
(1990) 11 SC CK 0060

In the Supreme Court Of India

Case No : Civil Appeal No. 5317 of 1990 (Arising out of S.L.P. (Civil) No. 755 of 1989)

Rajbir Singh and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 12-11-1990

Acts Referred:

Citation : AIR 1991 SC 518 : (1991) LabIC 488 : (1991) 2 SCC 272 Supp

Hon'ble Judges : K. Ramaswamy, J;B. C. Ray, J

Bench : Division Bench

Final Decision : allowed

Judgement

1. Special Leave granted.

After hearing learned Counsels for both the parties and considering the facts and circumstances of the case, we find that the findings arrived at by the Central Administrative Tribunal, Principal Bench, New Delhi, are not in accordance with law. We are unable to uphold the order of the Central Administrative Tribunal, New Delhi for the reasons given here in under :

(a) The appellants were appointed in 1971 in class IV posts and they were promoted in the grade of Rs. 192-232 in 1975 and was further promoted to class III post after holding selection tests and finding them suitable for the promoted posts. They have been working all along since their promotion as members of the class III service since 1975. On 26-9-1986 the services of the appellants were regularized and in determining their seniority the entire period of ad hoc service since 1975 was not taken into consideration. It has been alleged that a number of juniors to the appellants were given seniority taking into consideration that their ad hoc period of service and as a result they became senior Clerks and Head clerks. The order of seniority has been challenged before the Central Administrative Tribunal and the Tribunal relying upon the decision in Ashok Gulati v. B.S.Jain , held that the ad hoc service in the promoted posts of class III

cannot be taken into account in determining the seniority of these appellants. It has been further held that the fact that the applicants who were officiating on local ad hoc basis were selected and regularized cannot give them any benefit of seniority from the date of their ad hoc promotions. In that view of the matter, the Tribunal rejected the contention of the learned Counsel for the applicants and upheld the order of seniority as made by the Railway Authorities. It is pertinent to note in this connection that there has been a specific allegation made by the appellants that juniors to them, similarly appointed and similarly circumstanced have been given their seniority taking into consideration the ad hoc period of service rendered by them and as such, they became senior clerks and Headclerks.

2. It is well settled by several decisions of this Court that an appointment against a purely temporary ad hoc or fortuitous post does not entitle the holder of the post to be a member of the service and as such, such fortuitous or ad hoc appointment does not entitle the holder of the post to get the benefit of the period of such ad hoc or fortuitous service. Nevertheless, if a person is appointed against a substantive vacancy and is subsequently promoted to continue on ad hoc basis to hold such posts for a number of years, then, in that case the appointment though made on ad hoc basis has to be taken into consideration in reckoning the seniority of the holder on that basis. In the instant case, there is no whisper on the part of the Railway Authorities that the appellants who are already member of the service by being appointed in class IV posts since 1971 and subsequently promoted in 1975 on ad hoc basis after holding regular tests and finding them qualified to be promoted and has actually been regularized and promoted in class III service and their services were subsequently regularized in the said posts in 1986. In such circumstances, it cannot be said that such ad hoc service for a period of about 11 years will not be taken into account in determining the seniority of the holders of the class III post, i.e., the appellants. It has also been clearly averred that in similar circumstances some of the juniors of the appellants who had been given seniority from the date of regularization and were allowed the benefit for the period of ad hoc promotion. Similar application was "filed before the Central Administrative Tribunal, New Delhi by Shri Chander Mohan Sharma and others being Regn. No. O.A. 989/ 86. It came up before the Principal Bench of the Central Administrative Tribunal, New Delhi and the Tribunal by their order directed that the seniority of the appellants as Clerks should be reckoned on the basis of their continuous officiation from 1983. It was also directed that on the basis of their revised seniority they should be considered for promotion to the next higher grade of Senior clerks from the date when their next juniors were considered. These averments have not at all been denied or controverted in any manner whatsoever by the affidavit in counter filed on behalf of the Railways by one V.M.Kutty, Divisional Personnel Officer (Special) in the Office of the Divisional Railway Manager, Northern Railway, New Delhi.

3. Considering all these facts and circumstances and also considering the well-settled decisions of this Court we are constrained to hold that the period of 11 years of ad hoc service has to be taken into consideration in determining the

seniority of these appellants. The decisions in Ashok Gulati and Others Vs. B.S. Jain and Others, referred to here before has no semblance of application to this case as the facts of that case are totally different from the facts of this case. It has been tried to be contended before us by the learned Counsel appearing on behalf of the respondent that since the employees who are likely to be affected by this judgment has not been impleaded, the relief should not be granted until and unless they are impleaded in this case. We are unable to find any merit of this submission for the simple reason that the question of law involved in this case whether a person appointed on a officiating basis to a substantive vacancy and working there for a considerable period of years is entitled to have his period of ad hoc service to be reckoned while being regularized in the promoted posts.

4. Considering all aspects of the matter we cannot but hold that the order of the Central Administrative Tribunal, Principal Bench, New Delhi dated 1-1-89 is without any merit and as such we set aside the order and direct the authorities concerned to consider the case of the appellants and to determine their seniority after taking into account the period of ad hoc service since the initial date of their promotions to Class III service till the date of regularization in 1986. The appeal is, thus, allowed. In the background of the facts and circumstances it is not deemed fit and proper to award any costs.