

Union of India and Others

Vs

Ansusekhar Guin and Others

S. N. Aiyar and Another

Vs

Union of India and Others

Civil Appeals Nos. 4184 And 4185 of 1988

(Rangath Misra, M. N. Vankatachaliah JJ)

29.11.1988

JUDGMENT

RANGANATH MISRA, J. –

1. Special leave granted in both the applications.
2. Union of India, the Director-General of All India Radio and the Union Public Service Commission are appellants in one appeal and two officers belonging to the cadre of Assistant Station Engineers in the All India Radio are the appellants in the other. Both the appeals are directed against the decision of the Administrative Tribunal, New Delhi Bench dated January 23, 1987.
3. Twenty-six officers belonging to the cadre of Assistant Station Engineers or holders of other equivalent posts in the All India Radio had applied to the Delhi High Court challenging the inter se seniority list published on April 30, 1977, and asked for a direction for preparation of a fresh seniority list taking into consideration the length of regular service. There was also a prayer for a direction that the Recruitment Rules of 1972 should be deemed to have applied to all persons recruited or appointed after September 30, 1972 and inter se seniority of appointees subsequent to September 30, 1972 should be regulated by Rules. The writ petition was transferred to the Administrative Tribunal under Section 29 of the Administrative Tribunal Act, 1985.
4. The post of Assistant Station Engineers ('ASE' for short) is one of the juniormost class I posts in the Engineering Wing of the services under the All India Radio. Up to 1952 there were no rules for recruitment and appointments were cent per cent promotional from the lower cadre of Assistant Engineers. On December 5, 1962, recruitment rules were finalised by the Union Public Service Commission providing 25 per cent for direct recruitment and 75 per cent of promotional appointments, but the same were never brought into force as the reorganisation of the Engineering cadre was in contemplation. The matter was again examined and fresh recruitment rules were notified on September 30, 1972, now providing 60 per cent direct recruitment and 40 per cent confined to promotional avenues. During and 10 year period between 1962 and 1972, in the absence of recruitment rules the proportion of recruitment was being debated. It may be stated that within these 10 years 93 direct recruits were appointed being 14 in 1964, 25 in 1969, 29 in 1970 and 27 in

1971. During this period there were 345 promotees. The Tribunal examined the matter at considerable length and came to hold that it would be 'equitable dispensation of justice to fix the inter se seniority between the direct recruits and the promotees on the basis of length of continuous service followed by regular appointment to that grade. Where a part of such continuous service in the grade followed by regular appointment was of ad hoc or temporary nature and even in excess of the quota fixed, that period of service would also count for seniority subject, however, to the only condition that service would be (sic) that the appointment has been made on the basis of a regularly constituted selecting body and was not fortuitous nor out of turn.'

5. We have heard learned counsel for the parties and are of the view that in the facts and circumstances appearing in the case the guideline indicated by the Tribunal is fully justified. We may now proceed on the footing that there were no rules in force prior to 1972 and we see no justification to accept the stand taken before us to the contrary. Counting continuous length of service for fixation of seniority is a well accepted rule when the service rule does not prescribe a mode of fixing inter se seniority. The test adopted by the Tribunal appears to be just and we do not propose to interfere.

6. The appeals are accordingly dismissed and the direction made by the Administrative Tribunal shall now be implemented by the Union of India and its authorities within six months from today. There shall be no order as to costs.

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