

(1994) 02 DEL CK 0077

In the Delhi High Court

Case No : Civil Writ Appeal No. 4314 of 1993

Ram Murti Sharma and Others

APPELLANT

Vs

Delhi Electric Supply Undertaking and Others

RESPONDENT

Date of Decision : 22-02-1994

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 30
Delhi Municipal Corporation Act, 1957 — Section 96
Punjab Service of Engineers (Class II) Public Works Department (Irrigation Branch)
Rules, 1941 — Rule 2, 4, 5

Citation : (1994) ILR Delhi 477

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : G.D. Gupta, Monica Puri, A.M. Singhvi, B.C. Pandey, Jayant Nath and A.K. Bansal, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present writ petition raises the question of counting the ad hoc service of the petitioners from the date of such appointments for purposes of determining the seniority. The other questions of law, which have also been raised, relate to the interpretation of Delhi Electric Supply Undertaking (D.M.C.) (Seniority) Regulations, 1968 (hereinafter referred to as "1968 Regulations"), with regard to quota for promotees and direct "recruits in the service and the operation of rotational rule. These questions have already been dealt with vide my separate judgment in Civil Writ Petition No. 3153/92 entitled Shri P. K. Thappar and others v. Delhi Electric Supply Undertaking and others ,(1) and it will not be necessary for me to re-state the same hi the present judgment. The main contention in that writ petition was that since the quota had collapsed and broken down, seniority could not be determined on the basis of quota and rota and the same became liable to be determined on the basis of continuous length of service.

(2) The petitioners were initially anointed as Inspectors/Operators. Petitioners I

to 4 were appointed as Inspectors and petitioner No. 5, was appointed as Operator. Later on, the petitioners 1 to 4 were promoted as Superintendents (Technical) and petitioner No. 5 was promoted as Assistant Controller and thereafter as Controller. The posts of Superintendent (Technical) and Controller are feeder posts for promotion to the higher post of Assistant Engineer (E/M). The petitioners were firstly promoted as Assistant Engineers on ad hoc basis on different dates and it is contended by them that the said promotions had in fact all the ingredients of regular promotion, in as much as the promotions were made against the regular vacancies falling in promotion quota and through a duly constituted Departmental Promotion Committee (for short D. P. C.) in respect of petitioners I to 4 wherein all the eligible candidates were considered and in the case of petitioner No. 5. the promotion was also made on ad hoc basis in 1981 and was extended from time to time. The promotion was made against regular vacancies falling in promotion quota and through a regularly constituted D. P. C. although petitioner No. 5 was adjusted subsequently in the quota of Controllers in a regular vacancy. The ad hoc promotions of the petitioners took place initially for a period of six months or till further orders and the relative details may be reproduced as follows :

Sl.	Name	Date of order	Date of -	No. appointment as
1.	Ram Murti Sharma, Petitioner No. 1	28-6-1982	30-6-1982	Adhoc Asstt. Engr.
2.	Lal Chand Wadhwa, Petitioner No. 2	17-8-1983	22-8-1983	
3.	Subhash Chander, Petitioner no. 3	-do-	22-8-1983	
4.	H.C. Verma, Petitioner no. 4	-do-	22-8-1983	
5.	S.K. Jain, Petitioner no. 5	12-3-1981	17-3-1981	

(3) The services of the petitioners were regularised on the recommendations of the D. P. C. in the meeting held on 2/3rd June, 1987. The said meeting of the Committee was presided over by a member of the Union Public Service Commission. Learned counsel for the petitioners has contended that although the petitioners were promoted on ad hoc basis, the promotions had all the characteristics of regular selection as they were duly selected by a properly constituted D. P. C. and in accordance with statutory Regulations. The appointments were made within their quota and against regular vacancies and the period of ad hoc service was continuous and uninterrupted. They are, accordingly, entitled to be regularised from the dates of their appointment, as indicated above. He has further argued that it was not necessary to consult U. P. S. C. or to seek its approval at the time, when initial selection on ad hoc basis was made. The petitioners are governed by the provisions of Recruitment Regulations for the post of Assistant Engineer (Electrical and Mechanical), 1980. The relevant provisions may be reproduced as under :

1. Name of Post Assistant Engineer (Electrical & Mechanical)
2. No. of posts 261
3. Classification Class-11
4. Scale of Pay Rg. 650-30-740-35-810-EB-880-40- 1000-EB-40-1200.
5. Whether selection post or non- Selection selection post.
7. Whether benefit of added years of No service admissible under rule 30 of the Central Civil Service (Pension) Rules, 1972.
8. Educational and other qualifications Essential : required for direct recruits (i) Degree in Electrical and Mechanical Engineering from a recognised University or equivalent. (ii) I year's professional experience

preferably in a large Electric Supply Undertaking. Note I: Qualification are relax able at the discretion of the Appointing Authority in case of candidate otherwise well qualified. Note H..... 10. Method of rectt. whether by direct 50 % by promotion failing which rectt. or by promotion or by dope by direct recruitment and 50 % by tat ion/transfer &. percentage of the direct recruitment. vacancies to be filled by various methods. 11. In case of rectt. by promotion Promotion ; doputat ion/transfer, grades from (1) 75 % of the promotion quota: which promotion/deputation/transfer (i) Superintendent (Tech) with 3 to be made. years regular service in the grade in the case of degree holder and 7 years regular service in the case of Diploma Holders. (ii) Failing (i) above. Superintendent (Tech) with 5 years regular service in. the grades of Superintendent (Technical) and Inspector combined together in the case of Degree Holders and 10 years regular service in the case of Diploma Holders. (Hi) Failing (i) and (ii) above, Inspector with 5 years regular service in the case of Degree holder and 10 years regular service in the grade in the case of Diploma holders. (Note) The service in the grade of Superintendent (Selection Grade) shall count towards qualifying service in the grade of Superintendent (Tech) for promotion. (b) 13 ?/o of the promotion quota : (i) Controllers with 3 years regular service in the grade in the case of Degree holders and 7 years regular service in the grade in the case of Diploma holders. (ii) Failing (i) above. Controller with 5 years regular service in the grade of Controller and Assistant Consulter combined together in the case of Degree holders and 10 years regular service in the case of Diploma holders. (iii) Failing (i) and (ii) above. Assistant Controller with 5 years regular service in the grade in the case of Degree holders and 10 years regular service in die grade in the case of diploma holders. Note : The service in the grade of Controller (Selection Grade) shall count towards qualifying service in the grade of Controller for promotion. (c).....".

(4) The petitioners were duly qualified in terms of these Regulations, to be promoted as Assistant Engineers (EIM.) when they were promoted on ad hoc basis. The composition of the D. P. C. in terms of Regulation 12 did not require the participation of U. P. S. C. at that stage. The U. P. S. C. had to be consulted for amending and relaxing any of the provisions of these rules. Regulations 12 and 13 may be reproduced as follows ; "12. If a Dpc exists, what is its The composition may be given by composition. MCD. Gm (E) : Chairman CE/Addl. Ce : Member Deputy Gm : Member Lesion Officer ; Member

13.Circumstances in which Upsc is. to Consultation with the Commission be consulted in making.rectt.necessary while amending/relaxing any of the provisions of those rules."

(5) The above said Regulations, as framed in 1980, were amended vide notification No. F. 9116185 Lsg dt. 12-9-1985. It may not be necessary to quote all the Regulations. Suffice, it will be to say that the composition of D. P. C. was changed and the participation of U. P. S. C. was made mandatory. Amended Regulation reads as follows : 12. If a Dpg (exists, what Category "A" Dpc (for

considering promotion) is its composition 1. Chairman/Members. Upsc Chairman ". General Manager (E) Member 3. Add. General Manager (Admn.) Member 4. Addl. General Manager (Tech.) --Member (b) Category "A" Dpc (for considering confirmation) 1. General Manager (E) -.Chairman 2. Addl. General Manager (Admn.) Member 3. Addl: General Manager (Tech.) Member 4. Liaison Officer -- Member Note : The proceeding of the Dpc relating to confirmation shall be sent to the Commission for approval. If, however, these are not approved by the Commission a fresh meeting of Dpc to be presided over by the Chairman or a Member of the Upsc shall be held." The counsel for the petitioner has, accordingly, reiterated that it was not necessary to associate the U. P. S. C. in the selection on the basis of 1980 Regulations as the petitioners were already working on regular vacancies, although they were appointed initially on ad hoc basis. They are deemed to be treated as appointed promoted on regular basis with effect from their initial appointment. He has strongly placed .reliance on the conclusion of the judgment in The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, and has referred to sub paragraphs (A) and (B) in paragraph 44 of the judgment. These read as follows : "(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." 484 It has been stressed that the petitioners may have been initially appointed on ad hoc basis but since they have continued un-interruptedly till regularisation of their service in accordance with the Regulations, the period of officiating service will be counted. The petitioners were duly qualified and eligible in accordance with the Regulations on the dates of their ad hoc appointment and it will be harsh and arbitrary to deprive them of the period from the dates they were so appointed.

(6) Learned counsel for the respondent D.E.S.U., however, has contended that the petitioners cannot be given the benefit of their ad hoc service, inter-alia, for the following reasons :

(1)Ad hoc promotion was on seniority-cum-fitness and not on selection;

(2)The consultation with U. P. S. C. is mandatory. The promotion of the petitioners was made on ad hoc basis without consultation of U. P. S. C which is a mandatory requirement u/s 96 of the Delhi Municipal Corporation Act. 1957. The D. P. C. did not follow this provision of law, while" promoting the petitioners on ad hoc basis and no sanctity can be attached to the selection and the service cannot be treated as regular service;

(3)The ad hoc appointment of the petitioners was a stop-gap arrangement

despite the fact it may have continued till the regularisation by a duly constituted D. P. C. presided over by the Chairman member of U. P. S. C. It is settled law that any appointment, which is ad hoc and not according to Rules, the period of officiation in such posts cannot be taken into account for determining the seniority. The following judgments have been cited in this regard :

(I) Ashok Gulati and Others Vs. B.S. Jain and Others,

(II) D.N. Agrawal and another Vs. State of Madhya Pradesh and others,

(III) Masood Akhtar Khan and Others Vs. State of Madhya Pradesh and Others,

(IV) The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others,

(V) Keshav Chandra Joshi and others etc. Vs. Union of India and others,

(4)The U. P. S. C. substantially changed the order of seniority in the eligibility list sent for promotion to the post of Assistant Engineers and, Therefore, the petitioners cannot get benefit of the selection made in 1982-1983, which is purely on ad hoc basis. In case. the contentions of the petitioners are accepted, the same would imply giving complete go-bye to the selection process done by U. P. S. C. The grading of the petitioners done by U. P. S. C. would be of no value.

(5)There will be administrative and procedural difficulties to meet exigencies of situation, as respondent D.E.S.U. promotes large number of employees on ad hoc basis pending final selection process in accordance with Rap Regulations. This is done with a view to maintaining administrative efficiency so that posts are not kept vacant. Hence, the ad hoc service of any employee promoted dehors the rules cannot be treated as regular service and to change seniority of few selected petitioners, would cause tremendous administrative difficulties.

(6)Regulation 8 of Delhi Electric Supply Undertaking (DMC) Seniority Regulations, 1968, clearly stipulates that any person appointed on ad hoc basis to a grade would be shown below all persons, regularly appointed to the grade.

(7)The present petition is clearly barred by laches. The petitioners were promoted on ad hoc basis in 1982 and were regularised in 1987 vide office order dated September 8, 1987. The petitioners slept over their rights and only approached the Court in the year 1993. Therefore, no relief can be granted to them on this ground as well.

(7) The main contention of the petitioners in the present writ petition is that they are entitled to the" benefit of their ad hoc service for determination of their seniority, as they were initially promoted in 1982-1983 by valid selection process through a regular D.P.C., which was duly constituted under the statutory Regulations. There was an error in making the said promotions on ad hoc basis, as it was not mandatory to consult U. P. S. C. and the said consultation became necessary only in the Recruitment Regulations, as amended in 1985. The ad hoc promotions accordingly have all the characteristics of regular promotion and the

period so spent by the petitioners, which was continuous in nature, cannot be ignored merely on the ground that U. P. S. C. was not consulted at that time. Even if the consultation with U. P. S. C. was mandatory, the names of the petitioners were cleared by the regular D. P. C. as presided over by Member, U. P. S. C. in its meeting held on 2/3rd June, 1987. The D. P. C. proceeded to frame year-wise panels commencing from 1981. 1982, 1983 etc. and approved the names of the petitioners, in such year-wise panels. Therefore, the ad hoc period of sendee, as rendered was not discarded even by the D, P. C. presided by member of U. P. S. C.

(8) The learned counsel for the respondents has placed strong reliance on the Judgment of the Supreme Court in Keshav Chandra Joshi (supra). Paragraph 25 which deals with proposition as settled in Direct Recruit's (supra) case is cited :

" AN stated ,the counsel for the promotees placed strong reliance on proposition "B" while the counsel for the Direct Recruits relied on proposition "A". The controversy is as to which of the propositions would apply to the facts of this case. The proposition "A" lays down. that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The latter part thereof amplifies postulating that where the initial appointment is only ad hoc and not according to rules and is made as a stop-gap arrangement the period of officiation in such post cannot be taken into account for reckoning seniority. The quintessence of the propositions is that the appointment to a post must be according to rules and not by way of ad hoc or stop-gap arrangement made due to administrative exigencies. If the initial appointment thus made was de hors the rules, the entire length of such service cannot be counted for seniority. In other words the appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date. Propositions "A" and "B" cover different aspects of one situation. One must discern the difference critically. Proposition "B" must, Therefore, be read along with para 13 of the judgment wherein the ratio decidendi of Narendra Chadha was held to have considerable force. The latter postulated that if the initial appointment to a substantive post or vacancy was made deliberately, in disregard of the rule and allowed the incumbent to continue on the post for well over 15 to 20 years without reversion and still the date of regularisation of the service in accordance with the rules, the period of officiating service has to be counted towards seniority. This Court in Narendra Chadha's case was cognizant of the fact that the rules empower the Government to relax the rule of appointment. Without reading paragraph 13 and proposition "B" and Narendra Chadha's ratio together the true import of the proposition would not be appreciated. We would deal with the exercise of power of relaxing the rule later. After giving anxious consideration, we are of the view that the latter half of Proposition "A" would apply to the facts of the case and the rule laid down in that half is to be followed. If the concerned rules provide the procedure to fix inter se

seniority between direct recruits and promotees, the seniority has to be determined in that manner."

(9) This judgment will have no application to the facts of the present case. It may be mentioned that petitioners 1, 2, 3 and 4 were recruited on ad hoc basis by complete application of the 1980 Regulations and within their own quota. Petitioner No. 5 was not initially promoted within his own quota but was subsequently adjusted in the quota of Controllers to which he belonged. They were duly selected by the Departmental Promotion Committee, which was formulated as required by Regulation 12. At that relevant time, it was not even mandatory to consult the U. P. S. C. although it is faintly suggested that this consultation was necessary in view of the provisions of Section 96 of the Delhi Municipal Corporation Act. The Regulations of 1980 did not lay down any such proposition and the composition of the D. P. C. was strictly in terms of Regulation 12. The participation of U. P. S. C. was mandatory by the revised composition, as made by the amended 1985 Regulations. Therefore, it cannot be said that the appointment of the petitioners was not according to Regulations and was made as a stop-gap arrangement and, as such, the period of officiation in such post could not be taken into account for reckoning seniority. In case, the appointment was made according to rules/regulations, the seniority would be counted from the date when such an appointment was made. The suggestion of the learned counsel that the petitioners were being considered for a selection post and they were only recruited on ad hoc basis on seniority-cum-fitness criteria is equally without any force. The bare perusal of Regulation 5 of 1980 Regulations would indicate that the post of Assistant Engineer is a selection post and the petitioners were duly selected by application of such Regulations by a duly constituted D. P. C. The respondents have also not placed any material to justify this averment.

(10) The next authority on which reliance is placed by the respondents is D. N. Agrawal and another (supra). The Supreme Court has referred to the earlier judgments of the Court in Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others, (8) and G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others, and distinguished the said judgments from the facts of the case. Paragraph 10 is being cited in this regard :

"IT will thus be clear that the court was dealing with an altogether different situation in both the aforesaid cases. There was no dispute in those cases that except for the terminology and nomenclature there was no distinction between a temporary and permanent appointment and all that remained to be done in those cases was the formalization of the appointments. That is not the situation in the present case. The appellants were ineligible to be appointed as Assistant Engineers initially. Their appointments were made specifically under the power given to the government to make ad hoc appointments for administrative exigency. The appointment orders made it clear that the appointments were in the said special circumstances and that they will not be deemed to determine seniority for any purpose whatsoever. There is further no dispute that no

appointments could, be made as Assistant Engineers except by way of either direct recruitment through the Public Service Commission or promotion through the selection made by the Dpc as per the quota assigned to different categories. The first Dpc which met for selection after the appellants became qualified for being promoted, was held on October 12, 1972. It is in this meeting that the appellants were selected along with the other qualified promotees, namely, respondents 2 to 39. The Dpc further had the power also to arrange the seniority of the promotes according to merits. For all purposes, Therefore, the appointment of the appellants on July 22, 1971 was ad hoc and not according to rules. Their selection/appointment on November 22, 1972 by the Dpc was further not a mere formality for a process undertaken only for formalization of their earlier appointment. In the circumstances, their appointment on November 22, 1972 could not relate back to July 22, 1971 and hence they were not entitled to claim their officiation between July 22, 1971 and November 22, 1972 for being counted for the purposes of . their seniority for placing them either above respondents 40 to 63, who were directly recruited on August 7, 1972 or above respondents 2 to 39, who were promoted by the Dpc along with them on November 22, 1972, and who happened to be senior to them even as Junior Engineers."

In the present case, there is also no dispute that the ad hoc appointees to the posts, who were claiming benefit of such appointment on officiation were qualified to be appointed to the posts when they were initially appointed. The procedural formalities of their appointments were also followed i.e. they had the requisite qualifications and they rendered service for requisite period in the feeder posts and the selection was made by a duly constituted D.P.C. The promotions were made within their own quota. The facts of 1). N. Agrawal and another case (supra) would indicate that the appellants therein were ineligible to be appointed as Assistant Engineers initially and the appointments were made under the power given to the Government to make ad hoc appointments for administrative exigency and it was made clear in the letter of appointment that this period will not determine seniority. In this view of the matter, this judgment can hardly be of any application to the facts of the present case.

(11) The judgments of the Supreme Court in the cases of Baleshwar Dass (Supra) and G. P. Doval (Supra) are mere relevant to the facts of the present case.

(12) Reliance is next placed on the judgment in Ashok Gulati & Ors. (Supra) to support the proposition that an ad hoc or fortuitous appointment on a temporary or stop-gap basis cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold post on regular basis; such temporary tenure hardly counts for seniority in any system of service jurisprudence. The principles, as laid down by the Supreme Court have particular reference to the facts of that case and are not of any assistance to the contention advanced by the respondents in the present petition. The relevant paragraphs which will

highlight the facts, as well as the law laid down by the Court may be reproduced as follows : (at pages 611-612)

"IN the erstwhile State of Punjab there was a distinct class of Engineers designated as Temporary Engineers. All persons appointed as Temporary Engineers had to face the Public Service Commission for selection to the post under Rules 4 & 5 of the Punjab Service of Engineers, Class Ii, Pwd (Irrigation Branch) Rules, 1941. Under the Rules the term "Temporary Engineer" was defined in Rule 2(f) to mean an engineer in the service of the Public Works Department, Punjab Whose appointment was temporary within the meaning of the Fundamental Rules, was pensionable and who was not a member of any regular service. The word "service" as defined in Rule 2(g) of the Rules meant the Punjab Service of Engineers, Class Ii, Irrigation Branch, Rule 5 provided that no Temporary Engineer could be taken into service or member of the Oversees. Engineering's Service, Punjab promoted unless he had been declared by the Commission on the report of the Chief Engineer to be fit for the service, was serving the department and held an appointment for not less than two years continuously before the date of entry into the service.

NEXT came the Punjab Service of Engineers, Class Ii, Public Witness .D. (Irrigation Branch) Rules, 1970. The expression "member of service" was defined in R.2(12) to mean an officer appointed substantively to a cadre post. The definitions of the word "service" and of the term Temporary Engineer" in R.2 (15) and (.16) remained the same except for the difference that the word "temporary" carried the meaning as given in the Civil Service Regulations in place of the Fundamental Rules. Rule 6 provided for the manner of recruitment of Temporary Engineers from different sources, in the proportions and the order indicated. Sub-rule (3) thereof provided that in case a candidate was not available from sources 1 and 3 i.e. by direct recruitment or by promotion, and a person had to be appointed in public interest, as a stop-gap arrangement, the period of service rendered by such person shall not be reckoned for the purpose of seniority. Sub-rule (4) provided that the Government could fill a short term vacancy in the exigencies of public service ,after recording specific reasons, for the period not exceeding six months from the Overseers Engineering Service, Irrigation Branch. It is quite apparent under the rules that appointment of respondents Nos. 1 and 2 as Temporary Engineers on an ad hoc basis was de hors the rules.

IT may seem to be somewhat illogical that though respondents 1 and 2 were appointed as Temporary engineers on an ad hoc basis, they should" be deprived of the period of their officiation as such till they were absorbed to the post of Assistant Engineer on a regular basis through the Public Service Commission on April 21, 1975. That is a legal consequence which cannot be avoided on well settled principles. In their case the length of continuous officiation cannot be the basis for reckoning their seniority since they never became members of Class Ii service prior to their absorption. On the terms of appointment of respondents 1

and 2, it was specifically provided that their appointment was purely on ad hoc basis for a period of six months from the date of their joining the post on a fixed salary of Rs. 400 plus allowances and that their services were liable to be terminated without notice. It was also specifically mentioned that the appointment as such Temporary Engineers on ad hoc basis would not count towards seniority or increment in their salary. It was further stated that the posts of Temporary Engineers in Class Ii service would be advertised in due course by the Public Service Commission and that if they were not selected by the Commission their services would be terminated without notice. They were also intimated that their inter se seniority- among the Temporary Engineers so recruited would be in the order of merit in the list of candidates as settled by the Commission. It is common ground that respondents 1 and 2 .were not recruited through the Public Service. Commission. It was not till July 8, 1973 that the Secretary to the Commission" conveyed to the State Government the approval of the Commission lo the ad hoc appointment of 251 Temporary Engineers beyond the period of six months till regular appointments were made in the posts of Assistant Engineers through the Commission. These are the facts on which there is no doubt or difficulty as to the principles applicable." The judgment can be of no assistance to the respondents. The facts are entirely different as in that case the Temporary Engineers were appointed on ad hoc basis on a fixed salary and their services were liable to be terminated without notice. It was also made clear that the ad hoc service will not count towards seniority or increment. The posts were to be advertised by the Public Service Commission and in case they were not selected, termination would follow.

(13) On a specific query made to the counsel for the respondent D.E.S.U. it was admitted that the petitioners I to 4 were appointed on ad hoc basis from within their own quota. Respondent No. 5 was not initially within his quota, but he has also continued the work on a regular vacancy from the date of his ad hoc appointment and subsequently adjusted in the quota of Controllers and there has been no break in the service of any of the petitioners. It has also not been denied that the ad hoc promotions were cleared by the D. P. C. as framed under Regulation 12 of 1980 Regulations. The ad hoc appointment of petitioner No. 5, has also continued till the date of the regularisation by the U.P.S.C. in the year 1987. On a further query about the cause of delay in referring the matter to U.P.S.C., the respondent No. 1 has submitted in writing that the pay schedules for the post of A.E. was revised on 22-6-1982. Thereafter the post became a grade A post, hence in accordance with section 96 of the Dmc Act consultation of Upsc become mandatory. Hence proposal sent to Upsc for making regular promotion were referred back by Upsc advising amendment in the R&P Regulations incorporating the requirement of necessary consultation with UPSC. The amendment in the R&P Regulation was made on 112-9-1985. Thereafter the Dpc was convened on 2nd 3rd June 1987 for considering the promotions. Hence the delay in regularisation from 1982 to 1987 occurred on account of the aforesaid reasons. This submission will support the proposition that the

unamended Regulations did not require any approval of the U.P.S.C., as it was not necessary in terms of Regulation 12 of 1980 Regulations. The consultation with U.P.S.C. only became mandatory by the amendment of the Regulations on: 12-9-1985. The contention that the approval of the regular promotion of the petitioners was withheld because there was no consultation with U.P.S.C. is misconceived and misplaced. D.P.C. as framed under the 1980 Regulations, had approved the promotions on ad hoc basis earlier than the date of the amendment of Regulation's.

(14) Assuming, if the consultation with U.P.S.C. was necessary" and mandatory (which the Regulations did not provide when the petitioners were promoted on ad hoc basis) the facts would indicate that the Authorities have been sleeping over the matter and did not at all take steps to act in this regard. They were only perhaps waiting for the Regulations to be amended in 1985, which could only be held to be prospective and then deprive the petitioners of then ad hoc service on extraneous considerations. This speaks volumes about the malafide behavior of the respondent no. 1 to keep the matters in abeyance for such a long time and then to take the plea that the amended Regulations provide consultation with U.P.S.C. as mandatory and in view of the fact that the petitioners' promotions have only been approved by U.P.S.C. in the year 1987, they must be pushed down in seniority. This attitude does not inspire confidence in the functioning of a public body, which has to be just and equitable in treatment towards all officers coming from any stream of recruitment.

(15) The contention by the respondents is that the procedure followed by the D.P.C. for ad hoc promotion of the petitioners was entirely different from the procedure followed by a regular Departmental Promotion Committee. It is reiterated that when the ad hoc appointments are made, the selection for the same is done on the basis of seniority-cum-fitness. It is, however, not denied that only officers who fulfill the eligibility conditions, prescribed under the Regulations, are considered for ad hoc appointment unless necessary" exemptions are obtained from the Competent Authorities, It is further submitted that D.P.C. presided by Chairman Member of U.P.S.C. grades different officers in the following manner : (a) Outstanding (b) Very good (c) Good (d) Average (e) Not fit. Officers graded as "Outstanding" would rank en bloc senior to those, who are graded as "Very Good" and officers graded "Very Good" would rank en bloc senior to those, who are graded as "Good" and placed in the select panel accordingly up to the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post. These guidelines were issued by the Government only in the year 1989 and it has not been explained why these will be relevant in the present case where the petitioners are only claiming benefit of ad hoc service for seniority when they were promoted in accordance with Regulations by a duly constituted D.P.C. This submission is misconceived and irrelevant and was not taken up when the matter was argued. It only finds place in the written submission of respondent no. 1.

(16) "THE other argument with regard "to preparation of year-wise panel is that the Government of India instructions themselves state that year-wise panel has to be .prepared where D.P.C. had not been held for a number of years. The procedure provides that promotions will be made only prospectively even though vacancies may relate to earlier years. "The D.P.C. held on 2nd and "3rd June, 1987. and presided over by Members U.P.S.C. prepared year-wise panels for the vacancies turn the years 1981, 1982, 1983 and so on. If that be so, it cannot be appreciated as to how the petitioners can be denied the benefit of regular promotion as Assistant engineers from the date of -their ad hoc appointments as their names figure in the year-wise panels. In case. the D.P.C. had met immediately or within a reasonable period of such appointments, the petitioners would have been regularised from that date. There was no justification for. postponing the matter and no cogent grounds have "been cited by learned counsel for the respondents. The subsequent proceeding are indicative of the fact that even in 1987 "the D.P.C. did not intend to deprive the petitioners the benefit of their ad hoc service and the contention in this regard is liable to be rejected.

(17) To conclude, I hold that :

(1)The petitioners were promoted as Assistant Engineers according to Regulations and their seniority has to be counted from the date of such appointment. The ad hoc appointment of the petitioners had all the characteristics of-regular promotions,

(2)The initial promotion on ad hoc basis was made by following the procedure as laid down by the 1980 Regulations. The period of ad hoc service will be counted towards seniority in view of the fact that the vacancies to which the petitioners were appointed, were substantive vacancies and the petitioners were eligible to be promoted. The formalization of their appointments came in the year 1987 and that must relate back to the period of their ad hoc promotion.

(3)The petitioners continued to work uninterrupted till their promotions were regularised in 1987 by the Union Public Service Commission and there has been no break in their service. The ad hoc promotions of petitioners I to 4 were made within the quota and after considering the claims of all the eligible candidates and there has been continuous officiating by all the petitioners. Petitioner no. 5 continued in the post un-interruptedly till regularisation of his service in his own quota in accordance with the regulations. The ad hoc service cannot, Therefore, be discarded.

(4)The Departmental Promotion Committee which made the promotions was duly constituted in accordance with the 1980 Regulations and it cannot be said such selections was, in any manner, against the provisions of law.

(5)The decision of Hon"ble Supreme Court in the case of the Direct Recruitment Class 11 Engineering Officers" Association and others (supra), is fully applicable to the facts of the present case and the petitioners are entitled to the benefit of their un-interrupted ad hoc service as there was no violation of the Regulations.

Propositions (A) and (B) are relevant in this regard.

(18) The writ petition, as a consequence, is allowed. Rule is made absolute. The petitioners shall be entitled to the benefit of their ad hoc service, which they have rendered as Assistant Engineers from the respective dates of their appointment. The subsequent approval by U.P.S.C. in the year 1987 will relate back to the dates of initial appointments for the purpose of reckoning seniority. Respondent no. 1 shall re-frame the seniority list on this basis to give proper placement to the petitioners.

(19) There will be no order as to costs.