
(2001) 05 SC CK 0037

In the Supreme Court Of India

Case No : Civil Appeal Case No: 12801 of 1996

Union of India (UOI) and Others

APPELLANT

Vs

Satish Chandra Mathur

RESPONDENT

Date of Decision : 01-05-2001

Acts Referred:

Constitution of India — Article 309

Citation : (2001) 10 SCC 185

Hon'ble Judges : G. B. Pattanaik, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.B. Pattanaik J.-The Union of India is in appeal against an order of the Central Administrative Tribunal, Allahabad Bench. The question for consideration is whether the services rendered by the respondent as an ad hoc Programme Executive from 28-10-1976 till 1-1-1979, on which date his services stood regularised as a Programme Executive, can at all be counted for reckoning his seniority in the cadre of Programme Executive. The recruitment to the post of Programme Executive is governed by a set of rules under the proviso to Article 309 of the Constitution called the All India Radio (Group B Posts) Recruitment Rules, 1962. The said Rules have been amended from time to time. Programme Executive being a Group B post, the prescribed procedure for recruitment to the said post is as contained in Rule 4-A. It necessarily stipulates constitution of a Screening Committee with the Chairman or Member, Union Public Service Commission as a member of the Committee, and then after consideration/ adjudging suitability, approval of the list by the Union Public Service Commission, whereafter appointment could be made by the Government. The respondent, however, without going through the process of screening and selection, as stated above, was appointed by the Director General, All India Radio by letter dated 25-9-1976, and the appointment letter unequivocally indicates that the appointment to the post of Programme Executive is on ad hoc basis, and it

further adds a clause to the appointment letter, which reads as under:

"The appointments of the Transmission Executives mentioned above as Programme Executive will be on ad hoc basis and it will not confer on them any right or privilege for continued or regular appointment in that grade."

2. When the seniority list of the Programme Executive was drawn from time to time in 1977, in 1980, in 1985 and finally in 1989, the Union Government had not taken the aforesaid ad hoc period for the purposes of the seniority of the respondent. The respondent, however, had been filing objection to the said seniority list, and finally approached the Administrative Tribunal. When the seniority list was drawn in 1989, he was shown at Serial No. 107 excluding the ad hoc period from consideration. The Tribunal by the impugned judgment relying upon the earlier decision of the Tribunal in the case of one M.P. Verma came to hold that since the respondent has been continuously holding the post of Programme Executive from October 1976 till 1-1-1979, the date on which his services stood regularised, it would be unequitable not to count that period for the purposes of the seniority merely because of mentioning "ad hoc" in the letter of appointment. In effect, the Tribunal follows the earlier decision of the Tribunal in Verma case.

3. Mr Goswami, the learned Senior Counsel appearing for the Union Government contended that in the teeth of the provisions of the statutory Recruitment Rules prescribing the procedure for filling up the post of Programme Executive, and that procedure not having been followed, and instead the respondent having been appointed by the Director General on 28-10-1976, and the terms and conditions of the appointment having clearly stipulated that the period will not be counted either for regular recruitment or for any purpose, the Tribunal committed error in reckoning that period for the purposes of determining the seniority of the respondent in the cadre of Programme Executive. Mr Arvind Kumar appearing for the respondent, on the other hand, contended that it is no doubt true that the prescribed procedure had not been followed, but since at that point of time there had been no Screening Committee, and the respondent possesses the prescribed qualifications, and was appointed by the competent authority, and had been allowed to continue in the post till regularisation on 1-1-1979, the principle enunciated by this Court in the Constitution Bench decision in Direct Recruitment case¹ should apply and Principle B thereof would be applicable to the case in hand, and as such there is no infirmity in the impugned order of the Tribunal.

4. Having examined the rival submissions at the Bar, and having examined the relevant provisions governing the conditions of recruitment to the post of Programme Executive, and having examined the very order of appointment of the respondent dated 28-10-1976, we have no manner of doubt that the period from 28-10-1976 till 1-1-1979 cannot be counted for the purposes of reckoning the seniority of the respondent in the cadre of Programme Executive. It is undisputed that the appointment to the cadre was de hors the statutory Rules, and was not in accordance with the prescribed procedure, even though the

respondent might have possessed the prescribed qualifications for being appointed. Possessing the prescribed qualifications itself would not constitute an appointment in accordance with Rules, particularly when the procedure, as in the case in hand, was that a Screening Committee would scrutinise the cases and the Chairman, Union Public Service Commission is a member of the said Committee, and then the selection is required to be approved by the Union Public Service Commission. In this view of the matter, we unhesitatingly hold that the Tribunal committed serious error in directing that the period of service rendered by the respondent from 28-10-1976 till 1-1-1979 could be counted for the purposes of his seniority in the cadre of Programme Executive. We therefore set aside the aforesaid order of the Tribunal, and hold that the respondent's seniority in the cadre of Programme Executive could be counted from 1-1-1979 as Programme Executive.

5. The appeal is accordingly allowed.

6. The case of the interveners also shall be decided in accordance with the aforesaid principle.