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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA NO. 1404/2003 &  
OA NO. 1409/2003

New Delhi, this the 12<sup>th</sup> day of December, 2003

HON'BLE MR. JUSTICE V.S.AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.A. SINGH, MEMBER (A)

OA NO. 1404/2003

Ashok Kumar,  
L.D.C., Deptt. of Archaeology  
Kashmere Gate,  
Govt. of NCT of Delhi,  
Delhi.

...Applicant

(By Advocate Shri S.C.Jain)

OA No. 1409/2003

Har Swaroop Singh,  
Directorate General Home Guards,  
Civil Defence, Raja Garden,  
New Delhi.

...Applicant

(By Advocate: S.C.Jain)

Versus

1. Lt. Governor of Delhi,  
through Secretary (Services),  
Govt. of N.C.T.,  
Delhi Government Secretariat,  
New Delhi.

2. Director,  
G.B.Pant Hospital,  
New Delhi.

...Respondents

(By Advocate: Shri Ajesh Luthra)

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Justice V.S.Aggarwal, Chairman -

Original Application Nos.1404/2003 and 1409/2003  
raise common questions of law and fact. They are,  
therefore, being disposed of by this common order. OA  
No.1404/2003 (Ashok Kumar v. Lt.Governor of Delhi and  
anr.) is taken as a leading case.

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OA No.1404/2003

2. Applicant (Ashok Kumar) is a Lower Division Clerk. By virtue of the present application, he seeks assignment of seniority in grade IV (Delhi Administration Subordinate Service, for short 'DASS') from the date of his ad hoc appointment as Telephone Operator i.e. from 2.1.1978 on basis of the decision of this Tribunal in the case of **Asa Ram v. Union of India** in OA No.3095/1991 dated 27.11.1992.

3. To appreciate the question that arises for consideration, it would be appropriate to mention the back-drop of the facts which resulted in filing of the present application.

4. One Asa Ram was working as a Lower Division Clerk in the Directorate of Employment, Delhi Administration. He had challenged the action of the respondents in not taking into account the period of service from 4.5.1976 to 30.7.1985 rendered by him in Grade IV of DASS as a Telephone Operator on ad hoc basis for the purpose of fixation of seniority. He filed OA No.3095/91 which was decided by this Tribunal on 27.11.1992. This Tribunal had disposed of the application giving him the benefit of the said service rendered by him continuously on ad hoc basis. The

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operative part of the order reads:-

"In the facts and circumstances of the case, we hold that the applicant is entitled to succeed and the respondents are directed to revise the seniority list of the Telephone Operators after taking into account the continuous uninterrupted ad hoc service rendered by him and those similarly situated, till the time of regularisation and finalise the same after hearing all the representations. These orders shall be implemented expeditiously and preferably within a period of three months from the date of receipt of this order"

5. The present applicant had also filed OA No.362/1994. He also had been appointed as Class-IV (DASS). He was promoted as Telephone Operator in Class-III on ad hoc basis and he claimed the same relief as had been granted in the case of Asa Ram (supra). This Tribunal had granted the same relief with respect to his right to be considered for promotion and the seniority. The Original Application referred to above was disposed of on 1.12.1998 and the operative part of the same reads:-

"6. As regards the assignment of seniority w.e.f. the date of appointment as Telephone Operators on their appointment/ absorption in Grade-IV(DASS), respondents in their reply state that applicants were appointed as Telephone Operators on ad hoc basis, without the approval of the competent authority, and hence those appointments themselves are ab initio void. However, Shri Jain has relied upon the Tribunal's order dated 27.11.1992 in OA 3095/91 Shri Asa Ram vs. UOI wherein respondents had been directed to revise the seniority list of the Telephone



Operators after taking into account the continuous uninterrupted ad hoc service rendered by that applicant, and those similarly situated till the time of regularisation, and finalise the same after hearing all the representations. Shri Jain asserts that the aforesaid order fully covers the present cases. It is true that nothing has been shown to us to establish that the aforesaid judgement in Asa Ram's case (supra) has been stayed, modified or set aside but since that judgement was delivered, the law on the point of counting of ad hoc service towards seniority has developed considerably in the light of various pronouncements of the Hon'ble Supreme Court.

7. In the result these OAs succeed and are allowed to that extent that respondents are directed to consider the cases of the applicants for appointment/absorption in Grade-IV (DASS) w.e.f. the dates their immediate juniors were so appointed/absorbed with consequential benefits. In so far as their prayer for assignment of seniority w.e.f. the date of appointment as Telephone Operator is concerned respondents shall examine the prayer, in accordance with rules, instructions and judicial pronouncements on the subject, including Asa Ram's case (supra), to the extent that the same is applicable to the facts and circumstances of this present case, as well as recent Hon'ble Supreme Court's judgements and thereafter pass detailed speaking and reasoned orders in respect of the claims of each of the applicants within a period of four months from the date of receipt of a copy of this order."

An order thereafter had been passed by the respondents which prompted the applicant to file OA No.634/2002, but since the case of Asa Ram (supra) had not been considered, the matter was remitted for passing a fresh order.

6. It is in pursuance of the subsequent decision



of this Tribunal dated 18.9.2002 in OA No. 634/2002 that the impugned order dated 12.3.2003 had been passed. The respondents rejected the claim of the applicant holding that G.B.Pant Hospital authorities which made the ad hoc appointment to the post of Telephone Operator, a post of Grade IV (DASS) were not competent to make any ad hoc appointment and, therefore, the applicant did not have a right for regularisation. It was felt that the judgement in the case of Asa Ram (supra) was a judgement in personam and cannot be treated as a judgment in rem.

7. The applicant's grievance is that like the case of Asa Ram (supra), the applicant is entitled to the same relief. He should be treated at par with the case of Asa Ram and the benefit of seniority should accrue to him.

8. The application has been contested. The respondents contend that in the earlier application filed by the applicant, this Tribunal had directed the respondents to examine the matter of the applicant in accordance with the rules, instructions and judicial pronouncements. This Tribunal had directed to absorb the applicant from the date his juniors were appointed. There could not have been any other date from which the applicant could have been assigned the seniority because the assignment of seniority cannot precede the date of appointment/absorption to the grade or the

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posts. It was reiterated that G.B.Pant authorities which made the ad hoc appointments to the post of Telephone Operators were not competent to make any appointment which is void and, therefore, no benefit should accrue to him.

9. We have heard the parties' learned counsel.

10. The learned counsel for the applicant had contended that the claim of the applicant is identical to that of Asa Ram (supra) to which we have made a reference and, therefore, his ad hoc service as Telephone Operator must be counted and seniority assigned with consequential benefits. He particularly referred to the fact that this Tribunal had made it clear that the benefit must be given to those similarly situated persons. On the contrary, the respondents' plea was that the applicant cannot take advantage of the decision in the case of Asa Ram (supra) because it was a decision rendered between the parties and this Tribunal had clearly concluded that law had undergone a change and, therefore, the matter had to be re-examined which they have done in the facts of the case.

11. At the outset, we deem it necessary to mention that normally when a decision is rendered by this Tribunal and a direction is given, the same cannot be questioned by a coordinate Bench. However, if the coordinate Bench differs, the matter can be referred to a Larger Bench.

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12. Predicament herein is that while in the case of Asa Ram (supra), this Tribunal categorically stated that the benefit should be given to similarly situated persons and the applicant is similarly situated as Asa Ram. Still in the earlier original application filed by the applicant, this Tribunal directed that since the law had undergone a change, the matter should be considered in the light of the decisions of the Supreme Court and also that of Asa Ram (supra).

13. Can in the facts of the case it be stated that the decision in the case of Asa Ram (supra) could be ignored? It has to be remembered that the decisions in the case of Asa Ram as well as in OA No.362/1994 which was earlier filed by the applicant were passed by this Tribunal who was competent to pass the appropriate orders.

14. This Tribunal in the judgment rendered between the parties had directed that the matter of seniority pertaining to the applicant has to be re-examined in accordance with the rules, instructions and judicial pronouncements including the case of Asa Ram (supra). Once this Tribunal had directed the matter to be re-examined in light of the rules, instructions and judicial pronouncements, the respondents were justified in taking shelter and contending that the appointment of the applicant was dehors the rules. The judgement earlier rendered by this

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Tribunal between the parties also had become final and resultantly, it becomes necessary for us to re-consider if the said contention of the respondents can be looked into or not.

15. In the case of **Chief of Naval Staff and another v. G.Gopala Krishna Pillai and Others**, 1996 (1) SLR 631, the Supreme Court held that initial appointment on ad hoc basis if not made following the procedure laid down by the rules is followed by regular appointment then the period spent on ad hoc appointment cannot be counted towards seniority. The decision rendered by the Supreme Court in the case of **Direct Recruits Class II Engineering Officer's Associations and others v. State of Maharashtra and others**, 1990 (2) SLR 769 even had been considered. It was held that once the initial appointment was not made following the procedure laid down by the rules, the applicant could not take advantage of the decision rendered by the Supreme Court in the case of **Direct Recruits Class II Engineering Officer's Associations (supra)**. To the same effect is also the decision in the case of **State of Bihar and Others v. Kameshwar Prasad Singh and Another**, 2000 SCC (L&S) 845.

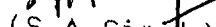
16. In the present case before us, it was not disputed that the authority which appointed the applicant on ad hoc basis was not competent to do so. It was not done by the appointing or cadre controlling

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authority. If some other authority appoints a person on ad hoc basis, in that event, the services so rendered cannot be counted for the purpose of seniority. That exactly had happened in the case of the applicant. Resultantly, he cannot claim seniority which has been rightly denied to him.

17. For these reasons, the present applications, namely OA Nos. 1404/2003 and 1409/2003 being without merit must fail and are dismissed. No costs.

  
(S.A. Singh)  
Member (A)

(V.S. Aggarwal)  
Chairman

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