

PETITIONER:
M.K.SHANMUGAM & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 25/04/2000

BENCH:
N.S.Hegde, S.R.Babu, S.S.Ahmad

JUDGMENT:

RAJENDRA BABU, J. :

Civil Appeal No. 5086 of 1994

This appeal is directed against the order made by the Central Administrative Tribunal, Bombay Bench [hereinafter referred to as 'the Tribunal'] on November 5, 1993 in O.A. No. 286/92. Respondents Nos. 3 and 4 filed an application O.A. No. 286/92 before the Tribunal. The pleadings raised in the application, briefly stated, are as under.

The respondents were directly recruited through the Union Public Service Commission as Assistant Executive Engineers (Electrical) Class I in the Ministry of Communications, while respondents Nos. 3 to 5 before the Tribunal were recruited as Assistant Engineers (Electrical) Class II and both the applicants and the other respondents were subsequently promoted on ad hoc basis and thereafter they were regularised as Executive Engineers (Electrical). The two respondents were aggrieved by the letter sent on February 6, 1992 which was accompanied by a seniority list of the Department of Telecommunications whereby the ad hoc services rendered by respondents 3 to 5 before the Tribunal as Executive Engineers from May 25, 1977, February 21, 1982 and April 16, 1982 respectively being treated as regular services and counted for the purpose of seniority in that grade and proposed to re-fix that position in the final seniority list of Executive Engineers as on April 1, 1985 and thus the applicants before the Tribunal being pushed down in the seniority list.

There are two channels of recruitment under the relevant recruitment rules and promotions to the post of Executive Engineer are to be made from two categories, namely, Assistant Executive Engineer Class I with five years regular service on seniority-cum-fitness basis (non-selection) in the 2/3rd quota and the other being Assistant Engineer Class II with eight years regular service on seniority-cum-merit basis (selection method) in the 1/3rd quota selection being made by the Departmental Promotion Committee with a member of the UPSC as Chairman.

The stand taken by the applicants before the Tribunal is that while regular promotions to the grade of Executive Engineers from the Assistant Executive Engineers cadre was made regularly from 1976. However, the seniority in respect

of Assistant Engineers Class II was not finalised till November 1987 in view of certain disputes inter se the promotees in the cadre. The D.P.C. thereafter selected from the category of Assistant Engineers Class II in a meeting held only in May 1988 when the D.P.C. selected the appellants for the vacancies belonging to their quota for the years 1977 to 1982. The appellants had thus worked for long period varying from 6 to 11 years in the post of Executive Engineer on ad hoc before the D.P.C. could meet for finalising regular promotion. The revision of the seniority list which was challenged before the Tribunal, it was submitted, was only a corrective action though belated to render justice to the affected persons and is in compliance of the judgment of the Madras Bench of the Tribunal dated October 12, 1990 in O.A. No. 113/89 directing disposal of the representation regarding the seniority of one of the appellants. It was further made clear in the said direction that it has to be decided after taking into account the decision of the Principal Bench of the Tribunal in N.N. Chakraborty case in O.A. No. 978/87 and of this Court in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors., 1990 (2) SCC 715. After noticing several decisions of this Court and of the Tribunal, it was held that under the statutory recruitment rules promotions to the post of Executive Engineer were to be made from among the Assistant Engineers Class II with eight years regular service on seniority-cum-merit by selection method in the 1/3rd quota and admittedly the appellants were promoted on ad hoc basis as Executive Engineers on different dates mentioned earlier. The relevant appointments were purely temporary and on ad hoc basis and were for a limited duration and it was also made clear that services on ad hoc basis will not confer any claim in the matter of seniority, confirmation, etc. Thus it was noticed that the ad hoc promotions were made in administrative exigencies since seniority lists of Assistant Engineers could not be finalised in view of pending litigation and, therefore, the D.P.C. meeting for regular selection could not be arranged. Non-selection for a selection post can hardly be considered to be a minor procedural deficiency and, therefore, the Tribunal concluded that selection was not by a competent D.P.C. and the ad hoc promotion was itself for a limited time and, therefore, does not fulfil the conditions mentioned in the decision in State of West Bengal & Ors. v. Aghore Nath Dey & Ors., 1993 (3) SCC 371. The Tribunal is of the view that ad hoc service to count for seniority must be rendered continuously till the date of regularisation for 15 years or more and, therefore, it held that the appellants could not take advantage of the ad hoc promotions made purely as a stop gap arrangement and it is only in special circumstances such ad hoc service could be counted for purpose of seniority as noticed in some of the decisions of this Court. Consequently, the application filed by the contesting respondents was allowed and it was declared that the appellants were not entitled to count their ad hoc service in the post of Executive Engineers (Electrical) for seniority, confirmation, promotion, etc.

It is contended before us that regular promotions from Executive Engineers, which is a feeder cadre, to the grade of Superintending Engineer could not take place immediately and four vacancies of Superintending Engineers had arisen by the time the meeting of D.P.C. was held on October 17, 1984. Strong reliance was placed on the counter affidavit

filed before the Tribunal which is to the following effect :- "The first two points after Point No. 7 of seniority list dated 10-4-85 thus, go to the officers promoted from the rank of AEE(E) and SL No. 10 goes to the officer promoted from the rank of AE(E). A point was left blank in seniority list to accommodate an officer promoted from Group B. This was erroneously shown as SL No. 9 instead of SL No. 10. This mistake has later on been rectified. The applicant cannot presume that in the selection process, he will find the top most position on the panel. The DPC chaired by a Member of UPSC will draw a select panel according to statutory Recruitment Rules."

Appellant No. 1 claimed that he was assigned top most position by the D.P.C. held on May 13, 1988 but the provisional seniority list dated January 12, 1989 did not reflect his position and in those circumstances he sought permission to withdraw the pending application with liberty to file a fresh application. So far as appellant No. 2 is concerned, he filed an O.A. before the Madras Bench of the Tribunal claiming seniority from the year 1982 when he was promoted on ad hoc basis to the grade of Executive Engineer (Electrical). The Tribunal rejected the contention raised by the Department that he is deemed to be on regular basis only with effect from May 13, 1988 when the D.P.C. met. Since the seniority list dated January 12, 1989 was only provisional the Tribunal directed appellant No. 2 to make another representation to the Department which the Department was directed to dispose of in accordance with law. Pursuant to this direction given by the Madras Bench of the Tribunal it is stated that the seniority had to be re-fixed and, therefore, it is contended that inasmuch as they had rendered service for a long period at any rate in higher cadre and their promotions having been subsequently regularised ought to be treated as giving them seniority in the matter.

The stand taken by the contesting respondents is that under the relevant rules the D.P.C. should be headed by a member of UPSC which was not done in the case of the appellants at the time of their ad hoc appointment and appellant No. 1 was duly considered in 1978 and was not found suitable and for that reason his name did not figure in the selection list and there was no additional quota vacancy in the grade of Executive Engineer (Electrical) meant for group B cadre officers upto 1985. As a matter of fact, B.V. Ramanamurthy, who is admittedly senior to both the appellants, was only regularised on June 28, 1985 with effect from April 1, 1975 as he came under the purview of clause 4C of amended rules published on September 22, 1984. Since the appellants herein were not covered under clause 4C of amended rules 1984 and also additional quota was not available as such, they could not be regularised prior to 1985. The Tribunal has taken note of the fact that the ad hoc promotions given to the appellants were not de hors the rules. It was contended that there were four vacancies against Assistant Engineers' quota but Department had informed the D.P.C. to fill two vacancies from direct recruitment and the D.P.C. accordingly selected K. Subramanian and T. Mohan Rao though B.V. Ramanamurthy and the first appellant were also eligible and vacancies were existing they were not regularly promoted by wrong interpretation of rules and separately reserving two vacancies for promotee cadre. Such provision is not

existing in recruitment rules and the petitioners are the initial constituents in Assistant Engineer (Electrical) grade and are much above promotees in the Assistant Engineer (Electrical) seniority list. There was considerable delay in the introduction of initial constitution clause and the same was published only in 1984 after a gap of 9 years and came into force with effect from April 5, 1975. The Screening Committee was thereafter convened by the Department on August 16, 1985 and appellants and officers, including B.V. Ramanamorthy and several other officers, were promoted on the dates indicating against their names. Appellant No. 1 and R. Ravindran were not included as initial constituents since they neither completed eight years of service nor on ad hoc before April 5, 1975. Their promotions fall under maintenance clause 4A and 4B of amended rules 1984. They, however, formed the initial constituents in Assistant Engineer (Electrical) or Assistant Executive Engineer (Electrical) cadre separately. On that basis it was contended that the seniority list published is in order.

The Union of India has also filed two appeals - one (Civil Appeal No. 3018 of 1997) arising out of judgment dated June 27, 1996 in O.A. No. 108/96 passed by the Madras Bench of the Central Administrative Tribunal and other (Civil Appeal No. 5081 of 1994) against judgment and order dated November 5, 1993 passed by the Tribunal in O.A. No. 286/92. In O.A. No. 108/96 the Madras Bench of the Central Administrative Tribunal merely followed the judgment of the Tribunal which is under appeal before us in Civil Appeal No. 3018 of 1997.

There is another dimension to the case by reason of the introduction of the Rules called "The Posts & Telegraphs Civil Engineering (Electrical Gazetted Officers) Recruitment (Amendment) Rules, 1984", which were given retrospective effect from April 5, 1975. It is explained that the reason for introduction of these Rules is that for recruitment to the various posts in the Electrical Branch of the Civil Wing of the Posts & Telegraphs Department, the rules of recruitment were published on the April 5, 1975. Prior to commencement of the said Rules, there were officers who had joined directly as Assistant Executive Engineer (Electrical) through the Combined Engineering Services Examination held by the Union Public Service Commission. Those who had come on deputation from C.P.W.D. were also deemed to have been regularly appointed in the Posts & Telegraphs Department pursuant to a decision of the High Court of Allahabad. Some of the officers were promoted to the higher grades on ad hoc basis. In order to ensure that these officers are not deprived of the service rendered by them before commencement of the rules, it was proposed to incorporate retrospectively a provision for initial constitution of these posts. Therefore, though the rules were amended by a notification issued on April 22, 1984 published in the Gazette of India and it was given retrospective effect but the purpose of giving retrospective effect to the provision relating to the initial constitution of these posts would not prejudicially affect the interests of any person already in service. It is in this background, it is contended before us, that the cases of the appellants could not be considered to the post of Superintendent Engineers although they were functioning as the Executive Engineers without determining their position in the initially constituted cadre and that could be done with reference to the rules, as amended in 1984

which came into effect from April 5, 1975. Though there may have been some delay and complications arising thereto there is another factor which needs to be considered in these cases. The case of the 1st appellant was considered by the Departmental Promotion Committee in which Air Marshal T.S.Virk was present on behalf of the UPSC and who presided over that meeting for selection of officers for officiating promotion to the grade of Executive Engineer (Electrical) and it was noticed that out of four vacancies, two vacancies are to be filled by promotion of direct recruit Assistant Engineer (Electrical) and the remaining two vacancies were kept reserved for the promotion of Assistant Engineer (Electrical). As no officer was available for consideration at present and the Committee accordingly considered the 4 eligible officers and assessed them. While K.Subramanian, T.Mohan Rao and B.V.Ramnamurthi were found to be 'very good', the 1st appellant was assessed to be only 'good'. This was recorded in the minutes of the meeting of the Departmental Promotion Committee held on June 2, 1978 in the office of the UPSC. Thereafter, in the minutes of the meeting of the meeting of the Departmental Promotion Committee held on May 13, 1988, the 1st appellant was found to be 'very good' for the year 1977 as an Executive Engineer (Electrical) Group A. It is in these circumstances, it is to be considered whether the case of the 1st appellant could have been considered earlier to the date he was found fit to be promoted. The initially constituted cadre is of the date April 5, 1975 and on that date the 1st appellant had not been considered for promotion to the post of Executive Engineer and he was found fit to be promoted as Executive Engineer only with effect from 1977, i.e., much later to the promulgation of these rules. Reliance has been placed on the decision of this Court in Direct Recruit Class II Engineering Officers' Association [supra]. That is a case where the quota rule between the direct recruits and the promotees had broken down and the appointments were made from one source in excess of the quota, but were made after following the procedure prescribed by the rules for the appointment; therefore, it was held that the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date. In that case the direct recruits were not available in adequate number for appointment and appropriate candidates in the subordinate rank capable of efficiently discharging the duties of Deputy Engineers were waiting in their queue. The development work of the State pre-emptorily required experienced and efficient hands and in that situation the State Government took a decision to fill up the vacancies by promotion in excess of the quota, but only after subjecting the officers to the test prescribed by the rules. Therefore, in those peculiar conditions certain directions had been given by this Court inasmuch as the rigours of the quota rule having been neutralised and the seniority being dependent on continuous officiation, the seniority so fixed would not be defeated by the ratio fixed by the rules. It is difficult to appreciate as to how the principle stated in that case could be extended to the case of 1st appellant in the present case as the quota rule had not broken down in any manner nor is there any material before the court to show that he has not been duly considered by the Departmental Promotion Committee before appointment to the higher grade. Again in the case of State of West Bengal & Ors. vs. Aghore Nath Dey [supra] the same question arose. In that case it was noticed that when reckoning seniority the length of the service may be a relevant factor. If the

ad hoc selection is followed by regular selection, then the benefit of ad hoc service is not admissible if ad hoc appointment is in violation of the rules. If the ad hoc appointment has been made as the stop gap arrangement and where there was a procedural irregularity in making appointments according to rules and that irregularity was subsequently rectified, the principle to be applied in that case was stated once again. There is difficulty in the way of the appellants to fight out their case for seniority should be reckoned by reason of the length of the service whether ad hoc or otherwise inasmuch as they had not been recruited regularly. As stated earlier, the appellants were regularly found fit for promotion only in the year 1977 and if that period is reckoned their cases could not be considered as found by the Tribunal. The view expressed by this Court in these cases have been again considered in the decisions in *Dr. Anuradha Bodi & Ors. v. Municipal Corporation of Delhi & Ors.*, 1998 (5) SCC 293; *Keshav Deo & Anr. v. State of U.P. & Ors.*, 1999 (1) SCC 280; *Major Yogendra Narain Yadav & Ors. v. Bindeshwar Prasad & Ors.*, 1997 (2) SCC 150; *I.K. Sukhija & Ors. v. Union of India & Ors.*, 1997 (6) SCC 406; *Government of A.P. & Anr. v. Y. Sagarashwara Rao*, 1995 Supp. (1) SCC 16, but all these decisions do not point out that in case the promotions had been made ad hoc and they are subsequently regularised in the service in all the cases, ad hoc service should be reckoned for the purpose of seniority. It is only in those cases where initially they had been recruited even though they have been appointed ad hoc the recruitment was subject to the same process as it had been done in the case of regular appointment and that the same was not a stop gap arrangement. That is not the position in the present cases at all. Therefore, we are of the view that conclusions reached by the Tribunal appear to us to be correct and call for no interference. However, we make it clear, as noticed earlier, that while amending the rules of recruitment in the 1984 all those who are already in service will be borne in mind in adjusting the seniority amongst the promotees inter se and suitable adjustments could be made and so far as the direct recruits are concerned, their cases will go by their quota rule and the view taken by the Tribunal in this regard cannot be taken exception of.

Appeals stand dismissed accordingly.