow the proper procedure, they could not do so because of the intervention of the High Court of Andhra Pradesh. We have only to see whether such an adhoc appointment not in accordance with rules and continued on court orders till the regular appointment can entitle the applicants to that service being counted for the purpose of seniority. No doubt, this Bench had held that such adhoc service should be counted for seniority. That judgement was dt. 1.11.89. We find that even in the case of Narender Chadha Vs. Union of India (AIR 1986 SC 638) which is generally relied upon for such purposes it had been stated in para 14:

"But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post."

We also find from a judgement dt. 2.5.90 of a 5 Judge Bench of the Hon'ble Supreme Court (AIR 1990 SC 1607) in the case of Direct Recruit Class II Engg. Officers' Association Vs. State of Maharashtra that where the initial appointment is only adhoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority (Para 44(A) of the judgement). This has again been reiterated in the 3 Judge Bench judgement dt. 6.11.90 of the Hon'ble

Copy to:-

1. Secretary to Government, Ministry of Steel & Mines, Govt. of India, Union of India, New Delhi.
2. The Director-General of Geological Survey of India, 27, Jawaharlal Nehru Road, Calcutta-16.
3. The Dy. Director-General, Southern Regional Office, Geological Survey of India, Bandlaguda, Hyderabad.
4. One copy to Sri. V. Venkateswara Rao, advocate, CAT, Hyd.
5. One copy to Sri. N. Bhaskara Rao, Addl. CGSC, CAT, Hyd.
6. One copy to Hon'ble Mr. C.J. Roy, Judicial Member, CAT, Hyd.
7. Copy to Reporters as per standard list of CAT, Hyd Bench.
8. One spare copy.

Rsm/-

(Handwritten signature/initials)

Supreme Court in the case of Keshav Chandra Joshi & others Vs. Union of India (AIR 1991 SC 284). It had been stated therein that:

"where the initial appointment is only adhoc and not according to rules and is made as a stop gap arrangement the period of officiation in such post cannot be taken into account for reckoning seniority. The appointment to a post must be according to rules and not by way of adhoc or stop gap arrangement made due to administrative exigencies. If the initial appointment thus made was de hors the rules, the entire length of such service cannot be counted for seniority. In other words the appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date."

5. In the case before us, the September, 1981 order was not done in accordance with rules as admitted by both sides. It was only a stop gap arrangement. The first regular selection of the applicants in accordance with rules (emphasis supplied) was the one dt. 9.5.84. In view of the clear law laid down by the Hon'ble Supreme Court subsequent to the pronouncement of the judgement of this Bench dt. 1.11.89 in O.A.No.194/87 we have to follow the law laid down by the Hon'ble Supreme Court. We, therefore, hold that the adhoc service rendered by the applicants prior to 9-5-84 9-4-85 cannot be treated as regular service and, therefore, cannot be counted for any consequential purpose like seniority etc. We, therefore, dismiss the application with no order as to costs.

Rb

R. Balasubramanian
(R. Balasubramanian)
Member(A).

C. J. Roy
(C. J. Roy)
Member(J).

Dated: 5th June, 1992.

S. J. Roy
Deputy Registrar (J)