

Sh. I.K. Sukhija & Ors vs Union Of India & Ors on 8 July, 1997

Equivalent citations: AIR 1997 SUPREME COURT 2714, 1997 AIR SCW 2684, (1997) 3 SCT 606, 1997 UJ(SC) 2 312, (1997) 6 JT 201 (SC), (1999) 1 SERV LJ 88, 1997 (4) SCALE 640, (1997) 4 LAB LN 43, (1997) 7 SUPREME 335, 1997 (6) SCC 406, 1998 (2) BLJR 1464, (1998) 2 PAT LJR 30, (1998) 1 SERV LR 294, (1997) 4 SCALE 640, 1997 SCC (L&S) 1512

Bench: S.C. Agrawal, G.T. Nanavati

PETITIONER:

SH. I.K. SUKHIJA & ORS.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 08/07/1997

BENCH:

S.C. AGRAWAL, G.T. NANAVALI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Nanavati. J.

The point involved in these 4 appeals being the same they were heard together are disposed of by this common judgment.

The appellants (in all eleven) started their career as Junior Engineers in the Central Public Works Department. On formation at P&T (Civil Wing) on 1.7.1963 the construction and maintenance work of P&T buildings was taken over from C.P.W.D. The services of the Junior Engineers (Elect.) of C.P.W.D. who are earlier looking after the building of P&T were transferred to the P&T (Civil Wing). Initially, they were treated on deputation without any deputation allowance but in 1969 they were absorbed in the P&T Department and were also designated as Section Officers. They were promoted

as Assistant Engineers (Elect.), on ad hoc basis between 1970 to 1977. All of them were appointed as A.Es. (E) on regular basis with effect from 20.3.1978. At that time it was directed that their names shall be arranged in order of their seniority in the grade of Assistant Engineers. Their seniority vis-a-vis direct recruits was to be fixed subsequently.

A provisional seniority list of Assistant Engineers was prepared in 1986 and finalised in 1987. It was challenged before the Bombay Bench of the Central Administrative Tribunal in O.A. No. 373 of 1987. The Tribunal quashed it in so far as it determined seniority between direct recruit and promotee Assistant Engineers. The department was directed to prepare a fresh seniority list in accordance with O.M. dated 22.12.59 of the Ministry of Home Affairs and the observation made in its judgment. Accordingly a revised seniority list was prepared and notified on 22.5.92. The new seniority list was prepared by following the principle of quota and rota prescribed by the said O.M. dated 22.12.59 as the Tribunal had held that quota rota system had not broken down. In the new seniority list the date of regular appointment of the appellants was shown as 20.3.78, The appellants were not satisfied with the new seniority list; and therefore, they challenge it before the Principle Bench of the Central Administrative Tribunal at New Delhi. The appellants sought a direction to determine their seniority by taking into consideration their uninterrupted and continuous ad hoc service. They wanted this relief even if there was break down of the quota rota rule. They had also prayed for other consequential reliefs. The contention of the appellants was that there was no break down of the quota rota rule, that they were appointed against regular vacancies on their being found fit and suitable by Department Promotion Committee and that their appointments were made in accordance with the rules prevailing then.

The Tribunal, after taking into consideration the reason for making ad hoc appointments of the appellants and the procedure followed for the purpose, the orders of their appointment, proceedings of the meeting of the D.P.C. in February-March 1978 pursuant to which the regular appointments were made and conduct of the appellants in that they had offered themselves for the test held for making regular promotion, came to the conclusion that the appointments of the appellants were not only ad hoc but also by way of stop gap arrangement in order to meet with the exigencies of service due to heavy constructional activity undertaken by the P&T (Civil Win) at the relevant time. The Tribunal also held that the decision of the Bombay Bench of the Tribunal in O.A. No. 373 of 1987 having become final and conclusive it had to proceed on the basis that there was no break down of the quota and rota rule. On these premises the Tribunal further held that the case of the appellant is governed by proposition 'A' laid down in Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra 1990 (2) SCC 715 and, therefore, they are not entitled to the benefit of continuous officiation for the purpose of considering their seniority. The Tribunal also examined the case of the appellants with reference to proposition 'B' laid down in that case. As the period of service rendered by the appellants as ad hoc Assistant Engineers varied from 1 to 8 years only it held that the period cannot be regarded as sufficiently long so as to entitle them to count it for the purpose of their seniority, particularly when between 1975 and January 1978 they had prevented the department from holding the test for regular selection under the 1975 Rules. The Tribunal also held that the appellants were not entitled to such benefit either on the basis of the decision in Keshav Chandra Joshi vs. Union of India 1992 Supp. (1) SCC 272 or on the basis of the decision in State of West Bengal vs. Aghore Nath JT 1993(2)

598. The Tribunal dismissed the O.As. filed by the appellants and upheld the seniority list prepared by the department. Hence these appeals.

Before we consider the rival submission, certain facts which are not in dispute may be stated. On 1.7.63 P&T (Civil Wing) was formed by taking over the construction and maintenance work of P&T buildings from C.P.W.D. Some J.Es. (E) of C.P.W.D. who were handling the said work were also transferred to the P&T (Civil Wing). Initially, they were treated as on deputation without any deputation allowance but in 1969 they were absorbed in the P&T Department. From 1964 onwards the P&T Department had also started its own recruitment to the grades of J.Es. (E) and A.Es.(E). Though there were recruitment rules for the post of J.E. (E) there was no provision for absorption of J.Es., brought on transfer in that cadre. There were no recruitment rules for the posts of Assistant Engineer (E). For the first time in 1969 Draft Recruitment Rules for Communication Electrical Engineering Service Class II were framed by the P&T Department. The post of Assistant Engineer (E) was a Class II post in Communication Electrical Engineering Service. These draft rules were not prepared in exercise of any statutory power. They provided filling up of the vacant posts in the grade of Assistant Engineers Class II in the ratio of 50:50 i.e. 50% by direct recruitment and 50% by promotion. Promotion were to be given on the basis of recommendations made by the Departmental Promotion Committee by selecting the candidates on merits. The eligibility criteria was five years approved service in case of graduates and 8 years approved service in case of non- graduates. It could be relaxed upto three years in case of graduates and six years in case of non-graduates. Rules 5 also gave power to the Government to relax any provision to such extent as was found necessary to ensure satisfactory working or to remove inequitable result. Even though the draft rules were framed in 1969 they could not be finalised till 1975. No regular appointments of Assistant Engineers were made between 1970 and 1975 because the rules could not be finalised. In 1975 rules called 'The Posts and Telegraphs Civil Engineering (Electrical Gazetted Officers) Rules 1975' were framed under Article 309. Even thereafter no regular promotion were made till 1978 as the departmental qualifying examination which was a pre-requisite for promotion could not be held till that year. Thus all the promotions, including those of the appellants, were made only on ad hoc basis.

What has been submitted on behalf of the appellants is that though in the letters of their appointments as A.Es. (E) it was stated that their appointments were 'on purely ad hoc basis' that was not by way of stop-gap arrangement made for the purpose of meeting with some urgent administrative exigencies. They were eligible for promotion and their merits were duly considered by the D.P.C. When they were promoted as A.Es. (E) regular vacancies in the promotion quota were available. Therefore, the only reason why they were not regularly promoted and their promotions were described as ad hoc was the delay on the part of the Department in finalising the draft recruitment rules.

On the other hand it was contended on behalf of the respondents that the ad hoc promotion of the appellants were made as the construction activity has increased considerably and pending finalisation of the recruitment rules they could not have been regularly promoted. They have also not undergone the required process of selection in view of the criteria of merit. Though they had undergone some process of selection at the hands of the D.P.C. That was only for the purpose for promotion them on ad hoc basis. Therefore, they cannot claim the benefit of their ad hoc service as

A.Es. for the purpose of determining their seniority in that grade.

The department could not produce any record, as it was not available, to show what was the position between 1964 and 1969 regarding recruitment to the cadre of A.E. (E), how the appellants were absorbed in the cadre of J.Es. and under what circumstance they came to be promoted on ad hoc basis. The only material which throws some light and which has been brought on record of these cases is (1) two letters dated 1.6.70 and 8.10.71 regarding filling up of some vacancies of Assistant Engineers(E) by promotion (2) minute of the meeting of the D.P.C held in February-March 1978 and (3) letter dated 22.8.1977 written by the U.P.S.C to the Government.

In the letter dated 1.6.70 it is stated that "some vacancies of the Assistant Engineers (Elec.) in the Posts & Telegraphs Civil Wing are to be filled by promotion and the Department Promotion Committee will be held shortly to select suitable officials for promotion. The crucial date for relaxing service requirement for his Department Promotion Committee would be First July, 1970. It is proposed to consider the officials under the relaxed service requirement i.e. three years for graduates and 6 years for non- graduates." After stating so he directed the Superintending Engineer to furnish particulars of all Section Officers who were eligible for consideration. This letter refers to the draft recruitment rules made for Communication Electrical Engineering Service Class II. It also refers to the eligibility criteria contained in the said rules. A similar letter was written, except the relaxation part, by the Assistant Director General on 8.10.71 to the Superintending Engineers of New Delhi, Bombay and Calcutta. Both these letters make it clear that though the draft recruitment rules have not been finalised the promotions in 1970 and thereafter were made in accordance with the said rules.

The appellant in their application before the Tribunal and asserted that the D.P.C. had made the selection on regular basis. However, there is nothing on record to show in which manner the selection was made by it. It appears that the D.P.C. has followed some process of selection to find out their comparative merit because some persons senior to the appellants thought considered were not recommended for promotion and the merit list was not prepared according to the seniority of the candidates selected. It is, however, significant to note that the draft rules of 1969 did not contain any provision prescribing how selection was to be made by the D.P.C. They did not contain any requirement of passing an examination like departmental qualifying examination. The Post and Telegraph (Civil Engineering Electrical Gazetted Officers) Recruitment Rules, 1975 which came into force on 5.4.75 prescribed for the first time passing of the department qualifying examination as a condition for promotion to the grade of A.E. (E). There was no rule which permitted and prescribed procedure for making of ad hoc appointments. Even otherwise also there was no separate procedure prescribed for making such ad hoc appointments of appellants were described as ad hoc was that the draft recruitment were described as ad hoc was that the draft recruitment rules were pending consideration and were not finalised.

It was contended by the respondents and the finding of the Tribunal is also that the appellants have not undergone any regular selection process as they had not passed the required qualifying examination. As stated earlier there was no requirement of passing a departmental qualifying examination for promotion as A.E. (E) till the year 1975. Only thing stated in the draft rules was that

the post of A.E. was a selection post. This aspect has been completely missed by the Tribunal. Therefore it wrongly came to the conclusion that the appellants had not undergone the regular selection process and for that reason their appointments were made on temporary and ad hoc basis by way of stop-gap arrangement only. Really, the appellants were promoted on those terms because the draft rules has not been finalised. It is not relevant for this case to consider whether it was rightly believed that pending consideration of the Draft Rules no regular recruitment could be made. The fact remains that carrying that impression the Department thought it proper to promote the appellants only on temporary and ad hoc basis.

The next relevant document is the minutes of the meeting of the D.P.C. held in February-March, 1978 recorded in connection with considering the ad hoc promotees for regular promotion. It refers to the taking over of construction work from the C.P.W.D. and formation of P&T (Civil Wing). It further records that as the Rules could not be finalised till 1975 and as heavy constructional activity was undertaken by P&T department some J.Es. were promoted to the grade of A.E.s on ad hoc basis. As the rules came to be finalised a question of making regular promotion to that grade arose and it was for that reason that it had met on that day for considering the cases of eligible candidates. The minutes further records that according to the Recruitment Rules which came to be finalised in 1975, the eligibility criteria was certain number of years service plus passing of the departmental qualifying examination. It is also recorded therein that in respect of those who were already promoted as A.E.s on ad hoc basis it was decided in consultation with the D.O.P. and U.P.S.C that one time relaxation should be made in favour of those promote and instead of taking a written test they should be subject to only oral test. The D.P.C. considered the C.Rs. of eligible persons, number of vacancies in each year in promotion quota and recommended who should be promoted on regular basis from which year. On important thing that emerges form this minutes is that between 1970 and 1975 there were regular 8 vacancies. From the other material on record it appears that in between 1970 and 1978 direct appointment on the basis of competitive examination held by U.P.S.C. were also made. It was possibly for that reason held by the Bombay Bench of the Central Administrative Tribunal that the quota rule had not broken down. The department in its counter affidavit has also maintained that the quota rules had not broken down, that it was strictly followed and that number of vacancies falling under the direct recruitment quota were regularly intimated to the U.P.S.C. and appointments were made. It has not been denied that regular vacancies were available in the promotion quota during those year. Thus the finding of the Tribunal that there is nothing on record to show if there existed regular vacancies when the promotion of the appellants were made is clearly erroneous. The minutes do not support the case of the respondents that appointments of appellants as A.Es. were made ad hoc because they had not undergone regular process of selection.

In the letter dated 22.8.77 written by U.P.S.C. to the Government it is stated that prior to 1975 no recruitment rules existed for the post of Assistant Engineers in P&T (Civil Engineering Wing). It further points out that 1975 Rules did not apply to persons appointed before they came into force. It further refers to its earlier letter dated 3.3.76 wherein the Ministry was advised to consider the question of regular absorption of existing incumbents of various posts in consultation with the Commission. It then pointed out that the 1975 Rules did not contain any provision for absorption of Junior Engineers who were taken over on transfer from the C.P.W.D. The said rules also did not contain any provision for regularisation of those incumbent who were holding the posts on ad hoc

basis. It was, therefore, suggested to amend the rules and provide for absorption of the then existing employees in their respective grades. It appears from the order dated 7.1.78 passed by the P&T Department (Civil Wing) that after considering the question of regularisation of the cadres of A.E. (Civil/Elect) it was decided that "in view of the need to regularise the cadre of A.E. (Civil/Elect) expeditiously, the Department qualifying examination provided for in the Recruitment Rules for the grade of A.E. (Civil/Elect) may be held orally this time only." What is to be noted from this letter and the order dated 8.1.78 is that though the appellants and similarly situated J.Es. were absorbed by the P&T Department (Civil Wing) in its service their regular absorption in the cadre of J.Es (E) had not taken place and it was for that reason that they were required to pass the examination contemplated by the 1975 Rules. This aspect also has been missed by the Tribunal and, therefore, it erroneously held that the conduct of the appellants in offering themselves for the test held for making regular promotions indicated that they had not earlier gone through the required process of selection and for that reason their appointments were ad hoc.

What emerges from the above discussion is that the promotion of the appellants as A.Es. (E) were not contrary to any statutory recruitment rules. Even if we proceed on the basis that in absence of statutory rules the draft recruitment rules of 1969 were applicable, what we find is that the appellants were eligible for promotion and their cases were duly considered by the D.P.C. They were promoted after they were found suitable by the D.P.C. and their promotions were made according to their placement in the merit list and not according to their seniority. When the appellants were promoted, though on ad hoc basis, clear vacancies were available in the promotion quota. the only reason for making their appointments as temporary and ad hoc was that the draft recruitment rules could not be finalised till 1975. There was no unusual spurt in the construction activity between 1970 and 1977 which necessitated giving of urgent temporary promotions. For all the reason stated above, it is not possible to accept that the appointments of the appellants as A.Es., though temporary and ad hoc, were by way of stop-gap arrangements only.

The Tribunal was, therefore, wrong in holding that the case of the appellants was governed by the corollary to the rule stated by this Court as Proposition 'A' in Direct Recruits case (supra). The appellants are in a better position than the situation contemplated by Proposition 'B' in that case. If the appointees contemplated by Proposition 'B' are held entitled to the benefit of the period of officiating service we see no reason why the appellants should not be held entitled to such a benefit. The learned counsel for the respondents had relied upon the decisions of this Court in A.P.M. Mayakutty vs. Secretary Public Service Department 1977 (2) SCR 937, D.N. Agawal vs. State of Madhya Pradesh 1990 (2) SCR 131 and Masood Akhtar Khan vs. State of Madhya Pradesh 1990 (4) SCC 24 but they have no application to the facts of these cases. In the first two cases it was found by this Court that the appointments were ad hoc and by way of stop-gap or emergency arrangement and, therefore, the appointees were not entitled to the benefit of the period of their ad hoc service for the purpose of counting their seniority. In Masood Akhtar Khan's case (supra) it was held that the appointment were not made in accordance with the recruitment rules.

We, therefore, allow these appeals, set aside the judgment of the Tribunal and hold that the appellants are entitled to get their seniority counted from the dates they were initially promoted as A.Es. (E). In view of the facts and circumstances of the case there shall be no order as to costs.