

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 07.09.2012
Judgment pronounced on: 05.10.2012

+ **W.P.(C) 2700/2003**

P.P. RELAN

... Petitioner

versus

UOI & ORS.

... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr Padma Kumar with Mr K.K. Mishra
For Respondent	: Mr Mukesh Kumar Tiwari for Ms Ruchir Mishra

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. The petitioner Shri P.P.Relan joined Department of Telecommunication as L.D.C. on 20th March, 1967. He was promoted as U.D.C. on ad-hoc basis with effect from 1st March, 1980 and on regular basis with effect from 7th April, 1980. On 14th October, 1985, he was appointed as Assistant, on the recommendations of D.P.C. held in September-October, 1985, on ad-hoc basis. The grievance of the petitioner is that his name which ought to have been included in the 1980 seniority list of UDCs was shown at Serial No.5 in the 1983 seniority list of UDCs. In the Select List of Assistants circulated on 1st October, 1997, he was shown as a

selectee of 1991 at Serial No.7. Vide subsequent order, his name was shown at Serial No.95 as a selectee of 1991. The case of the petitioner is that when he was promoted as Assistant with effect from 14th October, 1985, his name should have been included in the Select List of 1989. He also stated by including his name in the Select List of 1989, he should have been assigned seniority along with direct recruits of 1989 and his name should appear above Shri A.K. Chadha whose name appeared at serial No. 44 and below Shri Jasbir Singh whose name appeared at serial No. 43.

2. The petitioner accordingly filed OA No. 1402/1999 seeking the following directions to the respondents:

- (i) Assign correct seniority to him, firstly when he was promoted from LDC to UDC and secondly from UDS to Assistant with all consequential benefits;
- (ii) promote him by virtue of revised/re-fixed seniority as Assistant by virtue of which he is becoming entitled to promotional post of Section Officer from the date his junior was promoted; and
- (iii) grant arrears of pay and allowances in the event applicant becoming entitled to promotion from the date his junior Shri A.K. Chadha was promoted with 18% interest on them.

3. Vide order dated 06.04.2000, while dealing with preliminary objection taken by the respondent as to limitation, the Tribunal, *inter alia*, observed that the

petitioner can make any grievance as to fixation of seniority in the cadre of UDCs, the same having been finalized in 1980, could not be re-agitated in 1989 and 1991. The OA was, therefore, admitted only with respect to re-fixation of senior of Assistants.

4. The plea taken by the respondent before the Tribunal was that the applicant was shown against Select List of 1991 because he was included against Select List of 1983 of UDCs which enabled his inclusion in Selection List of 1991 in respect of Assistants. They submitted that the petitioner was never included in the Select List of 1980 in respect of UDCs and, therefore, he had rightly been placed in the 1991 list of Assistants. The Tribunal vide impugned order dated 25.10.2002 noted that the case of the petitioner has been considered by DoP&T and had been rejected on the ground that the petitioner was eligible only for long-term appointment in the year 1980 and not for inclusion in the Select List of that year. The Tribunal was of the view that a mistake had been committed by the respondents by issuing promotion of the petitioner with effect from 07.04.1980 on regular basis instead of long-term basis and, therefore, the name of the petitioner had rightly been included in the 1983 Select List of UDCs. The Tribunal also found that the petitioner was challenging the seniority assigned to him in the grade of Assistants on the basis of Select List of 1991 and he has not chosen to challenge the seniority assigned to him at the time he was promoted as UDCs way back in the year 1980. The application

filed by the petitioner for condonation of delay in filing the OA was dismissed by the Tribunal which found that the OA was hit by latches and delays.

5. It is an admitted position that the petitioner was appointed as Assistant with effect from 14.10.1985. The case of the respondent is that his appointment to the post of Assistant with effect from 14.10.1985 was on ad hoc basis and regular appointment to the said post came to be made only with effect from 20.09.1993. This is not the case of the respondents that there was no vacancy in the cadre of Assistants, when the petitioner was promoted on ad hoc basis. This is also not their case that the Recruitment Rules applicable for making regular appointment to the post of Assistant were not followed, at the time of appointment of the petitioner with effect from 14.10.2005.

6. No arguments were advanced on behalf of the respondents when this matter was taken up for hearing on 7.9.2012. We, however, gave liberty to the respondents to make submissions by way of filing their written submissions. The petitioner was also permitted to file written short synopsis along with copy of OM dated 30.5.2005 and its annexures, which he had relied upon during his arguments. The respondents have not availed this opportunity and have not filed any written submissions.

7. The petitioner has placed before us, along with a supporting affidavit, a copy of OM dated May 30, 2005 issued by the Government of India, Ministry of

Personnel Affairs, Public Grievances and Pension (Department of Personnel and Training) in connection with W.P(C) No.2647/1998, **Uma Kant Poddar & Others v UOI & Others** . A perusal of the said OM would show that during hearing of the W.P.(C) 2647/1998, this Court directed that records relating to all promotions (including Select List, long term and ad-hoc promotions) made in the Assistant's grade of All Cadre Authorities of CSS, from the year 1983 to 1989, be placed before the Court. All Cadre Authorities of CSS were, therefore, requested to furnish the relevant information, like minutes of the meetings of DPCs held in this connection, promotion order etc, so as to enable the Department to comply with the direction of the Court. The petitioner has also filed a copy of the information furnished by various Cadre Authorities in connection with the aforesaid writ petition. The Item at serial number 30 pertaining to the Ministry of Communication and IT, shows that the method adopted for appointment of promotion to the posts of Assistant was through DPC for the three modes i.e. Ad-Hoc, Long Term/Officiating and Selection List. The respondents have not filed any reply affidavit to controvert the case set out in the affidavit of the petitioner dated 12.09.2012, which he has filed pursuant to our order dated 7.9.2012.

8. In view of the affidavit dated 12.9.2012 and the annexures to the notice, we have no hesitation in concluding that the appointment of the petitioner as Assistant with effect from 14.10.1985 was based on the recommendations of the DPC, which

implies that the appointment was against a regular vacancy available in the cadre and was made after following the recruitment rules applicable to the post.

9. In ***The Direct Recruit Class-II Engineers Officers' Association and others v State of Maharashtra and Others*** [All India Services Law Journal V-1990(2) 40], the Supreme Court held that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority. The legal proposition in this regard was summarized by the Supreme Court as under:

A. Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

B. If the initial appointment is not made by following the procedure laid down by the rules but the appointed continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.

10. Since in the present case, the appointment of the petitioner in the cadre of Assistant with effect from 14.10.1985 though termed as ad hoc promotion was based upon the recommendations made by the Departmental Promotion Committee and was made according to the relevant recruitment rules, the period of service rendered by him as Assistant on ad hoc basis is required to be taken into consideration for the purpose of computing his seniority in the cadre of Assistants.

11. For the reasons stated hereinabove, we modify the impugned order dated 25.10.2002 and hold that the petitioner is entitled to seniority in the cadre of Assistants with effect from 14.10.1985. The petitioner is also entitled to consequential benefits which flow from computation of his seniority in the cadre of Assistant with effect from 14.10.1985. The arrears payable to the petitioner in terms of this order shall be worked out and paid by the respondents within eight weeks.

The writ petition stands disposed of in above terms. In the facts and circumstances of the case, there shall be no orders as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

OCTOBER 05, 2012

bg/rd