

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : : GUWAHATI - 5

O.A. No. 9/1997
T.A. No.

DATE OF DECISION 1.7.1997

A.T. Gayakwad

PETITIONER(S)

Mr.M.K.Choudhury, Mr.S.Sarma

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Mr.S.Ali, Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE **D.N.BARUAH, VICE-CHAIRMAN**

THE HON'BLE **SHRI G.L.SANGLYINE, MEMBER(ADMINISTRATIVE)**

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter, or non ? *Yes* *DB*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether the Judgement is, to be circulated to the other Benches?

Judgement delivered by Hon'ble Justice

Sanglyine 1.7.97
MEMBER(ADMINISTRATIVE)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.9/97

Date of Order: This the 1st th Day of July 1997.

HON'BLE JUSTICE MR.D.N.BARUAH, VICE-CHAIRMAN
HON'BLE SHRI G.L.SANGLYINE, MEMBER(ADMINISTRATIVE)

1. A.T.Gayakwad,
programme Executive,
Programme Production Centre(N.E.).
Doordarshan Kendra, Guwahati, ... Applicant.

By Advocate Mr. M.K.Choudhury, Mr.S.Sarma.

-Vs-

1. The Union of India
through the Secretary,
Ministry of Information & Broadcasting
New Delhi.
2. The Director General, Doordarshan
Doordarshan Bhawan,
Mandi House,
Copernicus Marg,
New Delhi-110001.
3. The Director General,
All India Radio,
Akashvani Bhawan
Parliament street,
New Delhi.
4. The Station Director,
All India Radio, Bangalore Respondents.

By Advocate Mr.S.Ali, Sr.C.G.S.C.

O R D E R.

SANGLYINE, MEMBER(A):

The applicant, Shri A.T.Gayakwad, was a Studio Executive, All India Radio, Dharwad. On 21-3-1983 he was appointed on purely adhoc basis to the post of Transmission Executive, All India Radio, Mangalore, which he joined on 31-3-1983. He continued in the post on that basis till on 23-10-1984 he was appointed on regular basis as Transmission Executive with effect from 21-8-1984 F.N. He submitted representation before

contd/-

the respondents claiming that the period of service from 31-3-1983 to 20-8-1984 rendered by him in adhoc capacity is liable to be counted for the purpose of determining his seniority in the cadre of Transmission Executive. The respondents had rejected his prayer made by him before them. Hence this application. In this application the applicant claims that the respondents had wrongly denied him the aforesaid benefit though he is entitled to such benefit. Further, as a result of this wrong determination of seniority by the respondents, he had been wrongly placed at Sl.No.149 in the Eligibility List as on 1-10-93 instead of the correct position at Sl.No.100 had his period of adhoc service aforesaid been counted in determining his seniority in the cadre of Transmission Executive. The respondents have filed a written statement resisting the claim of the applicant.

2. Shri M.K.Choudhury, learned counsel appearing for the applicant, has submitted that the appointment of the applicant to the grade of Transmission Executive under order No.Man.1(3)/83-S/3832 dated 21-3-1983 (Annexure 1) was made by following rules applicable for substantive appointment. Consequent thereto he had continued in the post till he was appointed on regular basis with effect from 21-8-84. Therefore, this period of adhoc service from 21-3-83 to 21-8-84 has to be counted for determining his seniority in the cadre of Transmission Executive. In support of his contention he has relied on the decision of the Hon'ble Supreme Court in direct Recruit Class II Engineering Officers'

contd/-

Association and others, Vs. State of Maharashtra reported in AIR 1990 SC page 1607. He further submits that even where initial appointment is not made by following procedure laid down by the rules but appointee continues in the post uninterruptedly till regularisation of his service in accordance with the rules the Hon'ble Supreme Court had held in the aforesaid judgment that the period of officiating service will be counted for determining seniority in the grade. According to him, the case of the applicant is in a better position as his appointment was made after recommendation of the Departmental Promotion Committee. The learned Sr.C.G.S.C.; Sri S.Ali, submits that the applicant was appointed to the post purely on adhoc basis and, therefore, there is no illegality in the action of the respondents in not counting the period of adhoc service rendered by the applicant as Transmission Executive for the purpose of determining the seniority of the applicant in the grade of Transmission Executive.

3. We have heard learned counsel of both sides. The applicant was appointed as Transmission Executive on purely adhoc basis and worked as such from 31-3-1983 till he was appointed to the post on regular basis with effect from 21-8-1984. The issue under consideration is whether the period of ad hoc service rendered by him in the capacity of Transmission Executive from 31-3-1983 to 20-8-1984 will count in determining his seniority in the cadre of Transmission Executive. For ready reference we reproduce below the relevant portion of the above mentioned judgment relied on by the learned counsel for

contd/-

the applicant in the course of hearing, namely, para 44(A) and (B):

" 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 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.

(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 "

In order to properly appreciate the contentions of both sides we have to look into the nature of the appointment of the applicant. For this purpose we refer to the appointment letter No.Man.1(3)/83-S/3832 dated 21st March, 1983 which is as under -

"Shri A.T.Gayakwad, Studio Executive, All India Radio, Dharwad, who has been approved by the DPC for promotion to the post of Transmission Executive is hereby appointed as Transmission Executive, on purely ad-hoc basis, at All India Radio, Mangalore, in the pay scale of Rs.425-15-500-EB-15-560-20-640-EB-20-700-25-750 with effect from the date he takes over his duties at All India Radio, Mangalore.

The ad-hoc promotion of the above official will not confer on him any claim for regular appointment as Transmission Executive and he is liable to be reverted at any time when approved candidates become available for appointment."

There is no doubt in our mind that the appointment of the applicant is a purely temporary arrangement against a vacancy awaiting arrival of approved candidates. It may be that the applicant was a candidate approved by the Departmental Promotion Committee for substantive appointment by promotion to the post of Transmission Executive but the fact that he was a selected

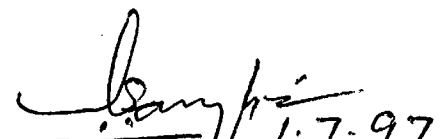
contd/-

Candidate does not alter the nature of his appointment dated 21-3-1983. We are firmly of the view that the case of the applicant presently under consideration falls within the second part of para 44(A) of the judgment of the Hon'ble Supreme Court referred to above. The applicant was appointed according to rules only with effect from 21-8-1984. Accordingly, the period of ad hoc service rendered by the applicant from 31-3-1983 to 20-8-1984 cannot be taken into consideration for determining his seniority in the cadre of Transmission Executive. The fact that there was continuous service in the adhoc appointment without any break during the period and that his appointment was followed by an appointment on regular basis to a substantive post do not change the position in the light of the nature of the appointment made on 21-3-1983.

In view of the above, the applicant cannot succeed in his contention and the application is liable to be dismissed. It is hereby dismissed.

No order as to costs.


(D.N. BARUAH)
VICE-CHAIRMAN


(G.L. SANGLYINE)
ADMINISTRATIVE MEMBER
1.7.97