

\* **HIGH COURT OF DELHI : NEW DELHI**

+ **Judgment reserved on: 21.11.2007**  
**Judgment delivered on: 04.06.2008**

% **W.P. (C) No. 4724/2004**

Union of India ...Petitioner  
Through: Mr. R.V. Sinha, Advocate

versus

Shri Avinash Mishra ...Respondent  
Through: Mr. Rajiv Manglik, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE A.K.SIKRI**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

**VIPIN SANGHI, J.**

1. This writ petition was heard along with WP(C) No.2146/2004 as both these petitions raised the same issues in similar background of facts and circumstances. We have already disposed of W.P(C)No.2146/2004 vide our decision dated 2.5.2008. We now proceed to dispose of this writ petition in light of the observations made in the aforesaid writ petition, that is WP(C) No.2146/2004.

2. The short question involved in this writ petition under

Article 226 of the Constitution of India is whether the ad hoc uninterrupted service rendered by the respondent for a period of about 3 years between the period May, 1996 to July, 1999 prior to the regular selection of the respondent to the post of Senior Research Officer (Civil Engineering) in Planning Commission, Government of India, could be counted or not, for the purpose of considering his eligibility for promotion to the post of Deputy Adviser(irrigation) in the said department.

3. Vide notification dated 17<sup>th</sup> May, 1996, the respondent, who was serving as Research Officer, in Planning Commission, was appointed as Senior Research Officer (Civil Engineering) on ad-hoc basis, with effect from 14<sup>th</sup> may, 1996 for a period of 1 year or till such time as regular arrangement to fill up the post are made in consultation with the UPSC, whichever was earlier. The aforesaid orders also specifically stated that the period of adhoc appointment of the respondent will not vest in him any right to claim for regular appointment. On 2<sup>nd</sup> July, 1997, a similar order appointing the respondent on adhoc basis as an Senior Research Officer (Civil Engineering) w.e.f. 17<sup>th</sup> may 1996, for a period of 6 months or till such time as regular arrangement to fill up the post are made in consultation with UPSC, whichever was earlier, was issued. Thereafter, from time to time similar notifications were issued extending the adhoc appointment of the respondent.

4. On 23.07.1999, the petitioner issued another

notification regularly appointing the respondent as Senior Research Officer "*on promotion basis*" on the recommendation of the UPSC w.e.f. the forenoon of 21.07.1999 until further orders. The said order reads as follows: -

"New Delhi, the 23<sup>rd</sup> July, 1999.

NOTIFICATION

No.A.12025/03/92-Adm-II: The President is pleased to appoint Shri Avinash Mishra, Regular Research Officer, ad-hoc Senior Research Officer, Planning Commission as Senior Research Officer (Civil Engineering) in the scale of Rs.10000-325-15200 (Revised) on Regular Promotion Basis with effect from the forenoon of 21.07.1999 and until further orders.

Sd/-  
(SURESH PAL)

UNDER SECRETARY TO THE GOVERNMENT  
OF INDIA"

5. The next promotional post, from the post of Senior Research Officer (Civil Engineering) is the post of Deputy Adviser. The said post is to be filled by promotion/deputation, failing which by direct recruitment. Senior Research Officer with five years regular service in the grade are eligible for consideration for the said post.

6. The petitioner issued an advertisement in pursuance to their decision to fill post of Deputy Adviser (Irrigation). This action of the petitioner was not to the liking of the respondent as, according to him, he was eligible for filling up the said post by promotion. Accordingly, the respondent filed the Original Application bearing

No.1116/01 before the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal), wherein he sought the relief of that his candidature be considered for the post of Deputy Advisor for which the meeting of the screening committee/DPC had been fixed for 15.05.2001. He also sought a direction to the petitioner to count the service rendered by him w.e.f. May,1996 onwards on the post of Senior Research Officer (Civil Engineering) for the purpose of ascertaining his eligibility for being considered for promotion to the post of Deputy advisor and to promote him to the said post.

7. The case of the respondent was that his ad-hoc promotion to the post of Senior Research Officer (Civil Engineering) had been continued from time to time without interruption since his initial ad-hoc appointment, and he was regularly promoted to the post of Senior Research Officer (Civil Engineering) w.e.f. 21.07.1999. The respondent contended that if his entire service as Senior Research Officer (Civil Engineering) is counted w.e.f. 14.5.1996, he had the requisite experience of 5 years on the post of Senior Research Officer (Civil Engineering) on the relevant date and was, consequently, eligible to be considered for promotion to the post of Deputy Advisor. The respondent further contended that in spite of his various representations for being promoted to the post of deputy Advisor, the petitioner was proceeding to fill up the post of Deputy Advisor without considering the candidature of the respondent. The respondent claimed that since he was eligible, having more than 5

years of service as Senior Research Officer (Civil Engineering), and was available for being considered for promotion, he should have been considered and promoted rather than adopting the next method prescribed for filling up the post i.e. by transfer on deputation (including short term contract). The respondent in support of his case relied upon the decision of the Supreme Court in ***Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors.*** (1990) 2 SCC 715 and ***T. Vijayan & Ors. v. Divisional Railway Manager & Ors.*** (2000) 4 SCC 20. The respondent specifically relied upon sub-para (B) of para 47 of ***Direct Recruit*** (supra) wherein the Supreme Court had held “*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*”.

8. The Tribunal after considering the respective submissions of the parties and after perusing the records of the petitioners gave a finding that the respondent's service on ad-hoc basis should be considered and counted as qualifying service for the purpose of promotion to the post of Deputy advisor in Planning Commission and directed that the result of the selection of the respondent, which has been kept in the sealed cover in pursuance of the direction in the interim order, shall be given effect to by the petitioners herein, after opening the sealed cover within a period of

one month from the date of receipt of a copy of the order.

9.                Thereafter, the respondent filed an OA 1748/2004 seeking compliance of the aforesaid impugned order, and the Id tribunal issued directions to the petitioner to comply with the directions given in the OA 1116/2001, subject to the final outcome of this writ petition, with the stipulation that if the contrary view is taken is taken by this court in the present writ petition, then the respondent will have to refund the difference of wages and would not have any right to promotion. In compliance of the said direction, the petitioner promoted the respondent to the post of Deputy Advisor vide notification dated 31.12.2004.

10.              The Tribunal was of the opinion that the appointment of the respondent on ad-hoc basis to officiate as Senior Research Officer (Civil Engineering) was in accordance with the recruitment rules. The mere fact that subsequently he had been given regular promotion in the year 1999, did not mean that the earlier period of officiation would not be treated as regular service rendered by the respondent for considering his eligibility for further promotion and seniority. The Tribunal agreed with the respondent's submission that because he had officiated on the promotion post of Senior Research Officer (Civil Engineering) uninterruptedly, he should be given the benefit of seniority and eligibility for further promotion. The Tribunal also held that the respondent's case was covered by principle (B) contained in para 47 of the judgment of the case of **Direct Recruit**

(supra).

11. Consequently, the Tribunal allowed the Original Application filed by the respondent .

12. Before us the submission of the respondent once again is that since his initial appointment, which was made on ad hoc basis was continued uninterruptedly and eventually he was duly selected to the post of Senior Research Officer (Civil Engineering), he should not be made to suffer on account of the failure of the petitioner in undertaking the selection process earlier. He has also argued that his case is covered by the principle stated in paragraph(B) of para 47 of the judgment in the case of **Direct Recruit** (supra).

13. On the other hand, while assailing the decision of the Tribunal, learned counsel for the petitioner, UOI has also relied on the decision of the Supreme Court in **Dr. Anuradha Bodi and others v. Municipal Corporation of Delhi and Others**, (1998) 5 SCC 293 and **Swapan Kumar Pal and Others V. Samitabhar Chakraborty and Others**, (2001)5 SCC 581.

14. Having considered the rival submissions of the parties, in our view the impugned decision of the Tribunal appears to be laconic. Admittedly, the initial appointment of the respondent to the post of Senior Research Officer (Civil Engineering) was merely an ad-hoc appointment. The said appointment was also not preceded by an

interview by the UPSC, which, admittedly, was required under the Rules. Even when the orders appointing the respondent on ad hoc basis to the post of Senior Research Officer (Civil Engineering) was initially made and continued from time to time, the respondent was left in no manner of doubt that the said appointment was merely on ad hoc basis and was being made for a limited period or till the regular arrangement to fill up the post is made in consultation with UPSC. The respondent was also informed that his ad hoc appointment would not confer upon him any right to claim regular appointment, seniority, etc.

15. Admittedly the selection to the post of Senior Research Officer requires consultation with the UPSC as per the rules and regulations, and, admittedly, while giving the ad-hoc appointment the UPSC was not consulted with. Merely because the respondent was subsequently recommended by UPSC for being regularly promoted to the post of Senior Research Officer (Civil Engineering) in the year 1999, the same would not relate back to the date of initial ad hoc appointment of the respondent to that post. The same cannot be equated with a situation where the incumbent is considered for appointment in accordance with the Rules, but appointed on ad hoc basis which is then continued without any explanation from the employer, and subsequently the incumbent is found eligible and suitable for promotion to the post on a regular basis on which he has been officiating.

16. In our view the Tribunal was wrong in accepting the submission of the respondent that his case is covered by principles set out in para (B) of para 47 of the decision in **Direct Recruits** (*supra*). In fact the case of the respondent is squarely covered by the corollary to the principle set out in paragraph (A) of para 47 of the said judgment which reads as follows:-

17. We may also refer to the decision of the Supreme Court in **Dr. M. A. Haque & Ors V. UOI**, JT 1993(2) Sc 265. In para 8 of the said decision, the Supreme Court inter alia, observed as follows:-

“8. Since the petitioner-applicants are admittedly not regularly appointed through the UPSC according to the rules but have been directed to be regularised by following the procedure laid down by this Court, it is obvious that they are not appointed to their posts according to the rules. Under no circumstances, therefore, they fall within the scope of guideline [A] laid down in *Direct Recruit Class II Engineering Officers' Association's case* [*supra*]. In fact they do not fall under guideline [B] given therein either, since their regularisation is not in accordance with the rules but as a consequence of special procedure laid down by this Court. The expression "in accordance with the rules" or "according to rules" used in the said guidelines [A] and [B] means the rules of recruitment and not the special procedure laid down by this Court.....”

18. For our aforesaid reasons, we find merit in this petition and allow the same. The respondent shall be reverted to the post of Senior Research Officer and shall also refund the difference of wages

that he has drawn on the post of Deputy Advisor since 31.12.2004.

The parties are left to bear their respective costs.

**(VIPIN SANGHI)**  
**JUDGE**

**(A.K. SIKRI)**  
**JUDGE**

**June 04,2008**  
RSK/as