

Chief of Naval Staff and Another

Vs

G. Gopalakrishna Pillai and Others

Civil Appeal No. 11923 of 1995

(G. N. Ray, G. T. Nanavati JJ)

08.12.1995

ORDER

1. Leave granted.

2. Heard learned counsel for the parties. The short question which arises for consideration is whether or not the Central Administrative Tribunal by the impugned judgment dated 2-6-1994 passed in OA No. 1507 of 1993 has correctly decided the question of seniority of the respondent Shri G. Gopalakrishna Pillai. It is an admitted case that the said Shri Pillai was given ad hoc appointment to the post of storekeeper at Goa and while he had been continuing in such ad hoc appointment, he was regularised in the post of storekeeper. The Naval Department has given appropriate fitment in the scale of storekeeper to Shri Pillai after giving credit for the officiation in the said post but so far as the seniority to the cadre of storekeeper is concerned, the seniority has been given only from the date when he was regularised in the post of storekeeper. Shri Pillai felt aggrieved for not getting seniority by computing the period spent on ad hoc service as a storekeeper. Claiming seniority by reckoning ad hoc service, he made a representation to the Naval Department which was rejected.

3. Thereafter, the Central Administrative Tribunal was moved by the respondent contending inter alia that as he had been officiating on ad hoc basis in the post of storekeeper continuously till he was selected and regularly appointed to the post of storekeeper, the entire period of continuous officiation would enure to his benefit for the purpose of fixing seniority in the cadre of storekeeper. Such contention has been accepted by the Central Administrative Tribunal by the impugned order. It has been directed that Shri Pillai should be given seniority to the post of storekeeper from the date he started officiating in the said post and all consequential benefits flowing from such seniority should also be given to him.

4. The learned Senior Counsel appearing for the appellant has submitted before us that ad hoc appointment to the said post of storekeeper had been given to the respondent by clearly indicating in the orders of ad hoc appointment that such appointment on ad hoc basis would not confer any right to claim seniority in the said post. That apart, law is well settled that in the absence of any specific rule of service by which a person holding an ad hoc post will be entitled to get seniority to the said post if he is later on selected on a regular basis to the post, the holder of ad hoc post is not entitled to claim seniority on the basis of ad hoc service. In support of such contention reliance has been made to a decision of this Court in Union of India v. S. K. Sharma. It has been held in the said decision that ad hoc service cannot be counted for determining seniority. In the said decision, the earlier decision of the Constitution Bench of this Court in Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra has also been referred to and relied on.

5. The learned counsel for the respondent engaged by the Supreme Court Legal Aid Committee, has, however, submitted that it is an admitted position in this case that Shri Pillai has been regularly selected to the post of storekeeper and appointed to such post. Prior to such selection and appointment to the post of storekeeper on regular basis, Shri Pillai had continuously officiated in the post of storekeeper on the basis of ad hoc appointment given to him. If an employee is ultimately selected on a regular basis to a post in which he had continuously officiated, then even if such employee had held the post only on ad hoc basis, he will be entitled to claim seniority from the date of ad hoc appointment. In support of such contention, the learned counsel has relied on a decision of this Court in *Union of India v. Ansusekhar Guin*. It, however, appears to us that in the said case, this Court has only reiterated the principle that if an employee had been appointed on ad hoc or temporary basis exceeding the quota fixed for such appointment such employee would be entitled to get the credit of continuous officiation in fixing seniority provided such ad hoc or temporary appointment had been made by a regularly constituted body for holding the selection of the candidates to be appointed. In the instant case, the respondent Shri Pillai was not selected by a regularly constituted selection body for giving ad hoc appointment to the post of storekeeper and on such selection he had continued in ad hoc service till regular appointment to such post was made. On the contrary, the case of Shri Pillai is that while he had been holding ad hoc post, he got selected on a regular basis to the said post of storekeeper. Hence, the decision relied on by the learned counsel for the respondent is not applicable in the facts and circumstances of this case. It also appears to us that the Tribunal in passing the impugned order has relied on Condition 'B' as referred to in the decision of the Constitution Bench in *Direct Recruit Class II Engineering Officers' Assn.* in support of the impugned order. In our view, the principle enunciated in the said case is not applicable in the facts of this case because the initial appointment of Shri Pillai by way of ad hoc arrangement was not made by following the procedure laid down by the Rules as referred to in Condition B in the said decision. Hence, the decision of the Tribunal cannot be sustained. We, therefore, allow this appeal and set aside the impugned order without however any order as to costs.