

SUPREME COURT OF INDIA

Ch. Narayana Rao

Vs.

Union of India

C.A.No.7903 of 2010

(Deepak Verma and Dalveer Bhandari JJ.)

10.09.2010

JUDGEMENT

Deepak Verma J:-

1. Leave granted.
2. The continual riven for seniority with regard to ad-hoc service rendered by the Appellant from the year 1981 till his regularisation in the year 1992 is required to be adjudicated in this Appeal by this Court. Further, we are called upon to consider whether the Appellant can be treated as Regular Stenographer (OG - Ordinary Grade) from the year 1981 itself.
3. This appeal arises from the judgment and order dated 19.02.2007 passed by Division Bench of the High Court of Judicature, Chhattisgarh at Bilaspur, in Appellant's Writ Petition No. 388 of 2002, wherein and whereunder he had challenged the order of the Central Administrative Tribunal, Principal Bench, Delhi, (hereinafter shall be referred to as 'Tribunal') passed in O.A. No. 413 of 1999 dated 02.07.2001.

“By the order of the Tribunal, the Appellant's Original Application filed by him claiming seniority for the period he had worked on ad-hoc basis till his regularisation was rejected. The order of the Tribunal has been affirmed by the Division Bench of the High Court by dismissing the Appellant's Writ Petition vide the impugned judgment. Hence, this appeal.”

4. Factual matrix of the case lies in narrow compass:- Appellant was appointed on 26.11.1981 on the post of Stenographer (OG). His appointment was against a temporary vacancy of stenographer, with the following rider:

“His appointment is purely on an ad-hoc and temporary basis and his services may be terminated any time without assigning any reasons.”

5. Thus, his letter of appointment clearly stipulated that it was not only ad-hoc but temporary too, terminable at any time without assigning any reasons.

“However, he continued in service, but after few years, an apprehension arose in the mind of the Appellant and other similarly situated stenographers that their services may be terminated. Thus, the Appellant and others were constrained to approach the Jabalpur Bench of the Tribunal by filing Original Application, claiming that the Respondent be restrained from terminating their services and they be regularised. Tribunal vide its order dated 23.10.1989 directed that the services of the Appellant and other similarly situated stenographers, be not terminated, instead they be regularised subject to qualifying requisite test. The operative part of the order of the Tribunal is reproduced hereinbelow:- "The Government may examine and review the position as whether it is possible to regularize the services of these petitioners by relaxing the rule requiring their recruitment through the Staff Selection Commission. If it is not considered feasible by the Government, then we direct that the petitioners should be continued in service and the respondents are restrained from terminating their services but two opportunities be given to the petitioners to attain proficiency in Stenography and clear the test with the requisite standard of speed in shorthand etc. before their regularisation.

In other words their appointments as stenographers will be treated as officiating appointment although not confirmed but also not ad-hoc pending such a regularisation.”

6. It is clear from a reading of the aforesaid direction that the Respondents were restrained from terminating the services of the Appellant and two opportunities were directed to be given to the Appellant to clear proficiency test so that he becomes entitled for regularisation. On the strength of the said order of Tribunal, his services were not terminated and he continued in employment with the Respondents.

7. He, thereafter, qualified the proficiency test in Stenography conducted by the Staff Selection Commission in 1992. Thus, he was regularised with effect from 12.04.1992, the date on which he was declared successful in the test. 50% of his past service was also ordered to be counted for the purpose of computation of pensionary benefits.

8. Aggrieved, Appellant submitted his representation with the Chief Commissioner of Income Tax, Bhopal on 06.08.1993 praying for regularisation of service from the date of his initial appointment and treating his full ad-hoc service as qualifying service for the purpose of pensionary benefits.

“Since, no fruitful results came forth on the Appellant's representation, he along with another employee, similarly situated, was constrained to file another O.A. No. 413 of 1999 before the Principal Bench of the Tribunal at Delhi which came to be allowed

on 11.10.1999. It appears that while the said O.A. was heard, the counsel for Respondents had remained absent. Thus, the order came to be passed ex-parte.”

9. The Department, therefore, filed M.A. No. 593 of 2000 in the aforesaid O.A. before the same bench of the Tribunal praying for the grant of opportunity to them to contest the proceedings and for recall of the order dated 11.10.1999. The said M.A. was allowed by the Tribunal on 04.01.2001 and the parties were directed to appear before the Tribunal on 07.03.2001 for re-hearing of the Appellant's Original Application. That is how the matter was heard again by the Tribunal. The Tribunal passed its order on 02.07.2001, dismissing the Appellant's Original Application. It was this order of the Tribunal which was challenged by the Appellant before the Division Bench of the High Court by filing a Writ Petition, but that too met with the fate of dismissal.

10. The contention of the respondents from the very beginning had been that the Appellant was one among several persons who were appointed as stenographers (OG) on purely temporary and ad-hoc basis. However, they were given their regular appointment as stenographers (OG) in the department only from the date of passing the qualifying test with approval by the Staff Selection Commission. All those who had been appointed alongwith Appellant were treated alike and were given their regular appointment only from the date of their passing the requisite test. Thus, no case of discrimination was made out by the Appellant as likes were treated alike.

11. They have also contended that the observations made by Jabalpur Bench of the Tribunal in the Appellant's first O.A., could at best be treated as obiter as the question before the Bench was only with regard to grant of injunction in favour of the Appellant so that the services could not be terminated. Thus, any observations made by the said Bench would not have a binding effect. Even otherwise, it has been contended that the first order of the Tribunal clearly stipulated that at the first instance the Respondents were restrained from terminating the services of the Appellant and the Appellant was given opportunity to appear in the test twice to qualify for the appointment on regular basis. It has also been contended that passing of the requisite examination was condition precedent for appointment on regular basis as per the Income Tax Department (Group C Recruitment Rules, 1990), to be approved by the Staff Selection Commission and there could not have been any deviation therefrom. Unless the Appellant had successfully cleared the said test he could not have been granted the benefits sought by him. As soon as he cleared the said test, he was regularised from the date of his passing the examination, that is on 12.04.1992. In other words, the Respondents have contended that the Appellant alone cannot be extended the benefit of regularisation of counting his service from the date of his initial appointment, which was not only temporary but was ad-hoc also, as the same may amount to hostile discrimination with other Stenographers who are similarly situated. They have, therefore, contended that the Tribunal and the High Court have taken a correct legal view of the matter, which calls for no interference and appeal deserves to be dismissed.

12. We have, accordingly, heard Mr. Sushil Kumar Jain and Mr. Puneet Jain, advocates for the appellant and Mr. B.S. Chahar, Senior Advocate with Mrs. B. Sunita Rao and Mr. Mohd. Mannan for respondents at length and perused the records.

13. The said question, as has been projected above, should not detain us long as the same has been considered in the matter of *Direct Recruit Class II Engineering Officers*¹ by a Constitution Bench of this Court. After eloquent discussion with regard to inter se seniority of direct recruits and promotees, the same has been summed up in para 47. The relevant portion of the said para applicable to the facts of this Appeal is reproduced hereinbelow:-

“47. To sum up, we hold that:- (A)Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.”

14. On the strength of the aforesaid Constitution Bench Judgment, Mr. Sushil Kumar Jain strenuously submitted before us that clause (B) thereof should be invoked for the purpose of grant of seniority to the Appellant.

15. We have minutely examined the same but are unable to accept the said contention as according to us corollary of clause (A) of para 47 of the aforesaid judgment would be applicable to the Appellant's case. It cannot be disputed that the initial appointment of the Appellant was only ad-hoc and for a temporary period and was also not in accordance with the Rules of 1990 as he did not appear in the requisite test, which is conducted by Staff Selection Commission, before his appointment. The same was only a stop-gap arrangement. Therefore, his officiation on such a post cannot be taken into account for considering the seniority. Thus, in our considered opinion neither clause (A) nor clause (B), as reproduced hereinabove, would be applicable to the Appellant's case and he cannot draw any advantages therefrom.

“On the other hand, he would be squarely covered by the corollary appended to clause (A).”

16. This judgment of Constitution Bench in Direct Recruit's case (supra) has been followed by three learned Judges of this Court in the case of State of West Bengal and SCC 371,

authored by most illustrious learned Judge of this Court - Hon'ble Mr. Justice J.S. Verma (as he then was).

“After considering the scope and ratio decidendi of Direct Recruit's case (supra), it has been held in paras 24 and 25 in lucid and concise words as under:- "24. The question, therefore, is of the category which would be covered by conclusion (B) excluding therefrom the cases covered by the corollary in conclusion (A).

In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, `if the initial appointment is not made by following the procedure laid down by the `rules' and the latter expression `till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stopgap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A).”

17. According to us, corollary appended to clause (A) of Direct Recruit's case (supra) and the aforesaid judgment in Aghore Nath Dey's case squarely decide the issue.

18. Reliance has also been placed by *Mr. Sushil Kumar Jain on yet another Constitution Bench Judgment of this Court*² titled Rudra Kumar Sain and terminology used in the case of O.P. Singla and another etc. namely, "Ad-hoc", "fortuitous" and "stop-gap". However, we are not required to consider the same as it has already been dealt with in Aghore Nath's case (supra) elaborately.

19. In Singla's case (supra), the question was with regard to seniority and promotion amongst direct recruits and promotees. The said question is not directly in issue in this case. To the same effect is yet another earlier judgment of this Court³ titled Narender dealt only with the aforesaid requirement.

20. In Narender Chadha's Case, benefit was directed to be granted to those Appellants as they were working on the said posts for more than 15 to 20 years, which is not the case in the present appeal. Apart from the above, admittedly the Appellant had not cleared the requisite examination/proficiency test as required under the Rules of 1990, as soon as he cleared the examination/proficiency test, he was regularised on the post. His regularisation from the date of initial appointment was impermissible and was rightly denied to him.

21. The view which has been taken by us hereinabove finds favour from a recent judgment of this Court reported in Perusal of the said judgment shows that the cases on which we have placed reliance have also been fully relied upon by learned two Judges of this Court while dealing with the said case. Succinctly, it has been held in paragraph 25 and 27 as under :

“25. It is, however, also well settled that where the initial appointment is only ad-hoc, not according to rules and made as a stop-gap arrangement, the period of officiation in such post cannot be taken into account for considering the seniority.

26.

27. When an ad-hoc appointment is made, the same must be done in terms of the rules for all purposes. If the mandatory provisions of the rules had not been complied with, in terms of *Direct Recruit Class II Engineering Officers*⁴, the period shall not be taken into consideration for the purpose of reckoning seniority. Furthermore, it is one thing to say that an appointment is made on an ad-hoc basis but it is another thing to say that inter se seniority would be determined on the basis laid down in another rule.”

22. We are, therefore, fortified in our reasoning as adopted in the aforesaid Appeal.

23. Thus, looking to the matter from all angles, we are of the considered view that no relief can be granted to the Appellant.

“His seniority has been correctly worked out only from the date he had passed the Stenography Test as contemplated under the Rules approved by Staff Selection Commission.”

24. Thus, the appeal being devoid of any merit and substance is hereby dismissed but with no order to costs.

¹(1990) 2 SCC 715

²(2000) 8 SCC 25

³(1986) 2 SCC 157

⁴(1990) 2 SCC 715