



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.866 of 1990

DATE OF JUDGMENT: 1-7-1991

BETWEEN:

Mr. R.Ashok Kumar

..

Applicant

AND

1. Union of India represented by the
General Manager,
South Central Railway,
Secunderabad
2. The Chief Personnel Officer,
S.C.Railway,
Secunderabad.
3. The Chief Hospital Superintendent,
Railway Hospital,
Lallaguda,
Secunderabad.
4. Mr. Benny,
Family Welfare Centre,
Railway Hospital,
Lallaguda,
Secunderabad.

..

Respondents

COUNSEL FOR THE APPLICANT: Mr. T.Laxminarayana

COUNSEL FOR THE RESPONDENTS: Mr. J.Siddaiah, SC for Rlys.

D.No.524/92/Sec.XII A
Supreme Court of India,
New Delhi.
Dated: 8th April, 1992.

From:
The Registrar(Judl),
Supreme Court of India,
New Delhi.

To
The Registrar,
Central Administrative Tribunal,
Hyderabad Bench,
at Hyderabad.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 5132/92
(Petition under article 136 of the Constitution of India
from the Judgment and Order dated 1-7-91 at Central Administrative
Tribunal, Hyderabad Bench, Hyderabad in O.A.No.866/90).

R.Ashok Kumar.

...Petitioner.

Versus

Union of India & others.

...Respondents.

Sir,
I am directed to inform you that the petition above
mentioned filed in the Supreme Court was dismissed by the
Court on 30-3-1992.

Yours Faithfully,

Sd/- x x
For Registrar.

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.
Endt.No. CAT/HYD/JUDL/SC/16/92.

Dated: 21-4-92.

COMMUNICATED

Sd/- x x
(A.MOHANA KRISHNA IAH)
DY.REGISTRAR(JUDL)

//true copy //

Y. Reddy
SECTION OFFICER(J).

- To
1. The General Manager, Union of India, S.C.Rly., Secunderabad.
 2. The Chief Personnel Officer, S.C.Rly., Secunderabad.
 3. The Chief Hospital Superintendent, Railway Hospital, Lallaguda, Secunderabad.
 4. One copy to Mr.T.Lakshminarayana, Advocate, 2-2-185/54/1/D, Bagh Amberpet, Hyderabad.
 5. One copy to Mr.J.Siddaiah, S.C. for Rlys., C.A.T. Hyderabad.
 6. One spare copy.

ghm/

1182

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(A.MOHANA KRISHNA IAH)
DY.REGISTRAR(JUDL)

[Signature]
SECTION OFFICER(J).

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ghm/

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empanelment on 5.4.1988, the applicant was promoted to officiate as Field Worker (Male) on regular basis with retrospective effect from 30.3.1988 by an order dated 11.4.1988.

3. The 4th respondent was appointed as Hospital Attendant who later on opted to join as Registration Assistant which is an ex-cadre post in the class-IV. In 1983, he was promoted as a Field Worker on adhoc basis but later on reverted on 22.3.1986. At the time of calling for options by the proceedings dated 3.12.1987, the 4th respondent was only a Class-IV employee substantially holding the post of Hospital Attendant though he was working as Registration Assistant which is an ex-cadre post as is evident by proceedings dated 3.12.1987, whereas the applicant by 3.12.1987 was holding the post of Field Worker (Male) on adhoc basis right from 8.3.1985. The said adhoc promotion of the applicant, was followed by regular promotion by order dated 11.4.1988 with effect from 30.3.1988. Therefore, it is evident that the applicant was holding the post of Field Worker from 8.3.1985 on adhoc basis followed by regular promotion on 30.3.1988 without any break. Hence, ^{states that he} the applicant is entitled for all benefits of seniority and counting of service for the purpose of promotion for the next higher post i.e., Senior Field

Next promotional post of a field worker is Senior Field Worker, which is purely on the basis of seniority.

2. The applicant was appointed as Hospital Attendant on 14.6.1978 and he was promoted to officiate on adhoc basis as Field Worker (M) (Class-III) on a pay of Rs.260/- per month and posted vice Shri Rama Rao who ^{was} promoted as compilation clerk by proceedings dated 6.3.1985 and ~~he was~~ relieved on 8.3.1985. The applicant joined the duty as Field Worker on the same ^{day} viz., on 8.3.1985 and ^{he} continued to work as such. While so, in 1987, volunteers were called, for the selection to the post of Field Worker (Male) in the pay scale of Rs.950-1400 on regular basis, since the post of Field Worker should be filled up by selection only. The selections were held on 17.1.1988, 11.3.1988 and 15.3.1988 by a duly constituted selection Board, for the post of Field Worker (Male), and the applicant was declared to have been selected as per the results published in the fortnightly gazette dated 1.5.1988. There were four posts existing at the time of selection out of which one post was held by the applicant who was promoted on adhoc basis on 8.3.1985. The post held by the applicant was a regular clear vacancy consequent to the promotion of Field Worker Shri Rama Rao as Compilation Clerk. Consequent to the selection and

The applicant was originally working as Health Attendant from 8.11.1978 in the pay scale of Rs.196-232. Later on he was promoted as Field Worker (M) in the pay scale of Rs.260-350 on adhoc basis from 4.3.1985. In his promotion letter it was clearly mentioned that the promotion was purely on adhoc basis and the ~~xxxxxx~~ applicant will not have any prescriptive right or claim for continuance or seniority over his seniors.

5. The Family Welfare Organisation is attached to Medical Department of South Central Railway and the post of Field Workers in the scale Rs.950-1400 in all the divisions are controlled by the Headquarters. The post of Field Worker is filled by calling volunteers from among the employees of medical department serving in Group 'D' and lower Group 'C' categories who possess the requisite qualification and experience and it is filled by conducting positive act of selection consisting of both the written and the viva-voce tests. On 23.9.1987 applications have been called for from eligible employees who possess the requisite qualifications and experience for the post of Field Worker (M) and the applicant who applied for the same was selected and was placed at Sl.No.2 as per merit order on the selection panel published on 5.4.1988. Shri Benny was also selected for the post and he was placed at Sl.No.1 of the above panel.

... original adhoc promotion i.e., on 8.3.1985. The applicant made a representation on 24.4.1990 for seniority above the 4th respondent as he was continuously officiating from 8.3.1985 followed by regularisation, whereas the 4th respondent though promoted as Field Worker on adhoc basis on 27.10.1985, he was reverted on 22.3.86 as Registration Assistant consequent to Mr. Mirza Hussain Ali Begh, Field Worker joined duty on 23.2.1986. The applicant also stated that he is senior to the 4th respondent by virtue of continuous officiation followed by regularisation as Field Worker and claimed seniority over and above the 4th respondent. As there was no response to his representation, the applicant sent a reminder on 1.9.1990. The 2nd respondent without passing any order on the representations, issued the impugned order dated 18.9.1990 promoting the 4th respondent as Senior Field Worker in grade Rs.1200-2040 (RSRP) by upgrading the post in which the applicant was holding till now. In order to accommodate the 4th respondent, the applicant was transferred to Kazipet. Hence, the applicant filed the present application for the above said relief.

4. The respondent filed a counter with the following contentions:

6. Shri T. Laxminarayana, learned counsel for the applicant and Mr. S. S. Srinivasan, learned Counsel for Railways, argued the matter. It is a fact that the applicant was originally appointed as Hospital Attendant on 14.6.1978 and promoted to officiate on adhoc basis as Field Worker (Male) Class-III on a pay of Rs.260/- per month and he took charge on 8.3.1985. It is also a fact that in 1987, volunteers were called, for selection to the post of Field Worker (Male) in the pay scale of Rs.950-1400 for appointment on regular basis. The post of Field Worker (Male) should be filled in by selection only. A selection board was constituted to select candidates who applied for the post of Field Worker (Male). The applicant was also selected by the Selection Board and empanelled at Sl.No.2 as Field Worker (Male). One Mr. Benny who also appeared for selection as Field Worker (Male) was also selected and he was placed at Sl.No.1 whereas the applicant was placed at Sl.No.2 in the panel. The contention of the applicant is that since he has been holding the post of Field Worker (M) on adhoc basis from 8.3.1985, and he was selected as Field Worker (M) by the Selection Board, his seniority has to be counted from 8.3.1985 when he joined as Field Worker (M) on adhoc basis.

Shri Benny was appointed as Health Attendant in the pay scale of Rs.750-940 on 26.7.1974 and he was promoted as Registration Assistant on 19.5.1982 in the pay scale of Rs.800-1150. Hence, Shri Benny is senior to the applicant in the substantive grade with reference to the date of appointment as also the scale of pay. The panel seniority will be counted for the purpose of promotion to the next grade as per the terms of Railway Board Letter dated 8.10.1958. The contention of the applicant that the seniority of adhoc promotion followed by regular promotion is to be counted for promotion to the next higher grade is not correct since the next promotion post is a selection post. Shri Benny is senior in the order of merit to the applicant on the selection panel, so, he has been promoted as Senior Field Worker (M) in the pay scale of Rs.1200-2040 and transferred to Railway Hospital, Lallaguda. As there is no vacancy of Field Worker (M) at Lallaguda Railway Hospital, the applicant has been transferred to Poly Clinic, Kazipet, vice Shri Benny vide order dated 18.9.1990. Hence, the orders of the respondent is legal and no provisions of the Constitution of India are violated as alleged by the applicant, and the applicant is not entitled to any benefits of seniority based on adhoc promotion. Hence, there are no merits in the application and the application is liable to be dismissed.



Moreover, ~~Senior~~ Field Worker Post is a selection post and in the selection the applicant was placed at Sl.No.2. The Supreme Court in the case of "Keshav Chandra Joshi and others Vs. Union of India and others" (AIR 1991 SC 284) held 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. Where the initial appointment is only adhoc and not according to rules and is made as a stop-gap arrangement, the period of officiation in such post cannot be taken into account for reckoning seniority. The appointment to a post must be according to rules and not by way of adhoc or stop-gap arrangement made due to administrative exigencies. If the initial appointment thus made was dehors the rules, the entire length of such service cannot be counted for seniority. In other words the appointee would become a member of the service in the substantive capacity from the date

According to him, when he continuously held the post on adhoc basis, if a regular selection is made in continuation, his seniority has to be counted from the beginning of his adhoc promotion. The respondents did not count his seniority during the period he worked on adhoc basis. So, he filed this petition. The applicant also contended that Mr. Benny is junior to him and since the applicant was holding the post of Field Worker (M) on adhoc basis from 8.3.1985, he must be placed above Mr. Benny.

7. The contention of the respondents is that Shri Benny is senior in the order of merit to the applicant in the selection panel of the Field Worker(M) and hence he was promoted as Senior Field Worker in the pay scale of Rs.1200-2040 and transferred to Railway Hospital, Lallaguda, Secunderabad. The selection took place after conducting written and viva-voce tests. In the selection, Mr. Benny was placed at Sl.No.1 in the order of merit and the name of the applicant was shown at Sl.No.2. According to the respondents, the appointment of the applicant as Field Worker (M) was on adhoc basis and it is categorically stated while giving adhoc promotion that the applicant will not have any prescriptive right or claim for continuance or seniority over his seniors. So, the adhoc promotion entails no right on the applicant to claim seniority.

Work because he is junior to Mr. Benny. So, there are no valid grounds to entertain the claim of the applicant and the application is liable to be dismissed.

9. The application is accordingly dismissed. There is no order as to costs.

CERTIFIED TO BE TRUE COPY
.....
Date.....
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

To

1. The General Manager, Union of India,
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6. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT.Hyd.
7. One sparecopy.

pvm

VSN

Case Number.....	CA. 866/90
Date of Judgement.....	11/7/91
Copy made ready on.....	15/7/91
Section Officer (I)	