



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

%

Date of decision: 18th December, 2023

+ W.P.(C) 16333/2023, CM APPLs. 65738/2023, 65739/2023 &
65740/2023

(57) **RAJIV RATAN SINGH AND ANOTHER**

..... Petitioners

Through: Mr. S.K. Gupta, Adv.

versus

UNION OF INDIA AND OTHERS

..... Respondents

Through: Mr. Ravi Prakash, CGSC with
Mr. Farman Ali, Mr. Taha Yasin,
Advs. with Mr. Amit Acharya, GP
for R-1 & R-2

Mr. Naresh Kaushik and
Mr. Anand Singh, Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 65739/2023 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM APPL. 65740/2023

This is an application filed by the petitioners seeking
permission to file additional documents on record.



For the reasons stated in the application, the same is allowed and the additional documents filed by the petitioners are taken on record. The application is disposed of.

W.P.(C) 16333/2023, CM APPL. 65739/2023

1. The challenge in this writ petition is to an order dated December 4, 2023, passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.329/2023 ('OA', for short) whereby the Tribunal has dismissed the OA filed by the petitioners herein by stating in paragraphs 9.1 onwards as under:

"9.1 In the instant case, it is clearly on record that this prescribed procedure has not been followed and, therefore, the promotions have been termed as purely ad hoc. It is also an accepted fact that ad hoc promotions are distinct from regular promotions and the former does not confer upon any employee the benefit of regular promotion.

9.2 The contention of the applicants that the ad hoc promotions had to be resorted to due to certain legal implications in terms of N.R. Parmar's case (supra) etc. and, therefore, they should be given the benefit of ad hoc promotions for the said period to be counted as regular promotions, is not tenable. The applicants were promoted as ACIT on ad hoc basis vide order dated 07.04.2016 which clearly states that they shall continue to discharge the functions of the lower post, i.e., ITO only.

9.3 Although citations have been provided by learned counsel for both the parties, yet the facts of the current matter and rules regarding ad hoc and regular promotions leave no doubt about the categorical difference between ad hoc and regular promotions. Hence, the citations do not have a direct bearing on the facts of the present case.



9.4 In conspectus of the facts brought out above, we do not find any merit in the contentions of the learned counsel for the applicants. Accordingly, we dismiss the OA being devoid of merit.

10. No order as to costs."

2. The petitioners had challenged the order dated July 15, 2022, whereby the respondents have rejected the request made by the Association of Officers for relaxation in length of qualifying service for grant of Senior Time Scale.

3. The facts as noted from the petition are that the petitioners were selected and appointed as Income Tax Inspectors in the year 1992. About ten years thereafter they were promoted to the post of Income Tax officer in 2001. They became due for promotion to the post of Assistant Commissioner of Income Tax (ACIT).

4. It is an admitted position that the post of ACIT did not take place for quite some time. In any case, the petitioners herein were promoted as ACIT on *ad hoc* basis, vide order dated April 07, 2016. The regular DPC was convened in 2019 and vide order dated May 16, 2019, the petitioners herein were promoted to the post of ACIT on a regular basis. In the context of promotion to the post of Deputy Commissioner of Income Tax, four years of standing in the feeder category, i.e., ACIT. The petitioners insisted that the service rendered by them from April 07, 2016 onwards is required to be counted for determining their eligibility for promotion to the post of Deputy Commissioner of Income Tax.

5. They made a detailed representation on May 28, 2019, as no orders were passed thereon, they filed OA No.3331/2019 with a prayer to declare the action of the respondents in not considering the cases of



the petitioners for promotion to the post of Deputy Commissioner of Income Tax in the DPC held in December, 2018 as illegal and arbitrary and to direct the respondents to count their service from the date on which they started functioning as ACIT, for determining their eligibility for further promotion. The stand of the respondents in the aforesaid OA was that the service rendered by the petitioners from April 07, 2016, could not be treated as valid for promotion to the next higher post as the aforesaid promotion was not on the basis of selection by UPSC and the arrangement was made purely on *ad hoc* basis.

6. The Tribunal while disposing off the OA had directed the respondents to pass orders on the representation dated May 28, 2019 within a period of eight weeks. Pursuant thereto, the respondents issued an order dated July 15, 2022, rejecting the representation filed by the petitioners by stating that the persons appointed on *ad hoc* basis to a grade are to be replaced by persons approved for regular appointment by direct recruitment, promotion or transfer (absorption), as the case may be, at the earliest opportunity. Thus, at no stage these instructions provide for counting of *ad hoc* service as qualifying service for promotion to the next grade. We have already reproduced the findings of the Tribunal while rejecting the OA.

7. It is noted that in the year 2014-15, a communication was sent to the UPSC for convening a DPC for promotion to the post of ACIT. After a round of correspondence between UPSC and the respondent-department, UPSC pointed out about framing a seniority list of ITOs on the basis of judgment of the Apex Court in *N.R. Parmar's case (supra)*. It is noted that the Commission, vide letter dated March 26, 2016,



directed the department to seek comments of DoP&T and Department of Law and Justice keeping in view the pending litigations as to whether convening of DPC to consider promotion to the post of ACIT on the basis of old seniority list, which has not been revised in accordance with the decision in *N.R. Parmar's case (supra)*, would not be in violation of any court order.

8. It was only after obtaining the opinion / advice of DoP&T and DoLA, the department again discussed the proposal for convening DPC under 'Single Window System' on November 10, 2016 with UPSC. The Commission observed that DoP&T vide its OM dated September 30, 2016 had stated that no further promotions of reserved categories persons to unreserved posts will be made based on the OM dated August 10, 2010 which pertains to promotion of officers belonging to SC / ST categories on their own merit.

9. The case of the respondents is pursuant to the decision in the SLP(C) Nos.31288/2017 and 28306/2017, the DoP&T had issued OM dated June 15, 2018, to all Cadre Controlling Authorities of Central Government Ministries, Departments and Union Territories to carry out promotions in accordance with the directions of the Apex Court. Accordingly, the department revised the earlier proposal for making promotion to the grade of ACIT for the year 2014-15 on a regular basis and forwarded the same to UPSC on December 13, 2018.

10. It appears that the matter was again referred to DoP&T seeking opinion / comments as sought by UPSC. It is also stated that a reference has also been made to the judgment of this Court in *W.P.(C) 3087/2016 & 8443/2016*, in *Ms. Veena Kothawale* to hold that the judgment of the



Supreme Court in *N.R. Parmar (supra)* cannot be applied in a manner which unsettles the settled seniority.

11. The decision in *Ms. Veena Kothawale's case (supra)* attained finality as the Apex Court dismissed the SLP. Therefore, in light of the said judgment, the department intimated the same to UPSC in February, 2019 with a request to convene a DPC for promotion to the grade of ACIT against the vacancy year 2014-15. It is pursuant thereto, the petitioners were given promotion.

12. Mr. S.K. Gupta, learned counsel for the petitioners would submit that the Supreme Court in the case of *Direct Recruit Class-II Engineering Officers' Association v. State of Maharashtra, 1990 (2) SCC 715*, has 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 regularization of his service in accordance with the rules, the period of officiating service will be counted.

13. The Tribunal was of the view that the procedure which is contemplated under the Rules has not been followed. Therefore, the promotions which were made initially in the year 2015 have been made as purely *ad hoc*. It was also of the view that the *ad hoc* promotions are distinct from regular promotions and the former does not confer upon any employee the benefit of regular promotion.

14. On the other hand, Mr. Farman Ali, Advocate / Mr. Ravi Prakash, CGSC appearing for the respondents has relied upon the judgment of the Supreme Court in the case of *Malook Singh and Ors. v. State of Punjab and Ors., 2021 SCC OnLine SC 876*, to contend that even the Supreme Court considering the judgment in the case of *Direct*



Recruit Class-II Engineering Officers' Association (supra) has in paragraph 21 held as under:

“21. The decision in Direct Recruits (supra) stands for the principle that ad hoc service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgment dated 6 December 1991 on Direct Recruits (supra) to hold that the ad hoc service should be counted for conferring the benefit of seniority in the present case is clearly misplaced. This principle laid down in Direct Recruits (supra) was subsequently followed by this Court in Keshav Chandra Joshi v. Union of India¹⁵. Recently a two judge Bench of this Court in Rashi Mani Mishra v. State of Uttar Pradesh¹⁶, of which one of us (Justice DY Chandrachud) was a part, observed that the services rendered by ad hoc employees prior to their regularization cannot be counted for the purpose of seniority while interpreting the Uttar Pradesh Regularization of Ad Hoc Appointment Rules. This Court noted that under the applicable Rules, “substantive appointment” does not include ad hoc appointment and thus seniority which has to be counted from “substantive appointment” would not include ad hoc service. This Court also clarified that the judgment in Direct Recruits (supra) cannot be relied upon to confer the benefit of seniority based on ad hoc service since it clearly states that ad hoc appointments made as stop gap arrangements do not render the ad hoc service eligible for determining seniority. This Court speaking through Justice MR Shah made the following observations:

“36. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time; initial appointment orders in the year 1985 and the



subsequent order of regularization in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularization as per the 1979 Rules shall not be counted for the purpose of seniority, vis-à-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent re-determination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularization in the year 1989 is to be restored.

37. Now so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the case before this Court, the appointments were made to a post according to rule but as ad hoc and subsequently they were confirmed and to that this Court observed and held that where appointments



made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. In the present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularized after following due procedure as required under the 1979 Rules and after their names were recommended by the Selection Committee constituted under the 1979 Rules. As observed hereinabove, the appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the “substantive appointments”. Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules.”

(emphasis supplied)

15. According to them, the Supreme Court has clearly held that the judgment in **Direct Recruit Class-II Engineering Officers' Association (supra)** stands for the principle that *ad hoc* service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules.

16. It is a conceded case that the *ad hoc* promotion which was given in the year 2015 was not through the process of UPSC. It is only in the year 2019 that the UPSC had held DPC and recommended the petitioners for promotion. In that sense, the reliance placed by Mr.



Gupta on the judgment of the Supreme Court in the case of *Direct Recruit Class-II Engineering Officers' Association (supra)* shall not help the case of the petitioners.

17. We are of the view that the Tribunal has rightly rejected the OA filed by the petitioners herein.

18. The writ petition being without any merit, the same is dismissed. No costs.

CM APPL. 65738/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

DECEMBER 18, 2023/aky