

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 7/12/2001

CA No.197/2000

1. Arnold Grey Rai s/o Shri J.H.Rai
2. Chetan Goyal s/c Shri M.L.Goyal
3. Gyarsi Lal Gupta s/o late Shri R.S.Gupta
4. Satish Chand Gupta s/o late Shri Ram Bharosi Lal
5. Smt. Suman Purchit w/o Shri Nawal Kishore Purchit
6. Arun Kumar s/o Shri Tek Chand Due
7. Mukesh Narain Nag s/o Shri S.N.Nag
8. Smt. Vandana Agrawal w/o Shri Ajay Agarwal
9. Smt. Sunita Rani w/c Shri Sunil Sharma

All are working as Data Entry Operator (Gr.B) in the Directorate of Census Operation, Govt. of India, 6-B, Jhalana Dongari, Jaipur.

..Applicants

Versus

1. The Union of India through the Registrar General and Census Commissioner, 2-A, Mansingh Road, New Delhi.
2. The Director, Directorate of Census Operation, Govt. of India, 6-B, Jhalana Dongari, Jaipur

.. Respondents

Mr. Manish Bhandari, counsel for the applicants

Mr. Bhanwar Bagri, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

These 9 applicants have a grievance that they are not being given the benefit under the Assued Career Progression (ACP) Scheme which has come into effect by issue of an order dated 9th August, 1999 by the Department of Personnel and Training. Their plea is that under the Scheme the first financial upgradation is to be granted after completion of 12 years of service and second after 24 years of service and they have already completed 12 years of service, but the respondents are denying them the benefit under this Scheme for the reason that from the date of their regularisation they have not yet completed 12 years of service.

2. We have heard the learned counsel for the parties and also perused the averments in the OA, reply of the respondents and contents of the Scheme dated 9th August, 1999.

3. There is no dispute that the applicants were all appointed initially as per appointment letter dated 30.11.1983 as Operators, on adhoc basis, for the period ending 29.2.1984. There are three appointment letters on record all dated 3.11.1983. The terms of appointment have also been detailed in these appointment letters filed at Ann.A/1, A/1A and A/1B. Vide letter dated 14.10.1991 seven applicants were regularised as Data Entry Operators Grade "B" w.e.f. 15.10.1991. By letter dated 19.4.1993 the remaining two applicants were regularised as Data Entry Operators Grade "B" w.e.f. the dates shown against them i.e. Vandana Agrawal from 3.3.93 and Smt. Sunita Rani



w.e.f. 1.4.1993.

4. The only controversy involved in this case is whether the applicants are entitled to their first financial upgradation under the ACP Scheme in view of their claim that from the date of their initial appointment, they have completed 12 years of service. The respondents have opposed this claim of the applicants on the ground that the applicants can become entitle to the benefit under the Scheme only after they have completed 12 years from the date of their regularisation, as under the Scheme the requirement is of 12 years or 24 years of regular service. Contention of the learned counsel for the respondents is that the applicants were appointed only on adhoc basis and the appointment letters made it clear that they will have no claim for regular appointment or any claim for the purpose of seniority or promotion to the next higher grade. The learned counsel referred to para 3.2 of the scheme, which reads as under:-

"3.2 'Regular Service' for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Service Rules."

and submitted that this regular service means service rendered after regularisation.

5. The learned counsel for the applicant, on the other hand, while admitting that the applicants had purely been appointed on adhoc basis but the fact that they have continued ever since and they were regularised in the year 1991 and 1993 entitles them to count their regular



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5. The learned counsel for the applicant, on the other hand, while admitting that the applicants had purely been appointed on adhoc basis but the fact that they have continued ever since and they were regularised in the year 1991 and 1993 entitles them to count their regular

services right from the date of their initial appointment. In support of his contention, the learned counsel placed reliance on Director, Recruit Class-II Engineering Officers' Association v. State of Maharashtra, reported in 1990 SCC (L&S) 339; L. Chandrakishore Singh v. State of Manipur and ors. reported in 1999 (5) SLR (SC) 538 and Rudra Kumar Sain and ors v. Union of India, 2000 SCC (L&S) 1055. The learned counsel also drew our attention to Ann.R2 filed by the respondents by which in the same Department the services of adhoc Statistical Assistants and Computers, initially appointed in 1981, were regularised in the year 1991 and they were permitted to count their adhoc service for the purpose of seniority as well as eligibility for promotion to the higher grades. Thus, the learned counsel stated that in the same Department there cannot be two yardsticks for the employees in different grades. The applicants and the employees covered in the Government's order dated 12th March, 1991 are exactly similarly placed and cannot be treated differently.

6. The respondents had also taken a plea that the initial appointments were against the shortfall of SC/ST quota and persons so appointed on adhoc basis against these reserved vacancies can have no claim of counting their service from the initial date of their appointment. The learned counsel for the respondents also placed before us the recruitment rules in reference to para 3.2 of the Scheme.

7. We have considered the rival contentions. The

recruitment rules did not explain anywhere as to what is considered as regular service. The fact in this case is that initially the applicants were appointed only on adhoc basis and too for the period ending 29.2.1984. It is also a fact that they have continued ever since. The plea of the respondents that they were appointed against the vacancies reserved for SC/ST is not borne by the letters of appointment as only in respect of three applicants, it has been stated that the appointment have been made against the post reserved for SC/ST and that the services would be terminated as soon as persons of these category are available. Obviously, it appears that persons of these categories did not become available. In any case, these three and all other remaining six applicants have continued right from the date of their adhoc appointment and they have been regularised in the year 1991 and 1993.

8. In the case of Direct Recruit Class-II Engineers Officer's Association v. State of Maharashtra (cited supra) the Hon'ble Supreme Court observed as follows:-

" To sum up, we hold that :-

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering

the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted."

9. In I. Chandrakishore Singh v. State of Manipur (cited supra) it was observed by the Apex Court :-

"13. It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of this Court in G.P. Daval and Anr. v. Chief Secretary, Government of U.P. and Ors. [(1984) 4 SCC 329]: [1984 (2) SLR 555]."



10. In Rudra Kumar Sain and Ors. v. Union of India (cited supra), Hon'ble the Supreme Court have discussed at length the term "adhoc, stop-gap and fortuitous" which are in frequent use in service jurisprudence. It has been laid down as to under what circumstances a post can be considered as adhoc or stop-gap or fortuitous. After discussing this, it was observed by the Apex Court as under:-

"20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi High Judicial Service in the case in hand was held by the High Court to be "fortuitous/ ad hoc/stopgap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous".

11. It is thus clear from the above that the legal position is well settled which is being followed for a very long time and i.e. that even if the initial appointments are adhoc but such adhoc appointees have continued for a fairly long period then such an

appointment cannot be held to be purely stop-gap or fortuitous. In such a case the persons so appointed are entitled to count their seniority and length of service from the date of their initial appointment. In the instant case before us, it is not even the case of the respondents that the initial appointment of the applicants was de-hors the rules. They have been appointed after the due process and by a competent authority. This becomes clear from the letter of appointment itself. This being the case and they having continued for so many years, in our considered view, the applicants are entitled to count their services right from 30.11.1983. This is more so when in the same Department Statistical Assistants and Computers appointed on adhoc basis, like the applicants, in the year 1981 have been allowed to count their adhoc services for the purpose of seniority as well as for eligibility for promotion to the higher grades. In this background, we are of the view that the applicants are fully entitled to count their seniority from the date of their initial appointment i.e. from the year 1983. It is clear that they have already completed the requisite qualifying service of 12 years to become eligible for first financial upgradation under the ACP Scheme.

12. The learned counsel for the respondents has also filed written submission and also submitted a copy of the judgment of Hon'ble the Gujarat High Court in Bhanmati Tapubhai Muliya v. State of Gujarat and ors. reported in 1996 LAR.I.C.885. The arguments in the written brief are on the lines already covered in the respondents' reply in the OA. The case cited by the learned counsel (cited



supra) is clearly distinguishable on facts. In that case the applicant had been appointed only for a fixed term upto July, 1985 and he continued in service only on the orders of the Civil Court. The High Court had held that permitting the applicant to continue beyond July, 1985 was not a proper order passed by the Civil Court and since the appointment was decidedly adhoc appointment for a fixed term, it was held by the High Court that such an appointee cannot claim regularisation. The case before us is that the applicants were initially appointed on adhoc basis for a term upto 29.2.1984, but were continued by the Department itself. In the background of the law laid down by the Apex Court and as discussed by us in earlier paragraphs, it is clear that such adhoc appointees are entitled to count their regular service from the date of their initial appointment.

13. We, therefore, allow this OA and direct the respondents to grant benefit of Assured Career Progression Scheme as issued vide DOPT's letter dated 9.8.1999 from the date of issue of that letter, as per the conditions for grant of benefit as contained in Para 3 of the Anneure to the said letter, as all the applicants had completed 12 years of service in the year 1995. The applicants shall be entitled to all consequential benefits. The respondents are directed to comply with this order within two months from the date of receipt of certified copy of this order. No costs.

Unj
(A.P.NAGRATH)

Adm. Member

S.K. Agarwal
(S.K. AGARWAL)

Judl. Member