

P. K. Singh

Vs

Bool Chand Chablani and Others

Civil Appeals Nos. 15372 and 15373 of 1996

(G. B. Pattanaik, S. P. Kurdukar JJ)

01.04.1998

ORDER

Civil Appeals No. 15372 of 1996

1. This appeal is directed against the order of the Central Administrative Tribunal, Calcutta Bench dated 23-9-1993, passed in OA No. 8 of 1992 and OA No. 9 of 1992. Special leave was rejected as against OA No. 8 of 1992, but had been granted as against order in OA No. 9 of 1992. The question for consideration in this appeal is whether the service rendered by Respondents 3 to 9 on ad hoc basis prior to their regularisation by letter dated 25-10-1984 can at all be taken into account for determining their seniority in the rank of Assistant Engineer. It is not disputed that in exercise of the power conferred under Article 309 of the Constitution, the President has framed a set of Rules called "Andaman & Nicobar (PWD) Group A and Group B Posts Recruitment Rules, 1980" (hereinafter referred to as "the Rules"). Respondents 3 to 7 had been promoted on ad hoc basis to continue as Assistant Engineer. A Departmental Promotion Committee considered the case of regular promotion on 30-8-1982, but the said Committee found that unless and until the reserved posts are dereserved, no regular promotion can be given to the said respondents. The Departmental Promotion Committee, however, recommended that after getting the reserved posts dereserved, the ad hoc promotion of three persons, which includes Respondents 3 and 4, could be regularised from the date of sanction of dereservation. The then Chief Commissioner, who was the appointing authority, also approved the aforesaid recommendation, but no order of regularisation or by way of fresh appointment had been issued in favour of Respondents 3 and 4. The Lt. Governor of Andaman & Nicobar Administration passed an order on 3-9-1984 dereserving the post of Assistant Engineer (Civil) at Roster Points 1, 4, 8, 14, 17 and 22 and directed filling up of the said post by general candidates by promotion from the feeder cadre of Junior Engineer with immediate effect. Notwithstanding the aforesaid order, the Government did not issue any order in favour of Respondents 3 and 4. A fresh Departmental Promotion Committee considered the case of promotion on 18-10-1984 and recommended the case of Respondents 3 to 7 for being promoted. Thereafter, the Administration by its order dated 25-10-1984 promoted Respondents 3 to 7 with effect from 18-10-1984 to the post of Assistant Engineer. The appellant was appointed to the post of Assistant Engineer on 17-9-1984. In the draft seniority list published in 1987, the promotee respondents were shown junior to the appellant. The same position also emerged in the final seniority list that was published in 1989. Even on 22-1-1991, when the Department sought for some clarifications, that was also rejected. Being aggrieved by the aforesaid seniority list, the promotee respondents filed the application before the Tribunal and the Tribunal by the impugned judgment having come to the conclusion that with the order of dereservation the promotees should be deemed to have been regularised with effect from their initial appointment on ad hoc basis, allowed the original application. Hence the present appeal.

2. Learned counsel for the appellant contends that since the promotion of Respondents 3 to 7 on ad hoc basis was not in accordance with the Rules and de hors the Rules and they were promoted on regular basis only with effect from 18-10-1984, the Tribunal was wholly in error in directing that the ad hoc period shall be reckoned for the purpose of determining the seniority of Respondents 3 to 7. We find sufficient force in the aforesaid contention. Mr. Rakesh Dwivedi, learned Senior Counsel appearing for the respondents, is also not in a position to support the aforesaid contention of the Tribunal. It is well settled that when ad hoc appointment is made de hors the Rules, the said appointment would not enure to the benefit of the appointee for the purpose of determining the seniority in the cadre. Mr. Dwivedi, however, contended that, since Respondents 3 and 4 were selected by the Departmental Promotion Committee in its meeting dated 30-10-1982 and that recommendation of the Committee was approved by the Chief Commissioner and ultimately the Lt. Governor sanctioned dereservation and directed that the dereserved post be filled up immediately by promotion from the feeder cadre, there is no justification for denying at least Respondents 3 and 4 for counting their services with effect from 4-9-1984 for the purpose of seniority in the cadre. According to Mr. Dwivedi, the appointment letter that was issued is merely a clerical act and the order of the Lt. Governor should be held to be an order in exercise of the power of relaxation under Section 6 of the Rules and, therefore, the continuance of Respondents 3 and 4 at least with effect from 4-9-1984 has to be counted for the purpose of their seniority in the cadre of Assistant Engineer. Learned counsel for the appellant, however, submits that neither is there any specific order of regularisation with effect from 4-9-1984 nor does the appointment order that was issued on 25-10-1984 indicate to that effect. He further urges that the appointment order dated 25-10-1984 has to be construed to be fresh appointment giving it retrospective effect with effect from 18-10-1984, and therefore no period prior to the said appointment can be taken into account for consideration to decide the seniority of Respondents 3 to 7 in the cadre of Assistant Engineer. Having considered the relevant provisions of the Rules as well as the relevant documents available on record, it is difficult for us to accept the contention of Mr. Dwivedi, learned Senior Counsel appearing for Respondents 3 and 4. It is no doubt true that the Lt. Governor had accepted the recommendation for dereservation and directed immediate appointment to be made by promotion from the feeder cadre. But until and unless any order emanated pursuant to that order, it will be difficult for us to hold that in fact Respondents 3 and 4 shall be deemed to have been in regular appointment with effect from 4-9-1984, the date on which the order of dereservation had been made.

3. In this view of the matter, the contention of Mr. Dwivedi cannot be sustained. In view of our earlier conclusion that the ad hoc appointment prior to the order dated 25-10-1984 cannot be taken into account for determining the seniority of Respondents 3 to 7 in the cadre of Assistant Engineer, the impugned order of the Tribunal cannot be sustained. We accordingly set aside the said order and allow this appeal. No costs.

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4. Nobody appears for the Union of India in this matter.

5. In view of our decision in Civil Appeal No. 15372 of 1996, this appeal is also allowed. No costs.