

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9194 of 2014 (O&M)

Date of Decision: 27.02.2017

Sports Authority of India & Anr.

... Petitioners

VS.

CAT, Chandigarh & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

Present: Mr. Arvind Moudgil, Advocate for the petitioners

Mr. Sanjeev Pandit, Advocate for respondent No.2

SURYA KANT, J. (Oral)

(1) The Sports Authority of India has laid challenge to the orders dated 12.03.2012 and 06.01.2014 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal') whereby respondent No.2 has been held entitled to the benefit of *ad hoc* service and consequently ordered to be placed above respondent No.3 in the cadre of Junior Scale Stenographers.

(2) Facts may be noticed briefly.

(3) Respondent No.2 (who was applicant before the Tribunal) was appointed as Junior Scale Stenographer on *ad hoc* basis on 13.01.1986. He was selected by way of an open competition. Respondent No.3 at that time was already working as a Lower Division Clerk with the petitioner-Authority. She made a request to shift her to the cadre of Junior Scale Stenographer which was acceded to and consequently she was also appointed as Junior Scale Stenographer on *ad hoc* basis on 21.02.1986.

(4) Services of both respondents No.2&3 were regularized w.e.f. 01.01.1987 without making any fresh selection or drawing a merit list.

(5) It appears that in the year 2008, respondent No.3 filed objections against the tentative seniority list and claimed herself senior to respondent No.2 on the premise that she was older in age. Her claim was accepted and she was placed above respondent No.2 in the final seniority list.

(6) It may be noticed at this stage that earlier also some employees of petitioner-Authority, namely, Adarsh Mehta and others who were appointed on *ad hoc* basis, were later on made regular without any break in service. The seniority dispute in relation to those employees had also arisen, which was decided by the Tribunal holding that they were entitled to be treated in service from the date(s) of their initial appointment on *ad hoc* basis. That order of the Tribunal was upheld by a Division Bench of this Court in **Sports Authority of India & Anr. vs. Adarsh Mehta & Anr. 2004 (6) SLR 286**. The SLP was also declined by the Hon'ble Supreme Court.

(7) When respondent No.2 was placed below respondent No.3 in the final seniority list of 2008, he too approached the Tribunal. His claim was accepted by the Tribunal vide order dated 12.03.2012 (RA-1) on the strength of the decision of Hon'ble Supreme Court in **Direct Recruit Class II Engineering Officers Association & Ors. vs. State of Maharashtra & Ors. AIR 1990 SC 1607** as also the decision of this Court in **Adarsh Mehta & Anr.** case (supra).

(8) The Sports Authority of India challenged the Tribunal's order before this Court and its writ petition was disposed of with liberty to seek review of the Tribunal's order. The Tribunal has dismissed the review application vide order dated 06.01.2014 (P12) reiterating that in view of the decision in **Adarsh Mehta & Anr.** case, respondent No.2 is entitled to the benefit of *ad hoc* service for the purpose of seniority and resultantly he would rank senior to respondent No.3.

(9) The petitioner-Authority has questioned both these orders in these proceedings though respondent No.3 has not come forward to agitate against the Tribunal's decision.

(10) We have heard learned counsel for the parties and gone through the record.

(11) The primary contention on behalf of the petitioners is that the Sports Authority of India (Service) Bye-laws and Conditions of Service Regulations, 1992 [(RA/3) relevant extracts only], do prescribe the criteria to determine seniority, hence the seniority has to be determined in accordance with such Bye-laws/Regulations.

(12) Clause 17 of the Bye-laws/Regulations deals with seniority and according to its *proviso* ***“the seniority in respect of persons appointed or promoted to a grade prior to the commencement of these rules shall be on the basis of their regular appointments to the posts which they are holding on the date of commencement of these rules”***.

(13) As regard to the employees appointed after the Regulations, came into force, it is provided that ***“the inter se seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointments on the recommendations of the selecting authority, person appointed as a result of an earlier selection being senior to those appointed as a result of subsequent selection”***.

(14) Service Bye-laws/Regulations came into force in the year 1992, namely, after the services of respondents No.2&3 were regularized w.e.f. 01.01.1987. In this view of the matter, the *proviso* to Clause 17 is the relevant provision for determination of seniority inter-se between the private respondents and according to the said *proviso*, they are to be assigned seniority

“on the basis of their regular appointments to the post...”. The Bye-laws/Regulations thus do not help in resolving the seniority dispute, for both of them were appointed on regular basis on the same date i.e. 01.01.1987. The later part of Clause 17 which applies *qua* the appointments made after the enforcement of Regulations, can neither be applied nor it otherwise throws any light to settle the controversy. The Bye-laws/Regulations are totally silent and do not deal with a situation where appointments were made on the same date without determining their inter-se merit. Similarly, the Regulations nowhere provide that a person older in age would rank senior than the person younger in age. Thus the stand taken by the petitioners that the seniority between respondents No.2&3 was determined as per the Bye-laws/Regulations is factually incorrect. It is also an admitted fact that at the time of regularization of services of private respondents w.e.f. 01.01.1987, no merit list was prepared. It is obvious that the criteria of inter-se-merit also cannot be invoked for determining the seniority. The decision of the petitioner-Authority thus is not supported by any provision of the Bye-laws/Regulations.

(15) In such like situation where the seniority claims cannot be settled within the framework of service Bye-law/Regulations/Rules, the Court has to fall back on the settled principles of service jurisprudence founded upon the equitable, just and fair principles.

(16) The services of respondents No.2&3 were admittedly regularized on 01.01.1987. Such regularization was an off-shoot of the *ad hoc* service rendered by them. The *ad hoc* service therefore is the foundation of the structure of their ‘regular status’. Such *ad hoc* service has a direct impact and relevance on the determination of status of respondents No.2&3 in regular cadre. In the *ad hoc* service, respondent No.2 was admittedly senior to

respondent No.3. He was appointed through a competitive mode as compared to respondent No.3 who was shifted from one cadre to another at her own request. Since in the cadre of Junior Scale Stenographers, the length of service of respondent No.2 is longer than that of respondent No.3, he is entitled to rank senior to respondent No.3. Even if the *ad hoc* service is not to be added or counted towards seniority in the regular cadre, yet its length is a decisive factor for deciding inter-se placement between respondent No.2&3 as on 01.01.1987. Respondent No.2 therefore deserves to rank senior to respondent No.3.

(17) In the light of the above discussion, we do not find any merit in this writ petition which is dismissed but for the reasons different than those assigned by the Tribunal.

(18) Ordered accordingly.

(Surya Kant)
Judge

27.02.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
Yes