

Form J(2).
Item No.11
Court No. 1

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Present:
THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

**WP.CT 205 OF 2013
+
IA No.CAN 2 of 2014 (Old No. CAN 10326 of 2014)**

**Sri Amalendu Jana
VS
Union of India & Ors.**

Appearance:-

For the Petitioners

:

Mr. Sarajit Sen
Mr. Sambhu Nath Sardar

For the Respondent

:

Mr. Pramit Kumar Ray, Sr. Adv.
Mrs. Sarda Sha
Ms. Atmaja Bandyopadhyay
Ms. Benazir Kazi
Mr. Krishnendu Ghosh

Heard on

:

21.04.2026

Delivered on

:

21.04.2026

Judgment (Oral)

Per, SUJOY PAUL, C.J.:-

1. This petition filed under Article 226/227 of the Constitution of India takes exception to the order of the Central Administrative Tribunal (Tribunal) dated 21st March, 2013 passed in OA 1963 of 2010 whereby the Original Application (OA) filed by the petitioner was dismissed by the Tribunal.

Factual Matrix :

2. Draped in brevity, the relevant facts of the case are that the petitioner was initially appointed on the post of Junior Engineer-II (Electrical). Thereafter, by promotion order dated 20.03.1988 the petitioner was promoted to the post of Junior Engineer-I on ad hoc basis. The petitioner was subsequently regularized on the post of JE-I by order dated 31.12.1992. The name of the petitioner finds place at serial no.4 in the said order in the then existing pay scale of 1600-2660. The petitioner filed aforesaid OA with the principle prayer that the services rendered by him on *ad hoc* basis followed by regularization should be counted for the purpose of seniority. Upon counting such service for seniority, other benefits for the purpose of restructuring/promotion etc. be given to him. The Tribunal initially dismissed the said OA by treating it to be barred by time. Aggrieved, the petitioner filed WPCT 35 of 2012, which was decided on 21.06.2012. The Division Bench of this Court overturned the impugned order of the Tribunal dated 23rd December, 2011 and remitted the matter back to the Tribunal to decide the OA by taking into consideration the judgment of the Supreme Court in the case of ***T. Vijayan & Ors. vs. Divisional Railway Manager & Ors.*** reported in ***AIR 2000 SC 1766*** and any other judgment on which parties place their reliance.
3. In obedience thereof, the Tribunal re-heard the matter and decided the instant OA by the impugned order dated 21.3.2013. The tribunal came to hold that the petitioner has claimed multiple reliefs, which are hit by Rule 10 of Central Administrative Tribunal (Procedure) Rules 1987.

4. The Tribunal after considering various judgments of the Supreme Court and this Court came to hold that the petitioner is not entitled to count his *ad hoc* services for the purpose of seniority because his *ad hoc* services were not rendered after fulfilling condition. As per Railway Board Circular, *ad hoc* service cannot be counted.

Contention of the Petitioners:

5. Learned counsel for the petitioner by taking this Court to the relief clause of OA submits that his principle relief is for counting *ad hoc* services for the purpose of seniority. Once those services are taken into account for seniority, he will secure a march over and above the private respondent. The said *ad hoc* services were rendered in accordance with rules and were followed by regularization. Thus, in the light of the judgement of the Supreme Court in the case of **T. Vijayan (supra)** the said service needs to be counted for the purpose of seniority.
6. Criticizing the finding of the Tribunal regarding multiple reliefs, the learned counsel for the petitioner submits that although multiple reliefs were claimed in the O.A., the reliefs are interconnected and based on the demand of seniority from the date of *ad hoc* promotion. Thus, the relief claimed before the Tribunal were dependent on the grant of seniority and it cannot be said that the petitioner had prayed for a relief which is foreign to the main relief.
7. Learned counsel for the petitioner submits that for the purpose of *ad hoc* promotion, the governing rules is Rule 216 of the **Indian Railway Establishment Manual** (Volume I) (in short 'Manual'). The petitioner's promotion was in consonance with Rule 216 and 216A of the said Manual

and, therefore, the said ad hoc promotion cannot be said to be contrary/*de hors* the rules. Thus, in the light of the judgement in the case of ***T. Vijayan (supra)***, the said service needs to be counted.

8. It is submitted that once ad hoc services are taken into account, the petitioner's seniority will be over and above the private respondent and other persons, who secured a march over and above him and in that event, his chance will come for promotion during restructuring in the year 1993. Thus, the Tribunal erred in not properly considering the judgment of Supreme Court in ***T. Vijayan (supra)*** and the judgment of Tribunal in the case of ***Chandan Kumar Maji vs. Union of India*** in **OA 755 of 1999** which was affirmed by this Court in WPCT No.716 of 2005.
9. Lastly, the learned counsel for the petitioner submits that there was no distinguishing feature, which supports the case of present petitioner.

Contention of the Respondent/UOI:

10. Learned senior counsel for the respondent/department on the other hand supported the impugned order of the Tribunal and advanced three-fold submissions. Firstly, it is submitted that in the previous round, this Court directed the Tribunal to consider the claim of the petitioner in the light of the judgment of the Supreme Court in ***T. Vijayan (supra)***. The Tribunal considered the claim in the light of the said judgment and gave certain findings which are justifiable. Secondly, by taking this Court to the grounds of writ petition, it is submitted that with accuracy and precision the petitioner could not point out as to what mistake the Tribunal has committed in not applying the judgment of ***T. Vijayan (supra)***. It is further submitted that the Tribunal has given justifiable

reasons and the petitioner could not distinguish its case in his pleadings in the writ petition. Thus, no interference be made. Thirdly, it is submitted that there are two different set of posts, which are mutually not comparable and hence, Tribunal's findings are justifiable.

Findings:

11. The aforesaid factual matrix makes it clear that this is the second visit of the petitioner to this Court. Earlier, the petitioner filed WP.CT 35 of 2012 against the order of Tribunal dated 23rd December, 2011 whereby the O.A. was dismissed on the ground of delay. While setting aside the impugned order of Tribunal, this Court on 21.06.2012 remanded the matter back to the Tribunal and directed it to consider the claim in the light of ***T. Vijayan & Ors. (supra)***. Since claim was rejected, the petitioner is again before us challenging the order dated 21.03.2013 passed in the instant O.A.
12. The pivotal argument of petitioner is that he was promoted on *ad hoc* basis with effect from 20.04.1988 (Annexure – P2), the *ad hoc* promotion was made as per rules and regularized by order dated 31.12.1992. Thus, *ad hoc* promotion given in accordance with Rule was followed by a regular promotion. In this backdrop, seniority of *ad hoc* services must be counted.
13. In ***T. Vijayan & Ors. (supra)***, the Hon'ble Apex Court had an occasion to consider the Rule 216 of the Manual. The Apex Court considered the Constitution Bench judgment of Supreme Court in the case of ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra*** reported in ***1990 Volume 2 SCC 715***. The relevant portion of the said judgments reads thus:-

"47. (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 stopgap 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 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."

(Emphasis Supplied)

14. Applying the *ratio decidendi* of the Constitution Bench judgment of Hon'ble Supreme Court in the case of **Direct Recruit Class II Engineering Officers' Assn. (supra)**, the Apex Court in the case of **T. Vijayan & Ors. (supra)** considered the Rule 216 and opined as under:-

"18. The above para indicates that ad hoc promotion is permissible pending regular selection. Once ad hoc promotion is found to be permissible under the Rules and Respondents 4 to 143 were promoted on ad hoc basis in the exigencies of service, pending regular selection, which, incidentally, took sufficient time as Respondents 4 to 143 who were on official duty "online" were not available at one point or at one time to facilitate the selection, the entire period of ad hoc service will have to be counted towards their seniority, particularly as all the respondents (4 to 143) were duly selected and their services were also regularised with effect from 16-12-1991 by order dated 18-1-1992. The employees concerned, including Respondents 4 to 143 had already been alerted for the process of selection which had been started in 1988 (sic 1987).

(Emphasis Supplied)

15. A plain reading of this paragraph makes it clear that Supreme Court in no uncertain terms made it clear that the ad hoc promotions given were in consonance with an enabling provision viz. Rule 216 and, therefore, it cannot be said that the ad hoc promotion given was contrary to the Rules.
16. A conjoint reading of the judgment of the Constitution Bench in **Direct Recruit Engineers (supra)** and **T. Vijayan & Ors. (supra)** makes it clear that when ad hoc promotion is given pursuant to an enabling provision/Rule, which is followed by regularization, the services rendered

on ad hoc basis are liable to be counted for the purpose of seniority. Thus, we find no reason to deprive the present petitioner from the principles of law laid down by the Supreme Court in the aforesaid two judgments.

17. The Tribunal considered the judgment of **T. Vijayan & Ors. (supra)** and gave its findings in paragraph no.29(b) by holding that respondents have taken a stand that his ad hoc promotion could not have been regularized as he had not fulfilled the condition. The Tribunal also opined that this aspect was not contested and reliance was placed on a Railway Board Circular that ad hoc service cannot be counted. We are unable to give our stamp of approval to the said finding given by learned Tribunal.
18. As noticed above, in **T. Vijayan & Ors. (supra)**, the curtains are finally drawn by the Supreme Court by holding that ad hoc promotions given under Rule 216 are indeed promotions, in accordance with Rules. In this backdrop, the *ad hoc* services are required to be counted. The Tribunal has not given any finding as to what was the deficiency while granting ad hoc promotion to the petitioner, which deprives him from claiming the benefit of seniority. More so, when such ad hoc promotion was regularized by giving him regular promotion by order dated 31.12.1992. The Tribunal has not taken pains to consider the petitioner's claim for seniority in the teeth of Rule 216 of Manual Volume 1.
19. As noticed above, after considering the said Rule 216, the Apex Court clearly held that services so rendered on ad hoc basis are liable to be counted for seniority.

20. Pausing here for a moment, we deem it proper to deal with another finding of Tribunal, which shows that the petitioner has prayed for unrelated multiple reliefs. A conjoint reading of reliefs claimed by the petitioner before the Tribunal shows that the reliefs are indeed inter-connected upon getting the benefit of seniority from 20.03.1988, as a consequence, he will be entitled to get an upgraded seniority, which will benefit him in the restructuring process for the purpose of promotion. The Tribunal has taken a hyper-technical view and we are unable to countenance the same.
21. Learned counsel for the Railway Administration while supporting the impugned order submits that the petitioner has not raised specific grounds against the impugned order of the Tribunal and in absence thereof, no fault can be found in the impugned order.
22. A bare perusal of ground nos. I, III, IV and VI of the 'grounds' taken in the writ petition makes it clear that petitioner has devoted sufficient pleadings to assail the order of the Tribunal where it committed an error in not following the binding judgment of the Supreme Court in **T. Vijayan & Ors. (supra)**. Thus, this technical argument of learned senior counsel for the Department must fail.
23. In view of foregoing analysis, in our opinion, the judgment of Supreme Court in **Direct Recruit Class II Engg. Officers' Assn. (supra)** and **T. Vijayan & Ors. (supra)**, squarely covers the case of the petitioner for counting seniority from 20.03.1988, the date when he was promoted on *ad hoc* basis and was regularized thereafter without any break by order dated 31.12.1992. The respondents are directed to count the ad hoc services for the purpose of seniority with effect from 20.03.1988. As a

consequence, the respondents shall alter the seniority of the petitioner and place him at appropriate place in the seniority list.

24. The respondents are also directed to provide consequential benefits to the petitioner, as prayed for by him before the Tribunal. As a result, on the basis of upgraded seniority, the petitioner's claim for restructuring/promotion in the year 1993 be also considered. The entire exercise be completed within 90 days from the date of production of copy of this order. The impugned order of the Tribunal dated 21.03.2013 is set aside. The writ petition is **allowed** to the extent indicated above.
25. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SUJOY PAUL, CJ.)

I agree.

(CHAITALI CHATTERJEE (DAS), J.)

RP/KS(AR.CT.)