

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 2618/2013

Reserved on : 11.05.2016
Pronounced on : 24.05.2016

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)**

Subhash Chand Goyal
27, Rati Ram Park,
Nagafgarh, New Delhi-110043. .. Applicant

(By Advocate : Shri Ranvir Singh)

Versus

1. The Government of NCT,
Through the Chief Secretary,
Old Secretariat, Delhi-110054.
2. Director of Education,
Directorate of Education,
Old Secretariat, Delhi-110054.
3. Deputy Director Education,
District South West (B),
Nagafgarh, New Delhi-110043.
4. Deputy Director Education,
District North West (B),
Pitampura, New Delhi-110034.
5. The Principal,
GBSSS, No.1, Nagafgarh,
New Delhi-110043.
6. The Principal,
Govt. Sarvodaya Co-Ed. Senior Secondary Vidyalaya,
Sector-7, Rohini, Delhi-110085.

7. Shri Satish Kumar,
TGT (Natural Science); ID No. 19790121,
Govt. Sarvodaya Co-Ed. Senior Secondary Vidyalaya,
Sector-7, Rohini, Delhi-110085.
8. Shri Narender Singh Arya,
I.D. No.19790128; Lecturer Physics,
Sarvodaya Bal Vidyala No.2,
Palam, Delhi.
9. Shri Balwan Singh,
PGT, Govt. Co.-Ed. Senior Secondary School,
Kazipur, New Delhi-110073. .. Respondents

(By Advocate : Shri N.K. Rohtagi for Shri Vijay Pandita)

ORDER

By Hon'ble Mr. P.K. Basu

The applicant was appointed as Trained Graduate Teacher (TGT) along with the respondent Nos. 7 and 8 vide office order No.81 dated 02.02.1979. On appointment, the applicant and respondents No.7 and 8 were granted pay scale of Rs.440-750. Order No.209 dated 31.08.1979 was issued after the candidates were found medically fit and verification of character and antecedents. It was mentioned in this order that they were on probation for a period of two years and probation can be extended without assigning any reason.

2. Vide order No.7 dated 30.01.2010, the respondents granted 3rd financial upgradation under MACP Scheme to the applicant and the respondent No.8 in the grade pay of Rs.6600/-, which was higher

than the grade pay being drawn by them at that time, i.e. Rs.5400. The date of grant of 3rd financial upgradation to the applicant is 03.02.2009, who is at sl.No.4 in the order No.7. Shri Satish Kumar, respondent No.7, was granted 3rd financial upgradation under MACP Scheme w.e.f. 03.02.2009 vide ID No.19 dated 04.05.2010 (Annexure A-12), in which his name appeared at sl.No.64.

3. Vide memorandum dated 20.02.2010 (Annexure A-9), the applicant was sent notice to explain and submit documents, if any, as to why the benefit granted to him under MACP Scheme w.e.f. 03.02.2009 should not be withdrawn besides initiating other corrective steps in the matter. We quote below the following paragraphs of this memorandum to highlight the facts as to why this memorandum was issued:

“AND whereas on the basis of the documents available with the undersigned, it has come to the notice that Shri Subhash Chand Goel was initially appointed as TGT (Science-B) on 3.2.1979 on purely temporary and ad-hoc/emergent basis for a period of 3 months or upto 30.04.1979 which ever is earlier w.e.f. the date of joining in the school vide Order No.81 endorsement No.F.1-16(93)/79-R&S dated 2.2.79 of the Joint Director of Education (Admn.) and his name appears at Sr.No.12 in the said order and he was posted at Govt. Co-Ed. Hr. Sec. School, Karala, Delhi.

AND whereas, the period of adhoc appointment was further extended upto 19.5.79 vide Order No.123 endorsement No. F.1-16(93)/79-R&S dated 26.4.79 of the Joint Director of Education (Admn.) with his name appearing at Sr.No.65 in the said order. And the period of adhoc appointment was further extended upto 31.8.79 vide Order dated 22.5.79 (endorsement No.F.1-16/93/R&S/79 of the Joint Director of Education (Admn.)

AND whereas, the above said Shri Subhash Chand Goel was appointed as TGT, Science B on temporary basis vide Order No. 208 endorsement No.DEF.1/2 Fresh Apptt./R&S/79 dated 31.08.1979 of the Joint Director of Education (Admn.) with his name appearing at Sr.No. 33 in the said order. He was posted at Govt. Co-ed. Hr. Sec. School, Karala, Delhi. In the remarks

column of the said order he has been shown posted against a vacant post.

AND whereas, in the Service Book of the said teacher he has been shown working as on officiating basis and there is no entry whatsoever regarding his initial appointment on adhoc basis and further extensions of adhoc appointment vide above referred Office Orders recorded in the Service Book. Further, there is no entry in his Service Book regarding appointment on temporary basis vide Order No.208 dated 31.8.1979.

AND whereas, the deeper scrutiny of the Service Book reveals that the above said Shri Goel has been granted annual increments in the month of February since the date of his posting on purely adhoc basis i.e. 3.2.79, Senior Scale and benefits of ACP etc. considering him appointed on regular basis ever since 3.2.1979 as against the fact that he was appointed as a fresh candidate vide order dated 31.8.1979.”

4. Vide letter dated 26.02.2010, the applicant replied to this memorandum issued to him. The respondents vide order dated 28.04.2010 (Annexure A-11) withdrew the 3rd financial upgradation granted to the applicant w.e.f. 03.02.2009 though, as already mentioned, respondent No.7 was granted 3rd financial upgradation with grade pay of Rs.6600/- vide order dated 04.05.2010. Later, the respondents vide order No.41 dated 15.09.2010 granted 3rd financial upgradation to the applicant as well in the grade pay of Rs.6600/-, but w.e.f. 01.09.2009.

5. In reply to an RTI application, the applicant was informed that Shri Satish Kumar (respondent No.7) had been granted 3rd financial upgradation under MACP Scheme w.e.f. 03.02.2009. On 14.12.2011, the applicant filed a representation before the respondents seeking that he should be treated at par with respondent No.7, Shri Satish Kumar, for grant of benefits under

ACP/MACP Scheme. Vide corrigendum dated 19.12.2011 (Annexure A-16), the respondents modified the date of grant of 3rd financial upgradation under MACPS in the case of Shri Narender Singh Arya (respondent No.8) from 01.09.2009 to 06.02.2009, though no reason is assigned. Thereafter, the respondents issued letter dated 06.02.2012 to the applicant rejecting his prayer to be treated at par with respondent No.7 by stating that the applicant has been correctly granted 3rd financial upgradation under MACPS w.e.f. 01.09.2009 and no change in the date of grant of MACP is warranted. The reason for this view is made clear in the order itself, the relevant portion of which is quoted below:

- “1. Your date of joining on the post of TGT (Sc.-B) on 3/2/7979 was on purely adhoc and emergent basis only for three months or upto 30/4/4979, whichever was earlier. This adhoc appointment was extended first up to 19/5/1979 and then up to 31/8/1979.
- 2. Thereafter, you were appointed on temporary basis on the post of TGT (Sc.-B) in terms of J.D.E. (Admn.) Order No.208 dated 31/8/1979. Since your services were on adhoc basis upto 31/8/1979, your regular service can only be counted for the purpose of MACP w.e.f. 1/9/1979.
- 3. You cannot claim grant of MACP w.e.f. 3/2/2009 on the analogy of Sh. Satish Kumar, TGT (N.Sc.), SV, Sector-7, Rohini as the document itself procured by you through RTI Application and enclosed with your representation shows that the adhoc appointment w.e.f. 3/2/1979 in respect of Sh. Satish Kumar was regularised w.e.f. 3/2/1979 whereas your adhoc services were never regularised and you were appointed as TGT (Sc.-B) afresh vide JDE (Admn) Order No.208 dated 31/8/1979.
- 4. The advice of the ACP Cell (HQ) was obtained specifically in your case and on the basis of clarification given by the ACP Cell, the earlier order for grant of 3rd financial upgradation under MACPS w.e.f. 3/2/2009 vide Order No.7 dated 30/01/2010 was withdrawn and you were granted this benefit w.e.f. 1/9/2009 vide Order No.41 dated 15/09/2010.”

6. Thereafter, a show cause notice dated 17.02.2012 was issued to the applicant for concealment of the fact that he was working as TGT w.e.f. 03.02.1979 to 31.08.1979 on adhoc basis and the official had taken all service benefits w.e.f. 03.02.1979 instead of 01.09.1979. The applicant filed a reply to this show cause notice vide his letter dated 26.03.2012 stating that issuance of order was done by the respondents based on the service record maintained by them in which the applicant had no say. The applicant states that thereafter the respondents issued letter dated 08.04.2013 to the applicant passed order for the following corrective steps required to be taken in this regard :

- “1. Entries regarding initial adhoc appointment w.e.f. 3/2/1979, its extension from time to time and fresh appointment w.e.f. 1/9/1979 will be made in your Service Book.
- 2. Date of increments shall be refixed as 1st of September instead of 1st February for the entire period and the excess amount will be recovered accordingly.
- 3. The date of award of senior scale shall be corrected as 1/9/1991 instead of 3/2/1991 and the difference amount shall be recovered.
- 4. The date of award of 2nd financial upgradation under ACP Scheme shall be corrected as 1/9/2003 instead of 3/2/2003 and the difference amount shall be recovered.
- 5. Any other consequential step will be taken as required for the above.”

7. Thereafter, the applicant requested for stay of recovery till the matter is sorted out. However, it is claimed that no reply was received from the respondents. After that, the applicant sought certain information regarding another TGT, Shri Balwan Singh

Dahiya (respondent No.9) and received reply dated 14.05.2013, which is as follows:

1. Was he appointed on adhoc basis? And joined on 15/11/1985?	Yes, DOA – 15.11.1985
2. Date on which ACP was granted.	No
3. Any other similar cases who had been appointed on adhoc basis and granted ACP/MACP from your office w.e.f. his date of joining.	No. MACP granted w.e.f. 01.09.2008 in R/o Shri Balwan Singh – PGT

In fact, the respondents issued an order dated 27.03.2010 (Annexure A-4A) in which services of Shri Balwan Singh Dahiya were regularised from his date of joining, i.e. 15.11.1985. Being aggrieved by the action of the respondents, this O.A. has been filed seeking the following relief:

- “A. Direct Respondents No.1, 2 and 3 to regularise applicant’s appointment w.e.f. 2.2.1979;
- B. Direct Respondent No.2 to stop deductions from Applicants pay;
- C. Pay cost of the Original Application estimated at Rs.40,000/-;
- D. Pass any other Order/s that this Hon’ble Court may deem fit in the facts and circumstances of the case.”

8. The first argument of the learned counsel for the applicant is that in orders dated 02.02.1979 as well as 31.08.1979, it has been mentioned that candidates are appointed in the pay scale of Rs.440-750 plus usual allowances **as admissible under rules**. It is argued that this clearly shows that the appointment was in accordance with rules and not illegal and, therefore, his appointment should be treated as regular from the date he joined

the school. He also drew our attention to order No.123 dated 26.04.1979 (Annexure R-1), which is regarding extension of adhoc appointment of total 146 TGTs, including the applicant being at sl.No.65. By this order, adhoc appointment was extended upto 19.05.1979. It is stated that in this order, it has been made clear that services of the officials will automatically stand terminated, in case the period of adhoc appointment is not regularised by 19.05.1979. Our attention is also drawn to Note 2 of this order in which it has been categorically stated that no teacher appointed on adhoc basis should continue beyond the date upto which the adhoc period has been extended, until and unless the adhoc appointment is regularised by the Headquarter. It is contended that it was, therefore, incumbent upon the respondents to regularise their adhoc appointment before the cut off date of 19.05.1979. Therefore, the appointment letter dated 31.08.1979 having been issued by the respondents appointing the applicant and two other TGTs on temporary basis proves that they stood regularised before 19.05.1979.

9. Learned counsel for the applicant also drew our attention to Column 6 of order dated 30.01.2010 (Annexure A-8) and stated that this order contains names of teachers, whose date of initial appointment is even before the applicant, i.e. 1973, 1974 and 1977.

10. Learned counsel for the applicant also relied on judgment dated 02.05.1990 in the case of **The Direct Recruit Class II Engineering Officers' Association and Others Vs. State of Maharashtra and Others**, JT 1990 (2) SC 264 and specifically drew our attention to para 47 of this judgment, which reads as follows:

“44. 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 regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down

below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

With respect to Writ Petition No. 1327 of 1982, we further hold:

(K) That a dispute raised by an application under [article 32](#) of the Constitution must be held to be barred by principles of res judicata including the rule of constructive res judicata if the same has been earlier decided by a competent court by a judgment which became final.”

It is contended that sub-para (B) applies to the applicant as he continued on the post uninterruptedly till the regularisation of his services, in accordance with rules and, therefore, the adhoc period of service should be counted.

11. The learned counsel also relied on decision of Calcutta High Court dated 11.03.1998 in the case of **Dipankar Sengupta Vs. United Bank of India (Cal.)**, 1998 (5) SLR, specifically para 38 of the order, which is quoted below:

“It is further a trite law that an authority empowered to pass an administrative order which causes a civil or evil consequence against another, must pose unto himself the correct question so as to enable himself to be acquainted with the relevant facts, failing which such action must be held to be a misdirection in law. It is further well known that an authority must not base its decision for any irrelevant matters not germane for the purpose of arriving at a fair decision, and must confine his decision on the relevant facts. The order of the disciplinary authority does not satisfy the aforementioned requirements.”

It is argued that the decision of the respondents does not satisfy this condition laid down by the Hon’ble High Court as, in the order dated 20.02.2010, the respondents states that **deeper** scrutiny of the service book had been undertaken, whereas there are no facts to support that actually a deeper scrutiny had been done.

12. The learned counsel also relied on judgment of the Hon’ble Supreme Court in **State of Punjab and Others Vs. Rafiq Masih**, 2014 (14) SCALE, and specifically para 12 of the judgment, which is quoted below:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be 20 that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery.”

The learned counsel states that the applicant has already retired. Moreover, the respondents have raked up an issue which is almost 33 years old and, therefore, both on count of sub-paras (ii) and (iii) above, no recovery can be made by the respondents.

13. The learned counsel further argued that at no stage the applicant misrepresented any facts or indulged in fraud and it is only the respondents who fixed his pay etc. based on their records and, therefore, no recovery of additional amount can be made and, in this regard, he relied on the following judgments of the Hon'ble Supreme Court:

- (i) Yogeshwar Prasad & Ors. Vs. National Inst. Edu. Planning & Admn & Ors., 2011(7) SLR 1.
- (ii) Bhagwan Shukla Vs. UOI & Ors., 1994 (4) SLR 614-615.
- (iii) Divisional Superintendent, Eastern Railway, Dinapur and Others Vs. L.N. Keshri & Ors., (1975) 3 SCC 1.
- (iv) Shyam Babu Verma & Ors. Vs. UOI & Ors., 1994 (1) SLR 827.
- (v) Sahib Ram Vs. The State of Haryana & Ors., 1994 (5) SLR 753.

14. The learned counsel also relied on the judgment of Hon'ble Supreme Court in **Union of India and Anr. Vs. Lalita S. Rao and**

Ors., (2001) 5 SCC 384 and drew our attention to para 2 of the judgment, wherein the following has been recorded:

“While the matter stood thus Dr. P. Srinivasulu and 20 others who belonged to the second category, namely, insider ad hoc recruits who got themselves regularised after being selected by the UPSC either by written examination or by an interview, filed an application before the Central Administrative Tribunal, Principle Bench, New Delhi which was registered as O.A. No. 1603 of 1987. The Tribunal in the aforesaid case came to the conclusion that the ad hoc appointees being regularised after being selected through the UPSC would be entitled to get their ad hoc period also counted towards seniority, and therefore, the seniority list that had been drawn up on 10.06.1987 was quashed.”

15. Per contra, the learned counsel for the respondents stated that the applicant was appointed on purely adhoc and emergent basis w.e.f. 03.02.1979 for a period of three months or upto 30.04.1979, whichever was earlier, vide order No. 81 dated 02.02.1979 (Annexure A-5) and following was clearly stated in the said order:

- (i) That these appointments will not confer any title claim for regular appointment;
- (ii) The candidate so appointed will not be given the benefit of such appointments towards seniority etc.

This adhoc period was extended first from 30.04.1979 to 19.05.1979 vide order No.123 dated 26.04.1979 (Annexure R-1) and again from 19.05.1979 to 31.08.1979 vide office order No.145 dated 22.05.1979.

16. The learned counsel contended that from this it will be clear that the period of service from 03.02.1979 till 31.08.1979 was on purely adhoc and emergent basis. There was no regularisation of

the period of adhoc appointment ever and instead the applicant was appointed afresh on regular basis vide order dated 31.08.1979. It is stated that the applicant was given offer letter containing the terms and conditions of the appointment and he accepted that offer being fully aware of the facts that his regular appointment is w.e.f. 01.09.1979 after the extended adhoc period expired on 31.08.1979. They further state that due to negligence or connivance of the officials of the school in which the applicant was initially posted, none of the facts, i.e. initial appointment on adhoc basis w.e.f. 03.02.1979, its extension from time to time upto 31.08.1979 and then fresh appointment on temporary basis vide order dated 31.08.1979 were recorded in the service book of the applicant. The entry which exists in the service book, the copy of which has been annexed as Annexure R-3, is as under, which is notoriously silent about the nature of appointment and its tenure, :

“Shri Subhash Chand Goel joined as TGT on 3/2/1979 in accordance with the office order No.81 dated 2.2.79 conveyed vide endst. No.F.1-16(93)/79-R&S dated 2.2.79 issued by the Joint Director of Education (Admn.) Directorate of Education, Old Sectt. Delhi.”

17. Unfortunately, it is explained that based on the single wrong entry and service verification w.e.f. 03.02.1979 and onwards, the applicant drew all the financial benefits, namely, annual increments in the month of February every year, senior scale after 12 years w.e.f. 03.02.1991, 2nd financial upgradation under ACP Scheme after 24 years of service w.e.f. 03.02.2003, whereas he was actually

entitled to these benefits counting his regular service w.e.f. 01.09.1979.

18. Learned counsel for the respondents explained that the above mistake went unnoticed till January, 2010. At the time of granting the applicant 3rd financial upgradation under MACP Scheme w.e.f. 03.02.2009 vide order dated 30.01.2010, during the process of scrutiny of MACP cases, this error was detected. On the factual position coming to light, the grant of 3rd financial upgradation w.e.f. 03.02.2009 was withdrawn and after giving opportunity to the applicant to be heard, he was granted 3rd financial upgradation w.e.f. 01.09.2009 by counting his regular service w.e.f. 01.09.1979.

19. The learned counsel for the respondents further clarified that in the case of respondents No.7 and 8, namely, Satish Kumar and Narender Singh Arya, also the same mistake has been committed and when this came to the notice of the respondents, corrective steps have been initiated also for respondents No.7 and 8. The learned counsel for the respondents, therefore, prayed for the dismissal of the prayer of the applicant on two counts:

- (i) the applicant has illegally been drawing all the financial benefits on account of concealed facts of adhoc appointment; and
- (ii) his prayer for regularisation has come after 34 long years, which suffers from limitation, which is highly belated and deserves to be dismissed on the ground of delay and latches.

20. In this regard, they relied on the judgments of Hon'ble Supreme Court in the following cases:

- (1) S.S. Rathore Vs. State of MP, AIR 1990 SC 10;
- (2) State of Haryana & Ors. Vs. Miss Ajay Walia, JT 1997 (6) SC 592;
- (3) State of Punjab Vs. Gurdev Singh, (1991) 4 SCC 1;
- (4) UOI Vs. Ratan Chandra Samanta, JT 1993 SC 418;
- (5) Harish Uppal Vs. UOI, JT 1994 (3) 126;
- (6) Union of India Vs. M.K. Sarkar, (2010) 2 SCC 59;
- (7) D.C.S. Negi Vs. UOI & Ors. dated 07.03.2011,

in which the Hon'ble Supreme Court has settled the law that an aggrieved party has to approach the court within the statutory period.

21. As regards, the applicants reference to the judgment of the Hon'ble Supreme Court in the case of **The Direct Recruit Class II Engineering Officers' Association** (supra) specifically to para 47, it is stated by learned counsel for the respondents that para 47(B) specifically states "till the **regularisation** of his service in accordance with rules", and in the case of the applicant, he continued as adhoc appointee and his services were not regularised, let alone in accordance with rules. It is, therefore, argued that para 47(B) provision will not apply to the applicant at all and the period

from 03.02.1979 to 31.08.1979, not having been regularised, no benefit can be granted to him for the period.

22. In his reply, the learned counsel for the applicant states that vide order dated 31.08.1979 along with the applicant, Shri Satish Kumar (respondent No.7) was also appointed and he was given benefit of 3rd financial upgradation under MACPS w.e.f. 03.02.2009 and granted the grade pay of Rs.6600/-. It is contended that though the applicant and respondent No.7 joined together and were granted upgradation and promotion by common order, the applicant has been singled out and there is no order for refixation of salary of Shri Satish Kumar (respondent No.7) nor of recovery. It is further stated that similarly, vide order dated 27.03.2010, Shri Balwan Singh (respondent No.9) regularisation has been treated w.e.f. 15.11.1985, i.e. regularised from the date of joining and in the case of Shri Narender Singh Arya (respondent No.8) also, the date was shifted to 06.02.2009 instead of 01.09.2009 and, therefore, the learned counsel contends that this is a case of pure discrimination by the respondents between the applicant and respondent No.7, 8 and respondent No.9.

23. Finally, the learned counsel for the applicant contends that he had filed a representation against this on 06.05.2013, but he received no response from the respondents.

24. Heard the learned counsel and perused the pleadings as well as the judgments cited by both sides.

25. The only question that has to be decided in this matter is whether the period between 03.02.1979 to 31.08.1979 has to be counted as regular service or not. If it is counted as regular service, then the applicant's prayer becomes valid and, if not, then his prayer fails.

26. Now, it is abundantly clear that the initial appointment w.e.f. 03.02.1979, subsequent extension upto 31.08.1979, was on adhoc basis. The applicant's counsel argued that in orders dated 02.02.1979 as well as 31.08.1979, it has been mentioned that candidates are appointed in the pay scale of Rs.440-750 plus usual allowances as admissible under rules. This establishes that the appointment was as per rules and, therefore, not an adhoc appointment. This argument has to be rejected outright. Those orders make it abundantly clear that his appointment was adhoc. What the learned counsel refers is only regarding fixation of pay and allowances being as per rules. This cannot be interpreted to mean that the appointment itself was as per rules.

27. The second argument adopted by the learned counsel is based on the premise that since vide order dated 26.04.1979 it was made clear that there shall be no extension of adhoc basis beyond 19.05.1979, and he continued upto 31.08.1979 and vide order

dated 31.08.1979 appointed on temporary basis w.e.f. 01.09.1979, therefore, it should be presumed that his appointment, even if it is accepted to be adhoc for argument sake, was regularised. Again this is a completely fallacious argument because upto 31.08.1979, he was given extension from time to time as an adhoc employee and w.e.f. 01.09.1979, he was regularly appointed on temporary basis. Therefore, the inference which the learned counsel has drawn, is erroneous. Therefore, the order dated 31.08.1979 does not confer a regular status to the applicant for the period w.e.f. 03.02.1979 to 31.08.1979 and this argument is rejected.

28. As regards respondent No.9, the respondents state that there is no similarity of facts between Shri Balwan Singh and that of the applicant. The applicant was initially appointed on adhoc and emergent basis and subsequently appointed on temporary basis whereas Shri Balwan Singh was appointed vide order No.73 dated 14.10.1985 on adhoc and emergent basis subject to the final orders of the Delhi High Court in CWP No.1170/85. After the disposal of that particular court case, the Establishment Branch concerned issued general order dated 12.04.1990 advising the Deputy Directors concerned to regularise the adhoc appointment. Thus the regularisation of Shri Balwan Singh has no relevance with the case of the applicant.

29. Lastly, regarding the allegation of discrimination by the respondents against the applicant vis-a-vis respondents No.7 and 8, as the respondents have already clarified that the same mistake had been committed in the cases of respondents No.7 and 8 and they have taken similar corrective steps as in the case of the applicant. So, the argument of discrimination also fails, and we are certain that if the same mistake is committed in the case of respondent No.9, the respondents would certainly rectify that as well.

30. As regards reliance of the applicant on para 47 (B) of **The Direct Recruit Class II Engineering Officers' Association** (supra), we agree with the respondents' counsel that this sub-para applies when service has been regularised in accordance with rules. In the case of the applicant, his service was never regularised.

31. As regards, the judgment in the case of **Lalita S. Rao** (supra), this does not have any relevance. In fact, they concluded as under:

“3. If any doctor, who had been appointed subsequent to 1.10.1984 and had applied for selection by the Union Public Service Commission on obtaining relaxation of age pursuant to the Direction 5 in Dr. Jain case and got selected thereby finally, in such a case the services rendered prior to such regularisation would not be counted for the purpose of their seniority in the cadre, particularly when the Recruitment Rules did not provide for any ad hoc appointment and only provided for appointment to be made through Union Public Service Commission.”

In any case, the facts and circumstances were different and we are, therefore, of the opinion that this judgment does not apply in the present case.

32. We are, therefore, of the clear opinion that the substantive prayer of the applicant that his appointment be regularised w.e.f. 02.02.1979 cannot be allowed. As regards his second prayer to stop deduction from his pay, we accept the contention of the learned counsel for the applicant that in his case, para 12 (ii) and (iii) of the judgment in **Rafiq Masih** (supra) will squarely apply, and the respondents are restrained from making any recovery from the salary as a result of refixation of pay, upgradation, promotion etc. due to change in date of regular appointment from 03.02.1979 to 01.09.1979. Further, any recovery made in this regard is directed to be refunded to the applicant within a period of 90 days from the date of receipt of a copy of this order.

33. With the above directions, the O.A. is disposed of. There shall be no order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

/Jyoti/