

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1509 of 2010

- Y.K. Shukla S/o Late Shri Prem Kumar Shukla, aged about 47 years,
R/o Block Colony Vikas Khand Nagri Distt. Dhamtari (Cg)

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Development of
Panchayat Avam Gramin Vikas Vibhag, D.K.S. Bhawan, Mantralaya,
Raipur (C.G.)
2. The Development Commissioner, Raipur Division Raipur (Cg)
3. The Executive Engineer, Department Of Rural Engineering Service,
Office Of Commissioner, Raipur Division, Raipur (Cg)

---- Respondent

For Petitioner	Shri Pawan Shrivastava, Advocate
For Respondent/State	Shri P. K. Bhaduri, GA

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

30/03/2016

1. The petitioner is Sub Engineer in the Department of Rural Engineering Service. He has preferred this writ petition claiming seniority from the date of initial appointment.
2. In O.A. No.804/1992 preferred by the petitioner before the erstwhile Madhya Pradesh State Administrative Tribunal (for short 'MPSAT'), an order was passed on 14.02.1997 to the following effect:-

“Counsel for both the parties were heard on merits of this case. They have agreed to the

extent that the direction as given in O.A. No.2279/91 (Pradeep Kumar Gumasta Vs. State of M.P. and others) if given in this case will meet the ends of justice at present because this case has the similar facts and the applicant has the similar situation as the applicant of the aforesaid case had in his case. It is well settled that the persons having similar facts and similar situations should be dealt or treated similarly. The direction as passed in the aforesaid case runs as under:-

It is being directed that the respondents shall constitute a screening committee within two months of the date of this order. If the committee finds the petitioner suitable for this post in all respect, he shall be regularized on the post held by him and shall pay his salary on regular scale. He shall also be entitled to salary for the days of break in service. The seniority will be counted from the date of his initial appointment.

This petition be and is hereby disposed of finally with the said directions with no order as to costs.”

3. Pursuant to the above order of the MPSAT, a gradation list was published in the year 2006 showing the seniority position as on 01.04.2005 mentioning the petitioner's date of entry into the cadre as 12.01.1984. In the subsequent gradation list also showing the position as on 01.04.2006, his name was mentioned at Sr. No.188 mentioning his date of initial entry into the cadre as 12.01.1984. Even in the tentative gradation list published in the year 2009 showing the seniority position as 01.04.2009, his name was mentioned at Sr. No.181, however, when this list was finalized and the final gradation list was published, the petitioner was shown at Sr. No.227 mentioning his initial entry into the cadre as 18.11.1997, which is the date, on which he was regularized.

4. It is argued by the learned counsel for the petitioner that having conferred seniority to the petitioner in accordance with the judgment rendered in O.A. No.804/1992, the respondents could not have withdrawn the same by reckoning his seniority from the date of regularization and placing him down below in the gradation list.
5. Per contra, learned State counsel would refer to the documents (Annexure-R-3 & R-4), wherein the Screening Committee constituted for considering the issue of regularization opined that the *inter se* seniority of the petitioner *vis-a-vis* other sub-engineers working in the department prior to 31.12.1988 shall be fixed separately. He would submit that this order has been accepted by the petitioner, therefore, he cannot turn back to challenge the same.
6. It appears, in the order dated 18.11.1997 issued by the State Government pursuant to the recommendation for regularization made in petitioner's favour by the Screening Committee, it was never directed that the petitioner would not be entitled for seniority from the date of initial appointment. This order only speaks about re-fixation of *inter se* seniority, however, in the garb of re-fixation of seniority, the respondents could not have denied the benefit of seniority from the date of initial appointment, which was earlier made admissible to the petitioner on the strength of the order passed by the MPSAT in O.A. No.402/1992.
7. Learned State counsel would refer to the averments made in the counter affidavit to impress upon the Court that the seniority is always reckoned from the date of regularization and not from the date of initial entry into the service, if the said entry was *de hors* the recruitment rules.

8. The argument appears to be convincing, however, in view of the order passed by the Tribunal in O.A. No.402/1992, the same would be binding on the State Government, because it would be an order in a lis inter parties. Moreover, the State Government never assailed the said order of the MPSAT before the High Court or by preferring a review application. On the contrary, the State Government has complied with the order by constituting a screening committee and regularizing the services of the petitioner. Hence, the order having been put into effect, the same has to be done in its entirety and not in part.
9. For the foregoing, the writ petition deserves to be and is hereby allowed. The respondents are directed to maintain the petitioner's seniority from the date of initial entry into the service i.e. 12.01.1984 and place him at the appropriate position in the gradation list showing the seniority position of sub-engineers in the Department of Rural Engineering Service as on 01.04.2009 and in all subsequent gradation lists.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA