

R. K. Trivedi and Others

Vs

Union of India and Others

Writ Petition No. 1132 of 1986 with Civil Appeals Nos. 281 and 282 of 1997

(B. N. Kirpal, A. P. Mishra JJ)

09.12.1997

JUDGMENT

KIRPAL, J. –

1. The only question involved in the connected appeals relates to the seniority of the appellants, vis-a-vis, Respondents 6 to 11. The appellants and the said respondents were working as UDC/Stenographers with the Director General of Supplies and Disposals, New Delhi.

2. The next higher post to which these persons could have been promoted to was that of Junior Progress Officers in the said Department. For recruitment to the said post statutory rules under proviso to Article 309 had been formulated in the year 1963. These Rules were amended on 14-7-1976 and as a result thereof the post of Junior Progress Officer was shown to be a selection post which was to be filled after a written competitive examination.

3. On 22-1-1980, a circular was issued inviting applications for preparation of panel of candidates for appointment as Junior Progress Officers on ad hoc basis. In this circular it was stated that the Department had taken steps to amend the existing Recruitment Rules so that the officials working at Headquarters and in the Regional Offices also became eligible for being considered for appointment to the post of Junior Progress Officers. Pending the consideration of this amendment this circular invited applications for appointment as JPOs only on ad hoc basis stating therein that it had been decided not to hold any test but the appointment would be made on the basis of length of service in the grade of UDC/Stenographers subject to fitness. It appears that Respondents 6 to 11 had applied and vide letter dated 27-2-1980 Respondent 6 was appointed as a Junior Progress Officer purely on ad hoc basis. This letter of appointment specifically states as follows :

"It is made clear to the said official that his promotion as JPO on ad hoc basis will not bestow on him any claim for regular appointment in the grade and that service to be rendered on ad hoc basis will not count for the purpose of seniority in the grade and for eligibility for promotion to the next higher grade."

The other respondents were appointed in similar manner subsequently.

4. The Rules were amended vide notification dated 31-8-1982. It is pertinent to note that the amendment did not bring about a change with regard to mode of selection which remained the same, namely, on the basis of the merit attained in the written test. In order to make regular appointment a circular was issued on 10-3-1983 inviting applications from the eligible candidates to take part in the written test. In this circular it was specifically stated that those Junior Progress Officers who

were already working on ad hoc basis may also apply for competing in the examination for the purpose of appointment to the regular post.

5. Not wanting to take the written test the said Respondents 6 to 11 filed a writ petition in the Calcutta High Court challenging the proposal of holding the test. No interim orders being passed, the test was held and the appellants were declared successful therein. It may also be mentioned that two of the original writ petitioners also took part in the test and were selected and appointed on regular basis. All these appointments were made on 23-8-1984. The other respondents who had not taken the examination, however, continued on ad hoc basis. The writ petition was transferred to the Central Administrative Tribunal which vide its judgment dated 22-5-1986 came to the conclusion that as Respondents 6 to 11 had worked as Junior Progress Officers for a number of years, therefore, they should be treated as having been regularly appointed with effect from the date of their ad hoc appointment.

6. In our opinion, the decision of the Central Administrative Tribunal at least insofar as it has restored the seniority of Respondents 6 to 11 with effect from the date they were appointed on ad hoc capacity, cannot be sustained.

7. At the time when appointments were made on ad hoc basis pursuant to their circular dated 22-1-1980 and by circular dated 26-8-1981 it was clearly stated that the appointments would be on ad hoc basis and the incumbents would have no right to claim seniority or even regularisation. Advisedly, two of the said respondents took the competitive test and were selected. According to the Rules of 1982, whose validity has been upheld, the selection on regular basis can only be on the basis of merit secured in the competitive examination. That seniority cannot be altered. At the time when the appointments were made on ad hoc basis, as well as when regular selections were made, statutory rules framed under proviso to Article 309 were in existence. The Rules after amendment in 1976 did not undergo any change with the 1982 Amendment insofar as it was concerned with the requirement of the eligible candidates passing the competitive test. No one could be appointed on regular basis without passing that examination and it is for this reason that when the examination was held the circular of 10-3-1983 specifically advised the ad hoc JPOs to apply for the written test so that they could be appointed on regular basis. The decision of the Tribunal clearly runs counter to the statutory rules and this is not permissible. When the statutory rules provide a particular mode by which a selection can be made, the Tribunal could not in law have directed that the essential mode which was required to be followed could be given a go-by as far as Respondents 6 to 11 were concerned.

8. In our opinion, the Government was right in considering Respondents 6 to 11 to continue to be JPOs on ad hoc basis till they qualify and could be regularly appointed as JPOs. The result of this would be that Respondents 6 to 11 cannot claim seniority over the appellants herein who were entitled to seniority on the basis of the merit position obtained by them in the competitive examination.

9. During the pendency of these proceedings Respondent 10 has unfortunately expired. As far as Respondent 6, S. K. Roy, Respondent 7, S. Srinivasa Rao and Respondent 9, A. Sunderachari are concerned they have superannuated. Only Respondent 8, A. B. Ghosh and Respondent 11, A. K. Das continue to remain in service. Of these, Respondent 11 is scheduled to superannuate on 31-1-1998, thus leaving Respondent 8, A. B. Ghosh to continue in service thereafter. As we have already seen the Government had treated him as JPO on ad hoc basis. That decision cannot be faulted. But he cannot claim seniority over any of the other regularly-appointed JPOs.

10. For the reasons mentioned above these appeals are allowed. The judgment of the Tribunal is set aside, the effect of which could be that the OA filed by Respondents 6 to 11 stands dismissed. In view of this decision no further order need be passed in the writ petition and the same stands disposed of. There will be no order as to costs.