
(2008) 08 CAL CK 0006
In the Calcutta High Court
Case No : W.P.C.T. 716 of 2005

Union of India and Others

APPELLANT

Vs

Chandan Kumar Maji and Others

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Citation : (2008) 08 CAL CK 0006

Hon'ble Judges : Pranab Kumar Deb, J; Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Urmila Dutta Sen, for the Appellant; Moloy Kumar Basu and Mr. Achin Kumar Majumdar, for the Respondent

Judgement

1. By this application, South Eastern Railway authorities have impugned the judgment and order dated 22nd March 2005 by which the learned Tribunal has granted relief to the respondent regarding his claim for seniority. The respondent before the learned Tribunal prayed for the following reliefs :

I) To direct the respondents to reckon seniority as I.O.W. Grade-1 from the date of ad hoc promotion (4.6.93).

II) To direct the respondents to recast the impugned seniority list of IOW Grade-1 accordingly.

III) Any other order(s) as the Tribunal may deem fit.

2. The short fact of the case before the learned Tribunal, as made out by the respondent/employee, is as follows:

The respondent was initially appointed to the post of apprentice IOW Grade-III. Thereafter on or about 7th December 1979 he was posted to Khurda Road Division. Subsequently he was transferred from Khurda Road Division to Kharagpur Division on 11th September 1984 for administrative interest. Thereafter, he was promoted to IOW Grade-II on 23rd November 1987 and he was regularised with effect from 1st January 1993. Then he got next promotion

to the post of IOW Grade-I which has been re-designated as Section Engineer on ad hoc basis with effect from 4th June 1993 and on regular basis, on selection being held, from 6th June 1996. According to him, respondents No.4 and 5, before the learned Tribunal, were junior to the applicant in all respect. They belonged to Bilashpur Division and they were appointed as IOW Grade-I with effect - from 8th December 1995, though appointed on 1st June 1983 and 2nd June 1983 respectively much later than the applicant; the date of applicant's appointment to the said post being 17th December 1979. The post of IOW Grade-II and Grade-I are divisionally controlled post and in Bilashpur Division, selection to the post of IOW Grade-I was held at an earlier date than that of the applicant. The private respondents were promoted to the post of IOW with effect from 8th December, 1995. In Kharagpur Division, during the period from 1992 to 1995, no selection was held for the post of IOW Grade-I due to the unforeseen circumstances, the respondents No. 4 and 5 got their promotion at an early date to the post of IOW Grade-I. Respondents No. 4 and 5 did not contest the application before the learned Tribunal.

3. Learned Tribunal, after considering all the aspect thought to crystallise the dispute in one issue; whether services rendered by the applicant, during the period when he was on ad hoc basis, should be counted for seniority or not.

4. Learned Tribunal has considered the relevant Rule in paragraph 320 of the IREM which is quoted hereunder :

"320. Relative seniority of employees in an intermediate grade belonging to different seniority units appearing for a selection/non-selection post in higher grade.

When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total strength of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose."

5. Learned Tribunal also noted a judgment of the Tribunal at Jodhpur in the case of V.K. Saxena v. Union of India, reported in (1990) 13 ATC 796.

6. Now the question is whether learned Tribunal has decided the matter correctly taking into consideration of the period during which the applicant was an ad hoc promotee. In absence of any Rule it is settled law that for the purpose of seniority, a particular employee, working on temporary or ad hoc basis, cannot claim any seniority. However, in this case, learned Tribunal has found Rule, so relief was granted.

7. Learned counsel for the applicant submits that learned Tribunal has gone wrong to lay down law that ad hoc period of promotion cannot be counted for the

purpose of seniority and if it is done then directly recruited candidates would be deprived. In support of her contention, on the question of counting of service period during ad hoc period, she has relied on two decisions reported in 1991 (1) SLJ (SC) 13 and 2007 (1) SLJ (SC) 98.

8. Learned counsel for the applicant further submits that the learned Tribunal had granted relief more than what had been asked for in the application.

9. Mr. Basu, learned counsel appearing for the respondent, submits that the issue is no longer *res integra* as it has been decided earlier by a Bench of Jodhpur Tribunal and it has been accepted that the relevant rule, being Rule 320, is very clear one. In support of his submission, he has relied on the decision reported in AIR 2000 SC 1766. Being, very candid enough he submits that the learned Tribunal, while granting relief, had granted something more than what was asked for.

10. Considering rival contentions raised by learned counsels for the parties and having read the impugned judgment and order of the learned Tribunal, we are of the view, learned Tribunal has correctly held, upon reading relevant Rule 320, that applicant's service in IOW Grade-I during ad hoc period should be counted for the purpose of determining his seniority as there has been no breakage in service and he was thereafter regularized, on selection being held. The aforesaid Rule 320 suggests so and it will appear from the language being used therein "irrespective of the date of confirmation of an employee".

11. In the decision rendered by the Supreme Court in the case of K. Madalaimuthu & Anr. v. State of Tamil Nadu & Ors., reported in 2007 (1) SLJ (SC) 98, it has been held on a different fact and in the context of the Rules contained therein. In the case before the Supreme Court the appointee was appointed *de hors* the recruitment rules. Therefore, recruitment on irregular basis cannot be said to be lawful service being rendered for seniority purpose. Here provision for appointment on ad hoc basis followed by regularisation is applicable. Therefore, continuity of service remains.

12. Similarly, in other decision, relied upon by the learned counsel for the applicant, reported in 1991 (1) SLJ (SC) 13, selection was made on ad hoc and on irregular basis and in that case, the Supreme Court, taking note of the irregular engagement, held that services rendered during ad hoc period could not be taken into consideration for the purpose of seniority. Moreover, it has been made clear in this judgment that in absence of any Rule, exclusion of period of ad hoc service is permissible.

13. We think this issue, finally clinched by the judgment, rendered by the Supreme Court, in the case of T. Vijayan v. Divisional Railway Manager, reported in AIR 2000 SC 1766, and the same is absolutely apposite. Hence we are of the view; learned Tribunal has answered the issue raised correctly. The respondent employee is, therefore, entitled to get his seniority from the date he was promoted on ad hoc basis.

14. We, however, clarify that his seniority in IOW Grade-I will confine amongst the promotee Grade-I, IOW and it will not have any impact so far as direct recruitment is concerned. We, therefore, clarify the judgment and order of the learned Tribunal that giving the aforesaid seniority from the date of his ad hoc promotion, seniority list should be corrected accordingly and nothing more or nothing less.

15. After the judgment is dictated, it is submitted by the learned counsel for the applicant that respondents No. 4 and 5 are no longer in service.

The application is disposed of with the aforesaid observation. There will be no order as to costs.

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