

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/00793/2017

Orders pronounced on: 04.12.2018
(Orders reserved on: 25.10.2018)CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

1. Ranjana Shahi, aged about 44 years, wife of Vijay Kumar Manocha, resident of Hira Maha, (Near Bansal Hospital), Nabha, District Patiala, presently working as Stenographer in the office of Commissioner of Income Tax, Leela Bhawan, Patiala (Group-C).
2. Gurmeet Kaur, aged about 43 years, wife of Sukhjit Singh, resident of House No. 85, G.K. Vihar, Dhanda Road, Dungi Ludhiana, posted as Stenographer, Grade-III in the office of Commissioner of Income Tax Appeals-I, Ludhiana.
3. Baljinder Kaur, aged about 47 years, wife of Sarbjit Singh, resident of C-6, Sewerage Boarding Colony, Model Town, Patiala posted as Stenographer Grade-II, Commissioner of Income Tax, Patiala.
4. Jaswinder Kaur, aged about 47 years, resident of # 5/513, St. No. 4, Ganesh Nagar, G.T. Road, Bathinda.
5. Anju Garg, aged about 43 years, wife of Subhash Kumar Garg, C/o Garg Property Dealer, Adjoining Park View Palace, Phase IV-V Road, Bathinda.

Applicants

By: **MR. I.D. SINGLA, ADVOCATE**

Versus

1. Union of India through its Secretary to Government of India, Ministry of Finance, North Block, New Delhi.
2. Principal Chief Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh.

By : **MR. K.K. THAKUR, ADVOCATE.**

3. Manoj Kumar, Stenographer O/O Assistant Commissioner of Income Tax, Central Circle, Patiala.
4. Jagsir Singh, Stenographer, O/o Assistant Director of Income Tax (Investigation), Patiala.

(Respondent Nos. 3 and 4 are impleaded in a representative capacity).

...

Respondents

(Respondents No.3&4 ex-parte vide order dated 27.9.2017).

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicants have filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, inter-alia, for quashing the seniority list dated 23.11.2015, Annexure A-1 and order dated 9.11.2016, Annexure A-2, vide which their request for grant of seniority for ad-hoc service as Stenographer Grade-II has been rejected and for issuance of direction to the respondents to allow them seniority of ad-hoc service also, with all the consequential benefits.
2. The facts leading to the filing of the instant Original Application (OA), that applicants were appointed as Stenographers Grade-II, on 89 days basis and then on adhoc basis during the years 1993 to 1995. The post is governed by Income Tax Department Stenographer Grade II (Group-C) Recruitment Rules, 2010. As per rule 4 (d) of said Rules, seniority is to be governed by instructions issued from time to time by the Central Government. In pursuance of order dated 30.8.2011 in CWP No. 2895-CAT-2006 (**VANDANA & OTHERS VS. UNION OF INDIA & OTHERS**), on the basis of decision in the case of **SECRETARY, STATE OF KARNATAKA AND OTHERS VS. UMADEVI AND OTHERS** 2006 (4) SCC 1 and order dated 11.4.2014 issued by the CBDT, New Delhi, the applicants having completed 10 years of service as on 10.4.2006, were regularized as Stenographers Grade-II, in the pay band-2 Rs.5200-20200 with grade pay of Rs.2400/-, vide order dated 20.5.2014 (Annexure A-4). It was categorically mentioned that their seniority will be fixed in the order of their dates of joining as Stenographer Grade II and is governed by DoPT OM dated 3.4.2013.
3. The respondents circulated seniority list of Stenographer Grade II vide letter dated 23.11.2015 (Annexure A-1), inviting objection of the

officials against the same by 30.11.2015. The objections were filed by applicants and then O.A.No.060/00760/2016 was also filed by them in this Tribunal, which was disposed of with direction to the respondents to pass a speaking order on objections of the applicants submitted on 4.3.2016 (Annexure A-6). The claim of the applicant has been rejected vide impugned order, Annexure A-2, on the ground that applicants are not entitled to seniority as per Circular dated 3.4.2013 (Annexure A-7), which is termed to be illegal by applicants, submitting that their seniority has to be relate back to their initial appointment on adhoc basis followed by regularization and they cannot be placed below those who have joined service after them. They submit that in the absence of any specific instructions, continuous length of service should be the determinative factor for fixation of seniority and private respondents having joined in March, 2010 cannot be ranked senior. They should be deemed to have been regularized w.e.f. 10.4.2006, the cutoff date fixed in Uma Devi's case. Hence the O.A.

4. The official respondents have filed a reply. They submit that private respondents had been appointed in March, 2010 against the recruitment year 2009-10, thus, they are senior to the applicants who were regularized on 20.5.2014. The adhoc service is not to be counted towards seniority as mentioned in DoPT Circular/OM dated 3.4.2013. The applicants have filed a replication. They submit that Circular in question does not deal with the issue of determination of seniority and as such cannot be relied upon by the respondents.

5. We have heard the learned counsel for the parties at length and examined the material on file.

6. The learned counsel for the applicant vehemently argued that the service rendered on adhoc basis followed by regularization would count

for seniority for which reliance is placed upon decision of our own jurisdictional High Court in **STATE OF HARYANA & OTHERS VS. SURINDRA KUMAR MISHRA & OTHERS**, 2013 (2) RSJ, Page 368, in which it was held that if the foundational fact of status of first entry into service is legal and valid which commensurate with Article 14 & 16 (1) of the Constitution, consequences of seniority would automatically follow from the initial date. Reliance is also placed on decision of Hon'ble Apex Court in the case of **RUDRA KUMAR SAIN & OTHERS VS. UNION OF INDIA & OTHERS**, AIR 2000 SC 2801 (1) to claim that the appointment of applicants was in the nature of regular one and use of word adhoc was merely a subterfuge. It was held that if a person continues in service for fairly long period, his appointment cannot be said to be stop-gap or fortuitous or adhoc. If there are no provisions in rules or instructions for fixation of seniority, then length of service is the determining factor for such purpose. Reliance in this regard is placed on decision of Hon'ble Apex Court in **K. BHATNAGAR & OTHERS VS. UNION OF INDIA & OTHERS**, 1991(1) RSJ, 459. On the other hand, learned counsel for respondents would argue that this Tribunal in earlier litigations in O.A. No. 732-PB-1995 – **ANJU BALA VS. UNION OF INDIA & ANOTHER**, decided on 21.9.1995, where in a challenge was posed to termination of service of the employee on adhoc basis, it was clearly held that she be continued in service if her work and conduct is satisfactory, there is a post, if it is not filled up by a regularly selected person and if any junior is continuing but with a rider that she would not be entitled to benefit of any service in the event of her regular appointment to the post.

7. We have considered the rival submissions made by the learned counsel for the parties.

8. A perusal of the pleadings and documents available on record would show that the applications were initially engaged on temporary basis with breaks and were then appointed on adhoc basis which was continued without any break consequent upon directions issued by courts of law. This is apparent from letter dated 10.10.2018 produced by respondents indicating that applicant Ranjana Shahi was appointed as Stenographer on adhoc basis on 31.1.1994 for a period of 89 days w.e.f. 2.2.1994. She was again appointed on 9.5.1994, 12.8.1994, 16.11.1994 upto 31.1.1995 and then on adhoc basis without any break w.e.f. 1.2.1995, as per directions issued in earlier O.A. No. 95-PB-1995 dated 1.3.1995. It is also not in dispute, and is infact admitted position, at all hands, that as per rule 4 (d) of Recruitment Rules, 2010, the seniority is to be determined as per the instructions issued by Central Government from time to time. It is not in dispute that instructions contained in Office Memorandum dated 3.4.2013 (Annexure A-7) are on the subject of nature and character of adhoc appointment / promotion including the element of seniority. Para 5 thereof clearly provides as under :-

"As already provided in this Department's O.M. No.22011/3/75-Estt.(D) dated 29th October, 1975, and reiterated in O.M. No.28036/8/87-Estt.(D) dated 30.03.1988 and O.M. No.28036/1/2001-Estt.(D) dated 23.07.2001, an ad-hoc appointment does not bestow on the person a claim for regular appointment and the service rendered on ad-hoc basis in the grade concerned also does not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade. As per existing provisions, these facts are to be clearly spelt out in the orders of the ad-hoc promotions/ ad-hoc appointments. Therefore, such ad-hoc arrangements are neither in the interest of the individuals nor the organizations concerned. It is, thus, not appropriate to resort to ad-hoc arrangements in a routine manner."

A perusal of the instructions would make very clear that any claim for regular appointment of adhoc employee, does not lie and the service rendered on such basis in the relevant grade does not count for the purpose of seniority or for eligibility for promotion to the next higher

grade. The instructions further provide that as per earlier existing instructions, these facts are to be clearly spelt out in the orders of the ad-hoc promotions/ ad-hoc appointments and such arrangements are neither in the interest of the individuals nor the organizations concerned, therefore, it is not appropriate to resort to ad-hoc arrangements in a routine manner. So, instructions of 2013 do not provide any fresh provision for fixation of seniority. It only reiterates the earlier provisions existing in the instructions that adhoc service shall not count for seniority. The claim of applicants is for counting the adhoc service towards seniority. The instructions of 2013 on adhoc appointment would obviously apply to the applicants on all fours for determination of seniority and it cannot be said that there is no provision for fixation of seniority of adhoc employees. For this very reason, the reliance placed by applicants on aforesaid decisions is misconceived from every possible angle.

9. It is not in dispute that the applicants were regularized only in the year 2014 whereas the private respondents were appointed on regular basis against vacancies for the year 2009-2010. Thus, a person who was regularly appointed in 2009 or 2010 would rank senior to a person, who is regularized and became member of the service only in the year 2014 as his service on adhoc basis would not count for the purpose of seniority, as per pointed instructions. We find support in our view from a decision of Hon'ble Apex Court in C.A. No. 7903 of 2010 – **CH.NARAYANA RAO VS. UNION OF INDIA & OTHERS** decided on 10.9.2010. The relevant observations are reproduced as under for ready reference :

"13. The said question, as has been projected above, should not detain us long as the same has been considered in the matter of Direct

(O.A.No. 060/00793/2017
Ranjana Shahi etc. Vs. VOI etc.)

Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Others reported in (1990) 2 SCC 715 by a Constitution Bench of this Court. After eloquent discussion with regard to inter se seniority of direct recruits and promotees, the same has been summed up in para 47. The relevant portion of the said para applicable to the facts of this Appeal is reproduced hereinbelow:-

"47. 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."

14. On the strength of the aforesaid Constitution Bench Judgment, Mr. Sushil Kumar Jain strenuously submitted before us that clause (B) thereof should be invoked for the purpose of grant of seniority to the Appellant.

15. We have minutely examined the same but are unable to accept the said contention as according to us corollary of clause (A) of para 47 of the aforesaid judgment would be applicable to the Appellant's case. It cannot be disputed that the initial appointment of the Appellant was only ad-hoc and for a temporary period and was also not in accordance with the Rules of 1990 as he did not appear in the requisite test, which is conducted by Staff Selection Commission, before his appointment. The same was only a stop-gap arrangement. Therefore, his officiation on such a post cannot be taken into account for considering the seniority. Thus, in our considered opinion neither clause (A) nor clause (B), as reproduced hereinabove, would be applicable to the Appellant's case and he cannot draw any advantages therefrom. On the other hand, he would be squarely covered by the corollary appended to clause (A).

16. This judgment of Constitution Bench in Direct Recruit's case (supra) has been followed by three learned Judges of this Court in the case of State of West Bengal and others Vs. Aghore Nath Dey and Others reported in (1993) 3 SCC 371, authored by most illustrious learned Judge of this Court - Hon'ble Mr. Justice J.S. Verma (as he then was). After considering the scope and ratio decidendi of Direct Recruit's case (supra), it has been held in paras 24 and 25 in lucid and concise words as under:-

"24. The question, therefore, is of the category which would be covered by conclusion (B) excluding therefrom the cases covered by the corollary in conclusion (A).

In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the 'rules' and the latter expression 'till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of

regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stopgap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."

17. According to us, corollary appended to clause (A) of Direct Recruit's case (supra) and the aforesaid judgment in Aghore Nath Dey's case squarely decide the issue.

18. Reliance has also been placed by Mr. Sushil Kumar Jain on yet another Constitution Bench Judgment of this Court reported in (2000) 8 SCC 25 titled Rudra Kumar Sain and Others Vs. Union of India and Ors. to distinguish the terminology used in the case of O.P. Singla and another etc. Vs. Union of India and Others reported in (1984) 4 SCC 450 namely, "Ad-hoc", "fortuitous" and "stop-gap". However, we are not required to consider the same as it has already been dealt with in Aghore Nath's case (supra) elaborately.

19. In Singla's case (supra), the question was with regard to seniority and promotion amongst direct recruits and promotees. The said question is not directly in issue in this case. To the same effect is yet another earlier judgment of this Court is reported in (1986) 2 SCC 157 titled Narender Chadha and Others Vs. Union of India and Others, which also dealt only with the aforesaid requirement.

20. In Narender Chadha's Case, benefit was directed to be granted to those Appellants as they were working on the said posts for more than 15 to 20 years, which is not the case in the present appeal. Apart from the above, admittedly the Appellant had not cleared the requisite examination/proficiency test as required under the Rules of 1990, as soon as he cleared the examination/proficiency test, he was regularised on the post. His regularisation from the date of initial appointment was impermissible and was rightly denied to him.

21. The view which has been taken by us hereinabove finds favour from a recent judgment of this Court reported in (2009) 4 SCC 170 titled, Union of India Vs. Dharam Pal & Ors. Perusal of the said judgment shows that the cases on which we have placed reliance have also been fully relied upon by learned two Judges of this Court while dealing with the said case. Succinctly, it has been held in paragraph 25 and 27 as under :

"25. It is, however, also well settled that where the initial appointment is only ad-hoc, not according to rules and made as a stop-gap arrangement, the period of officiation in such post cannot be taken into account for considering the seniority.

26.

27. When an ad-hoc appointment is made, the same must be done in terms of the rules for all purposes. If the mandatory provisions of the rules had not been complied with, in terms of Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra & Ors. (1990) 2 SCC 715, the period shall not be taken into consideration for the purpose of reckoning seniority. Furthermore, it is one thing to say that an appointment is made on an ad-hoc basis but it is another thing to say that inter se seniority would be determined on the basis laid down in another rule."

22. We are, therefore, fortified in our reasoning as adopted in the aforesaid Appeal.

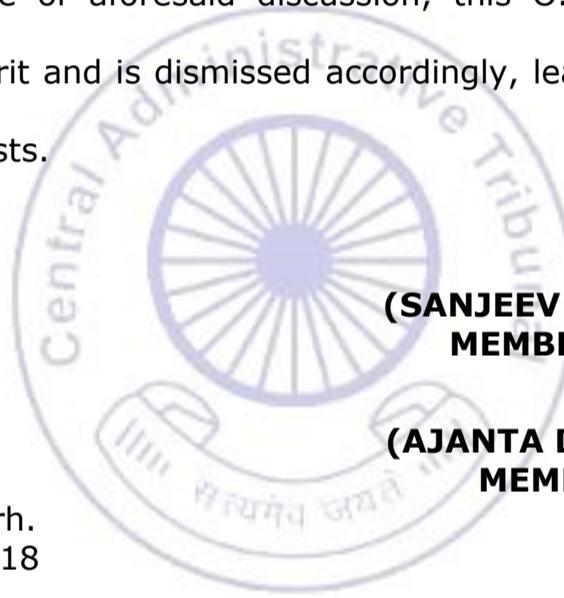
23. Thus, looking to the matter from all angles, we are of the considered view that no relief can be granted to the Appellant. His seniority has been correctly worked out only from the date he had passed the Stenography Test as contemplated under the Rules approved by Staff Selection Commission."

It is not in dispute that appointment in this case had to be done through the Staff Selection Commission whereas the applicants were appointed only through the Local Employment Exchange and were regularized subsequently consequent upon the directions of courts of law. The Hon'ble Apex Court has ruled in aforesaid extracted case that when an ad-hoc appointment is made, it has to be done in terms of the relevant recruitment rules and if the mandatory provisions of the rules are not followed, in terms of **DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION VS. STATE OF MAHARASHTRA & ORS.**

(1990) 2 SCC 715, the period of adhoc service shall not be taken into consideration for the purpose of reckoning seniority. In that view of the matter, we do not find any ground made out to interfere with the impugned seniority list/order. The applicants have not even challenged instructions of 2013, which run contrary to their interest and have tried to escape its rigours by explaining in the replication that the same cannot be applied to them being on the subject of adhoc appointment and not on issue of seniority. This plea, to say the least, is misconceived. The claim of applicants that their regularization has to

be relating back to 2006, the cut off date in Uma Devi's case is also without any basis and cannot be accepted at all. Admittedly, it was only upon the directions of Hon'ble High Court that the respondents initiated process of regularization of services of applicants which culminated in 2014 only. The applicants became members of service in 2014 and as such their seniority cannot be related back to 2006 or initial date of their appointments. Moreover, in earlier round of litigations, this Tribunal, while allowing the employees to continue in service on adhoc basis, had specifically held that adhoc service shall not count for seniority etc.

10. In the wake of aforesaid discussion, this O.A turns out to be devoid of any merit and is dismissed accordingly, leaving the parties to bear their own costs.



**(SANJEEV KAUSHIK)
MEMBER (J)**

**(AJANTA DAYALAN)
MEMBER (A)**

Place: Chandigarh.
Dated: 04.12.2018

HC*