

PETITIONER:
UNION OF INDIA AND ANOTHER

Vs.

RESPONDENT:
ONKAR CHAND AND OTHERS

DATE OF JUDGMENT: 02/02/1998

BENCH:
K. VENKATASWAMI, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K. Venkataswami, J.

In all these appeals a common issue arises for consideration and decision. Hence they are heard and disposed of by this common judgment.

By way of sample, the facts in the case of Onkar Chand (Civil Appeal No. 68/90) are given. The said Onkar Chand originally belonged to Himachal Pradesh State Police and came on deputation to the Intelligence Bureau, Ministry of Home Affairs, Govt. of India on 17.8.1970 as JIO-I (Junior Intelligence Officer, Grade - I). He continued as such until he was promoted against deputation quota to the next higher rank of Assistant Central Intelligence Officer, Grad - II (for short 'ACIO-II') by an order dated 11.10.1977. Factually, he took charge of the said post on 2.1.1978. He was absorbed permanently in the Intelligence Bureau by an order dated 10.12.1980 with effect from 31.12.1977 as JIO-I. His services in the grade of ACIO-II were regularised with effect from 1.1.1985 by an order of even date.

His grievance was that his seniority in the grade of ACIO-II was reckoned from 1.1.1985, the date of regularisation in that cadre, and not from 11.10.1977, the date on which he was promoted to that rank. It was his case that his services even as deputationist in the posts of JIO-I and ACIO-II should be taken for reckoning seniority.

The next promotion from ACIO-II was to the post of ACIO-I. The minimum service required in the cadre of ACIO-II for promotion to the post of ACIO-I was complete five years. The appellants promoted him as ACIO-I only on 2.1.1990 on the ground that the said Onkar Chand was regularised in the cadre of ACIO-II with effect from 1.1.1985. According to the said Onkar Chand, he should have been considered with effect from the date on which he joined the post of ACIO-II on 2.1.1978, if not from the date of his promotion, namely, 11.10.1977, by counting his seniority accordingly. All his claims to that effect before the authorities concerned did not yield the desired results which obliged the said Onkar Chand to move the Tribunal for a direction to the authorities that his seniority in the cadre of ACIO-II should be fixed after counting his service from 2.1.1978 in

that grade and consequently he should be eligible for being considered for future promotion on the said basis.

The appellants opposed the claim of the said Onkar Chand by contending that according to the general principles of seniority, as per the Memo issued by the Ministry of Home Affairs, the seniority of transferees was determined from the date they were appointed on transfer basis in the Department. When so appointed on transfer basis, the transferees will be placed below all departmental officers promoted earlier than the date of the absorption of the transferees permanently in the Intelligence Bureau in the grade of JIO-I. In the case of Onkar Chand, he was permanently absorbed as JIO-I only on 10.12.1980 w.e.f. 31.12.1977. His services earlier to 31.12.1977, according to the appellants, in the Intelligence Bureau in the capacity of deputationist will not be taken into account for the purpose of seniority in the cadre of JIO-I. On the absorption of Onkar Chand permanently w.e.f. 31.12.1977, he will be placed junior-most in that cadre and the seniority will be counted accordingly. Though, in the meanwhile, he was promoted as ACIO-II on ad hoc basis against the deputation quota, his turn for regular promotion as ACIO-II will come only in the year 1984 as his junior departmental JIOs were promoted on the basis of 1984 DPC.

The Tribunal was not impressed by the contentions put forward on behalf of the appellants. Purporting to follow a decision of this Court in Narendar Chadha and Others vs. Union of India and Others [(1986) 2 SCC 157], it took the view that when a person has been allowed to function in a higher post for many years on ad hoc basis, it would be unjust to hold that he has no sort of claim to such post. The Tribunal has proceeded that such a view has been taken in other case and purporting to follow that decision, the Tribunal held that the seniority of the said Onkar Chand in the cadre of ACIO-II will be counted from 2.1.1978 and accordingly directed the appellants to fix the seniority from the said date.

Aggrieved by the above ratio laid down by the Tribunal, these appeals by special leave are filed.

We may at the outset point out that Mr. TLV Iyer, learned senior counsel appearing for the appellants fairly stated that irrespective of the decision in these appeals, the contesting respondents will not be disturbed as the direction of the Tribunal has already been given effect to so far as the contesting respondents are particular to get a decision on the point in issue for application in other cases.

We have carefully perused the order of the Tribunal under challenge and considered the rival submissions. We are of the view that the Tribunal had mis-directed itself in understanding and applying the ratio laid down by this Court in Narendar Chadha's case (supra). That was a case concerning the seniority dispute between the direct recruits and promotees belonging to the same Department. The case on hand is not a case of that type. On the other hand, the present case is a dispute concerning the seniority and promotions between the departmental candidates and deputationists, who had subsequently consented to be permanently absorbed in the Department of Intelligence Bureau. The Tribunal by extensively quoting from the judgment of this Court in Narendar Chadha's case, came to a wrong conclusion by applying the same to the facts of this case.

The indisputable facts, which we have given above, will show that Onkar Chand was a deputationist. When he was

permanently absorbed as JIO-I w.e.f. 31.12.77 he was factually working as JIO-I. Though, he was promoted to officiate in the rank of ACIO-II in the deputation quota by an order dated 11.10.77, he joined that post on 2.1.87. A perusal of the promotion list (vide Ex.R-II at page 124) will show that separate lists were prepared for departmental candidates, permanently absorbed candidates and deputationists. It is also worthy to note that the inter se seniority among the different categories were also fixed in the list. It is not in dispute that the deputationists have got certain percentage of quota for promotion. The said Onkar Chand was promoted to officiate in the rank of ACIO-II only against the deputationist quota is not in dispute. At this juncture, it is necessary to quote the relevant clause in the office Memorandum dated 22.12.59 regarding the fixation of seniority of persons appointed by transfer in accordance with the Recruitment Rules. Clause 7(iii) reads as follows :-

"Where a person is appointed by transfer in accordance with provision in the recruitment rules providing for such transfer in the event of non availability of a suitable candidate by direct recruitment of promotion such transferees shall be grouped with direct recruits or promotees, as the case may be, for the purpose of para 6 above. He shall be ranked below all direct recruits or promotees, as the case may be selected on the same occasion."

Therefore, when the said Onkar Chand was permanently absorbed (by transfer) in the cadre of JIO-I W.E.F. 31.12.77 he must take his seniority below the persons in the department already in the cadre of JIO-I on that date. One more relevant factor will be that a person in the cadre of JIO-I has to put in a minimum years of service before aspiring for promotion as ACIO-II. The appellants, taking the date of permanent absorption of the said Onkar Chand as JIO-I w.e.f. 31.12.77, fixed the seniority in that cadre and so considered his turn for regular promotion as ACIO-II came only in the year 1984 as his junior departmental JIOs were promoted on the basis of 1984 D.P.C.

On these factors, one cannot find fault with the fixation of seniority of the said Onkar Chand by the appellants, which was challenged before the Tribunal. The Tribunal was no right in holding that the services rendered by the said Onkar Chand as a deputation promotee in the officiating cadre of ACIO-II from 2.1.78 has to be reckoned. The earlier ad hoc promotion as ACIO-II being against the deputation quota that service cannot be claimed by a deputationist once he opted for permanent absorption in the Department. If he wanted to continue the seniority in the deputation quota be running the risk of being repatriated to his parent department, he ought not to have opted for permanent absorption. After opting for the permanent absorption, he cannot claim the benefits of absorption as well as the service put in by him in the deputation quota as ACIO-II. On the said basis, the appellants placed their case before the Tribunal that the said Onkar Chand was not entitled to seniority w.e.f. 2.1.1978 and his application before the Tribunal was, therefore, liable to be dismissed. As noticed earlier, the Tribunal came to that wrong conclusion by wrongly applying the ratio laid down by this

Court in Narender Chadha's case to the facts of the present case.

Likewise, the Tribunal also was not right in assuming that an earlier order of the Tribunal was to be followed. It was pointed out by the learned counsel for the appellants that the earlier order of the Tribunal on facts was distinguishable. According to the learned counsel for the appellants that in that case when the concerned deputationist was permanently absorbed he was factually working in the higher cadre. Therefore, that case cannot be cited to support the case of Onkar Chand. We may at once point out that we are not called upon to decide the correctness or otherwise of the ratio of that decision and, therefore, we are not expressing any opinion on that. Suffice it to say that the Tribunal was not right in directing the appellants to calculate the seniority of Onkar Chand w.e.f. 2.1.78 and granting other consequential relief.

What we have said about Onkar Chand applies also to two other connected appeals as the facts are similar.

In the result, the appeals are allowed. We make it clear that notwithstanding allowing these appeals by upsetting the order of the Tribunal, the contesting respondents shall not be affected by this judgment as the appellants are interested only to have a ruling on the point in issue for application in the other cases. No costs.