

Arjun Ravi Das Vs. Secretary, Minor Irrigation Department and Rural Engineering Service and ors.

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Court : Allahabad

Decided On : Feb-27-2004

Reported in : (2004)2UPLBEC1248

Judge : A.K. Yog and ;V.N. Singh, JJ.

Acts : The Uttar Pradesh Regularisation of ad-hoc Promotions (on posts within the Purview of the Public Service Commission) Rules, 1988 - Rules 4, 5, 6 and 7; Uttar Pradesh Government Servants Seniority Rules, 1991 - Rules 4, 7 and 8

Appeal No. : Civil Misc. Writ Petition Nos. 2605, 2613, 5018, 5020, 5022, 17379 and 50618 of 2002

Appellant : Arjun Ravi Das

Respondent : Secretary, Minor Irrigation Department and Rural Engineering Service and ors.

Advocate for Def. : Sudhir Agrawal, Addl. Adv. General, Vishnu Pratap and ;Vivek Saran, Advs. and ;S.C.

Advocate for Pet/Ap. : T.P. Singh, ;Swarn Kumar Srivastava and ;Anil Kumar Srivastava, Advs.

Judgement :

A.K. Yog, J.

1. Learned Counsels, appearing for the parties submit that all the Writ Petitions are based on similar facts giving rise to common question of law and hence all of them may be heard together and decided by a common judgment.

2. Individuals, were impleaded as Respondent Nos. 4 to 24 in the Writ Petition under Court order dated 23.10.2002 on the Civil Misc. Application No. 138538 of 2002. No request made on behalf of the petitioners to serve them and instead desired these petitions to be decided finally as such.

3. Learned Counsels for the parties submit that there is no dispute on facts. The sole question to be decided in the petitions is 'whether petitioners can claim for counting period of ad-hoc service, rendered on the basis of ad-hoc promotion before regularisation, while determining inter se seniority?'

4. Relevant facts and dates, in the leading petition filed by Arjun Ravi Das, are :

No.	Date
Facts	
7.9.1972	Petitioner appointed as Junior Engineer in the Department of Rural Engineering Service.
20.4.1981	Petitioners and others promoted on ad-hoc basis on the post of Assistant Engineer in the department (Para 17 of the leading petition).
1982-83	Substantive vacancy year in promotional quota on the post of Assistant Engineer in the department.
3.11.1988	The U.P. Regularisation on ad-hoc Promotions (on Posts within the Purview of the Public Service Commission) Rules, 1988 enforced.
20.3.1991	U.P. Government Service Seniority Rules, 1991 enforced (Annexure-2) to the supplementary affidavit.
17.6.1992	Government Order of regularisation in favour of petitioner, ad-hoc Assistant Engineer as Assistant Engineer on temporary basis and subject to seniority to be fixed in the cadre of Assistant Engineers later (Annexure-8 to the W.P.).
29.12.1992	Fixing Year wise quota.
10.2.1995	Department Published Seniority List; name of the petitioner at Serial No. 82. Annexure-3 to the W.P.
14.12.2001	Revised Seniority List published after notice to concerned and invited

objections from the concerned JuniorEngineers in pursuance to the directions given by HighCourt, Lucknow Bench. Name of the petitioner mentioned at Serial No.

210. _____

5. Reliefs, claimed in the leading petition, are :

'RELIEFS

'It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to :

(i) issue a writ, order or direction in the nature of certiorari to quash impugned seniority list dated 14.12.2001, vide Annexure-1 to the writ petition;

(ii) issue a writ, order or direction in the nature of mandamus commanding respondents not to give effect to the aforesaid seniority list;

(iii) issue further a writ, order or direction in the nature of mandamus commanding the respondents to place the petitioner, in the impugned seniority list at an appropriate place, in adherence to U.P. Government Servants Seniority Rules, 1991 as also the earlier seniority list dated 10.2.1995 and the seniority list of Junior Engineers.

(iv) issue further a writ, order or direction in the nature of mandamus commanding the respondents to promote the petitioner as an Superintending Engineer, under scheduled caste quota, he being the seniormost Executive Engineer under the said quota;

(v) issue any other and further writ, order or direction as this Hon'ble Court may deem fit and proper;

(vi) award costs to the petitioner.'

6. Petitioner alleges in Para 12 of the leading petition, that 'no opportunity of hearing to the petitioner has been given before publishing the impugned seniority list-----'. It is also contended that their 'ad-hoc' period of service-at least from the

departmental promotional quota vacancy year 1982-83 till 17.6.1992 (when petitioner was regularised by Selection Committee under Regularisation Rules, 1988) cannot be ignored and it must be computed while determining inter se seniority of persons working on the posts of Assistant Engineers.

7. Copy of the objection filed by the Petitioner (and referred in the impugned order) is Annexure 9 to the affidavit, of the petitioner himself in support of Amendment Application No. 138546 of 2002. It may be noted that said Amendment Application was not pressed and hence rejected by separate order. In the interest of justice however, we have referred to the said objections to ascertain the case of the Petitioners before the concerned authority. We find that against tentative proposed seniority, he did not claim seniority on the basis of the year of vacancy in promotional quota. In the said objection petitioner nowhere claimed that his regularisation of ad-hoc promotion as Assistant Engineer, under Government Order dated 17.6.1992, relates back to the vacancy year or the said order dated 17.6.1992 contemplated regularisation of the petitioner with retrospective effect.

8. Learned Counsel for the petitioners, in support of the above, referred to earlier Seniority-List of 1995/Annexure 3 to the leading petition. Column 4 of this list is titled 'Date of Substantive Appointment'. Name of the petitioner, (amongst Assistant Engineers) is at Serial No. 82 (PP 61 of the writ paper book). Date of substantive appointment of the petitioner is shown as 1982-83. It may be noted that the title of column No. 4 though read 'Date of Substantive Appointment', but it does not contain exact day, month and year of substantive appointment of concerned persons. Instead at various places it only shows, substantive vacancy year on the post in the cadre of Assistant Engineers. Admittedly, only said Seniority list of 1995 has been revised.

9. Petitioner has also annexed copies of orders dated 17.6.1981 and 7.7.1982 whereby some of the petitioners (before us) were granted ad-hoc promotion on the post of Assistant Engineer. These orders in favour of Pranav Kumar Kundu, Babban Tiwari, Moti Kunwar and others categorically spell out that their ad-hoc promotions were on purely on stop-gap-temporary arrangement; such ad-hoc promotions were by way of ad-interim arrangement and as soon as posts of

Assistant Engineers will be filled up by direct recruitment, these 'ad-hoc promotees' were to be reverted to their post of Junior Engineers in their parent cadre. Aforementioned orders (filed as Annexure 1 to the Supplementary Affidavit) mentions that these petitioners were given ad-hoc promotion on the post of Assistant Engineer without fixing quota available for them respectively and purely by way of stop-gap and ad-interim arrangement. Order dated 25.1.1995 (part of Annexure 1 to the Supplementary Affidavit) shows that the Government determined 'Vacancy year' with respect to the petitioners and at the end, vide Clause (3), clearly indicated that seniority of the promotee Assistant Engineers vis-a-vis directly recruited Assistant Engineers was to be fixed later. The said Government Order, therefore, gave no advantage in the matter of seniority to the ad hoc promotees, like the petitioners. Also the, basis upon which seniority list 1995 was prepared, was set aside. Under orders of Court respondents were to consider objections of the concerned and required to revise 'seniority list', 1995, and as a consequence thereof came in existence the 'Seniority List' dated 14.12.2001/ Annexure 1 to the leading petition.

10. Regularisation order dated 17.6.1992/Annexure 8 to the petition (PP 140 of the writ paper book) nowhere indicates that persons mentioned therein were regularised either with effect from the 'Vacancy year' or from the date of their ad-hoc promotion.

11. The sole question for determination is whether the petitioners are entitled to count for their ad-hoc services as Assistant Engineer, on the basis of the Government Orders making ad-hoc appointment read with their regularisation orders while determining their inter se seniority

12. There is no controversy that the posts of Assistant Engineers' in question are within the purview of U.P. Public Service Commission (called the Commission) and promotion on the said posts can be done by the Commission in accordance with the Uttar Pradesh Promotion by Selection (on the posts within the Purview of the Public Service Commission) Eligibility List Rules, 1986. It is also not in dispute that ad-hoc promotions of the petitioners under Government Order dated 17.6.1992 were made without referring the matter to the Commission under

relevant Rules and that ad-hoc promotions of the petitioners was purely on stopgap arrangement on the posts of Assistant Engineer.

13. Relevant service Rules, are titled the Uttar Pradesh Regularisation of ad-hoc Promotions (on posts within the Purview of the Public Service Commission) Rules, 1988 (called 'the Rules, 1988').

14. For convenience relevant Rules, 4,5,6 and 7 of the Rules, 1988 are reproduced below-

'4. Regularisation of ad-hoc promotions.--(1) Any Person who--

(i) was appointed by promotion on ad-hoc basis before January 1, 1985 and is continuing in service either on the post on which he was so promoted or on an equivalent or higher post on the date of the commencement of these rules.

(ii) was eligible for regular promotion on the date of ad-hoc promotion; and

(iii) has competed or, as the case may be, after he has competed three years service on the post or posts, referred to in Clause (i) shall be considered for regular appointment by promotion in permanent or temporary vacancy as may be available, on the basis of record and suitability before any regular appointment by promotion is made in such vacancy in accordance with the relevant service rules or orders.

(2) In making regular appointment under these rules, reservation for candidates belonging to the Scheduled Castes, Schedules Tribes and other categories shall be made in accordance with the orders of the Government in force at the time of consideration under Sub-rule (1).

(3) For the purpose of Sub-rule (1), the appointing authority shall constitute a Selection Committee:

Provided that where constitution of Selection Committee is provided for in any rules or orders, relating to the relevant post of service the Constitution of the Committee for the purpose of these rules shall, as far as possible, be as provided in such rules or orders but nothing herein contained shall be construed to mean

inclusion of the representative of the Commission in such Committee. (4) The appointing authority shall, having regard to the provision of sub-rule (1), prepare an eligibility list of the candidates, arranged in order of seniority on the post from which promotion was made, and place it before the Selection Committee along with the character rolls, including the confidential entries given after ad-hoc promotion and such other records as may be considered necessary to assess their suitability.

(5) The Selection Committee shall consider the cases of candidates on the basis of their records, referred to in Sub-rule (4).

(6) The Selection Committee shall prepare a select list of candidates, arranged in the same order of Seniority as is referred to in Sub-rule (4) and forward it to the appointing authority.

(7) Where in respect of any person, who is eligible for being considered for regularisation under these rules, a formal departmental enquiry is pending or there is an order of the Court on account of which or for any other reason it is not possible to make regular appointment by promotion of such a person, Selection Committee shall place its recommendation in a sealed cover and shall mention this fact against the name of the concerned person in the list prepared under Sub-rule (5).

5. Appointment.--The appointing authority shall, subject to the provisions of sub-rules (2) and (7) of Rule 4 make appointments from the list prepared under Sub-rule (6) of the said rule in the order in which the names stand in the list:

Provided that in the case covered by the provisions or Sub-rule (7) of Rule 4, action shall be taken by the appointing authority in accordance with the order of the Government. 6. Appointment be deemed to be under the relevant service rules, etc.--Appointment made under these Rules shall be deemed to be appointed under the relevant service rules or orders, if any.

7. Seniority.--A person appointed under these rules shall be entitled to seniority in accordance with the relevant service rules or orders, regulation conditions or

service of persons regularly appointed in the service or on the post, and for this purpose selection under these rules shall be deemed to be selection under the said service rules or orders.'

15. Rules 4,7 and 8 of U.P. Government Servants Seniority Rules, 1991 (called Rules, 1991), which are reproduced-

'4. Definitions--In these rules, unless there is anything repugnant in the subject or context, the expression,-(a) 'appointing authority' in relation to any service means the authority empowered to make appointments to such service under the relevant service rules;

(b) 'cadre' means the strength of the service, or part of the service sanctioned as a separate unit;

(c) 'commission' means the Uttar Pradesh Public Service Commission, or the Uttar Pradesh Subordinate Services Selection Commission, as the case may be;

(d) 'committee' means the Committee constituted to make selections for appointment to the service under the relevant service rules:

(e) 'feeding cadre' means the cadre of service from amongst the members whereof, promotion is made to a higher service or post under the relevant service rules;

(f) 'service' means the service in which the seniority of the member of the service has to be determined;

(g) 'service rules' means the rules made under the proviso to Article 309 of the Constitution, and where there are no such rules, the executive instructions issued by the Government, regulating the recruitment and conditions of service of persons appointed, to the relevant service';

(h) 'substantive appointment' means an appointment, not being an ad-hoc appointment, on a post in the cadre of the Service, made after selection in accordance with the service rules relating to that service.

7. Seniority where appointments by promotion only from several feeding cadres.--Where according to the service rules, appointments are to be made only by promotion but from more than one feeding cadres, the seniority inter se of persons appointed on the result of any one selection shall be determined according to the date of the order of their substantive appointment in their respective feeding cadres.

Explanation.--Where the order of the substantive appointment in the feeding cadre specifies a particular back date with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases it will mean the date of issuance of the order :

Provided that where the pay scales or the feeding cadres are different, the persons promoted from the feeding cadre having higher pay scale shall be senior to the persons promoted from the feeding cadre having lower pay scale :

Provided further that the persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection.

8. Seniority where appointments by promotion and direct recruitment.--(1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments, and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order : Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and , in other cases, it will mean the date of issuance of order :

16. Rule 4 of Ad-hoc Regularisation Rules, 1988 contemplates that 'any person who was eligible and fulfilled conditions contemplated under Clauses (i), (ii) and (iii) of Rule 4 shall be considered for regular appointment by promotion in permanent or temporary vacancy as may be available, on the basis of record and

suitability before any regular appointment by promotion is made in such vacancy.....'.

17. Rule 4 (4) of the Rules, 1988 further provides that 'appointing authority shall, having regard to the provision of Sub-rule (1), prepare an eligibility list of candidates, arranged in order of seniority on the post from which promotion was made, and place it before the Selection Committee along with the character rolls, including the confidential entries given and after ad-hoc promotion, and such other records as may be considered necessary to assess their suitability'.

18. Sub-rules (5) & (6) contemplates that 'Selection Committee shall consider the case of the candidates itself on the basis of their records, and thereafter prepare as select list of the candidates, arrange in the same order of seniority as is referred to in Sub-rule (4) and forward it to the appointing authority'.

19. Rule 5 of Rules, 1988 confers power upon the appointing authority subject to Sub-rules (2) and (7) of Rule 4 and make appointments from the list prepared under Sub-rule (6) of Rule 4.

20. Further Rule 6 of Rules, 1988 contemplates that 'Appointments made under these Rules shall be deemed to be appointed under the relevant service rules or orders, if any'.

21. Rule 7 of said Rules, 1988 further deals with 'seniority' and provides that-'A person appointed under these rules shall be entitled to seniority in accordance with the relevant service rules or orders, regulating conditions of service of persons regularly appointed in the service or on the post, and for this purpose selection under these rules shall be deemed to be selection under the said service rules or orders.'

22. Rules, 1988, therefore, clearly contemplate that unless an ad-hoc promotee is regularised (subject to conditions contemplated therein) he shall not be deemed to be appointed under relevant service rules.

23. Sh. T.P. Singh, learned Counsel for the petitioners, admitted that there were no statutory Service Rules, when Petitioners were promoted on ad-hoc basis. On

behalf of the Petitioners it is argued that their ad-hoc promotions were as per executive instruction issued by the Government regulating the recruitment and conditions of service of persons appointed to the relevant service-as per definition of 'Service' & 'Service Rule', given in Rules 4(f) & (g) of Rules, 1991. According to the petitioners, Government Order dated 20.4.1981-making their ad-hoc promotion is such 'executive instruction' as contemplated under Rule 4(g) of Rules, 1991. We are unable to accept the above argument.

24. There is nothing to show that ad-hoc promotions were made in accordance with the then existing relevant service rules regulating service of persons in question. The above position becomes clear if we refer to the definition of the terms-'cadre', 'service rules' and 'substantive appointment' contained aforequoted Section 4 of Rules, 1991.

25. Further, 1st proviso to Rules 8 of Rules 1991 contemplates that 'unless appointment order specifies a particular back date, with effect from which a person is substantively appointed, no back date can be deemed or presumed.'

26. No back date is mentioned in the regularisation order dated 17.6.1992 in favour of the petitioners.

27. It is thus, clear that unless petitioners were regularised and substantively appointed in the cadre of Assistant Engineer, they cannot be said to have born in the said cadre.

28. The petitioners, however, place strong reliance on the decision of the Apex Court in the case of Direct Recruit Class-II Engineering Officers' Association and Ors. v. State of Maharashtra and Ors., AIR 1990 Supreme Court 1607 and claimed that case of the present petitioners fall in Clause (B) of Para 44 of this judgment. Petitioners' Counsel fairly conceded that case of the present petitioners does not fall in Clause (A) of Para 44 of that judgment.

29. The learned Counsel for the petitioners then referred to the decision in the case of Keshav Chandra Joshi and Ors. v. Union of India and Ors., 1992 Supp (1) Supreme Court Cases 272. Paras 23 & 24 are reproduced-

'23. It is seen that the appointments of the promotees were made in batches yearwise. The rule postulates that appointment shall be strictly as per merit after interview arranged in order by the Public Service Commission. In the same year when the appointments are made to the substantive vacancies from both the sources, the promotees shall rank senior to the direct recruits in accordance with the quota prescribed under Rule 6. The rules provided the power to appoint Forest Rangers from Sub-ordinate Service, due to administrative exigencies to officiate or to act temporarily as Assistant Conservators of Forest. The rule itself, thus, recognizes the distinction between substantive appointment and temporary/officiating appointment. The procedure to prepare the list to man the officiating or temporary vacancies is on the basis of seniority subject to rejection of the unfit. The question of considering relative merited and ability of the promotees inter se, then would not arise. Thereby, it is clear that the list prepared by the Chief Conservator of Forest for appointment of the Forest Rangers to officiate in the posts of Assistant Conservator of Forest on ad-hoc or temporary basis is only fortuitous due to non-availability of the direct recruits as stop gap arrangement. Employees appointed purely on ad-hoc or officiating basis due to administrative exigencies, even though continued for a long spell, do not become the members of the service unless the Governor appoints them in accordance with the rules and so they are not entitled to count the entire length of their continuous officiating or fortuitous service towards their seniority.

24. It is notorious that confirmation of an employee in a substantive post would take place long years after the retirement. An employee is entitled to be considered for promotion on regular basis to a higher post if he/she is an approved probationer in the substantive lower post. An officer appointed by promotion in accordance with Rules and within quota and. on declaration of probation is entitled to reckon his seniority from the date of promotion and the entire length of service, though initially temporary, shall be connoted for seniority. Ad-hoc or fortuitous appointments on a temporary or stop gap basis cannot be taken into account for the purpose of seniority, even if the appointee was subsequently qualified to hold the post on a regular basis.....'

30. Learned Counsel for the respondents, Sri Sudhir Agarwal, however, referred to Paras 25, 26 and 34 of the judgment in the case of Keshav Chandra Joshi (supra), which read :

'25. In Direct Recruits case the Constitution Bench of this Court in which one us (K. Ramaswamy, J.) was a member, in Propositions 'A' and 'B' in Paragraph 47 at Page 475 stated :

(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 stop gap 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.'

Mr. Mukhoty and Mr. Garg repeatedly asked us to apply the ratio in the cases of Narender Chadda, Baleshwar Dass and Chauhan contending that the promotees were appointed to the same post; are discharging the same duties; drawing the same salary, therefore, they should be deemed to be given promotion from their initial dates of appointment. We express our inability to travel beyond the ratio in Direct Recruits case. While reiterating insistence upon adherence to the rule that seniority between direct recruits and the promotees has to be from the respective dates of appointment, this Court noticed that in certain cases, Government by deliberate disregard of the rules promotions were made and allowed the promotees to continue for well over 15 to 20 years without reversion and thereafter seniority is sought to be fixed from the date of ad-hoc appointment. In order to obviate unjust and iniquitous results, this Court was constrained to evolve 'rule of deemed relaxation of the relevant rules' and directed to regularise the services giving the entire length of temporary service from the date of initial appointment for

seniority. To lay down binding precedent the cases were referred to a Constitution Bench. In the Direct Recruits case, this Court has laid down clear propositions of general application in Items A to K. Therefore, to keep the law clear and certain and to avoid any slant, we are of the considered view that it is not expedient to hark back into the past precedents and we prefer to adhere to the ratio laid down in the Direct Recruits case.

'26. As stated, the Counsel for the promotees placed strong reliance on proposition 'B' while Counsel for the Direct Recruits relied on proposition 'A'. The controversy is as to which of the propositions would apply to the facts of this case. The proposition 'A' lays down that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The latter part thereof amplifies that where the initial appointment is only ad-hoc and not according to rules and is made as a stop gap arrangement, the period of officiating in such post cannot be taken into account for reckoning seniority. The quintessence of the propositions is that the appointment to a post must be according to rules and not by way of ad-hoc or stop gap arrangement made due to administrative exigencies. If the initial appointment thus made was de hors the rules, the entire length of such service cannot be counted for seniority. In other words the appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date. Propositions 'A' and 'B' cover different aspects of one situation.....

34. Accordingly we have no hesitation to hold that the promotees have admittedly appointed on ad-hoc basis as a stop gap arrangement, though in substantive posts, and till the regular recruits are appointed in accordance with the rules. Their appointments are de hors the rules and until they are appointed by the Governor according to rules, they do not become the members of the service in a substantive capacity. Continuous length at ad-hoc service from the date of initial appointment cannot be counted towards seniority. The Governor shall have to make recruitment by promotion to substantive vacancies in the posts of Assistant Conservator of Forest, if not already made, in accordance with Rule 5(b) read with

Appendix 'B' and Rule 6. Their seniority shall be counted only from the respective dates of appointment to the substantive posts in their quota under Rule 6 as per the Rules. The direct recruits having been appointed in accordance with Rule 5(a) read with Appendix 'A', their seniority shall be counted from the date of their discharging the duties of the post of Assistant Conservator of Forest and the seniority of the dissect recruits also shall accordingly be fixed. The inter se seniority of the direct recruits and promotees shall be determined in accordance with Rules 5,6 and the Rule 24 in the light of the law declared in the judgment. All the employees are entitled to all consequential benefits. On account of the pendency of judicial proceedings, if any of the employees became barred by age for consideration for promotion to cadre posts, the appropriate Governments would do well to suitably relax the rules and do justice to the eligible candidates.'

31. From the aforesaid observations it is clear that the cases of the petitioners do not fall in Clause (B) of Para 44 of the judgment in Direct Recruits case (supra).

32. In the facts and circumstances of the instant case, the petitioners who were given ad-hoc-appointments by way promotion as temporary and stop-gap basis are not entitled to claim their ad-hoc period of services as Assistant Engineers to be counted for the purposes of determining inter se seniority. In other words they will be entitled for only that period of service which they have rendered after having been appointed on regular/substantive basis.

33. Learned Counsel for the petitioners, in the end referred to unreported Division Bench decision of this Court in Writ Petition No. 9940 of 2001 in the case of Narendra Kumar Tripathi v. The Secretary, Minor Irrigation Department and Rural Engineering Services, U.P. Bahukhandi Bhawan, Lucknow.

34. Relevant extract of the aforesaid judgment reproduced-

'Heard learned Counsel for the parties.

The petitioner was selected and appointed as Work Engineer on work charge basis by order dated 18.1.83 Annexure 3 to the writ petition. Thereafter in pursuance to the G.O. dated 29.1.85 a selection committee was constituted and

after taking into account the satisfactory work of the petitioner he was appointed as Assistant Engineer vide order dated 12.6.85 Annexure 5. His services was regularized as Assistant Engineer by order dated 14.12.89. A seniority list of the Assistant Engineer of Rural Engineering Service was published by the department on 4.1.95 wherein the petitioner's name was placed at Serial No. 274 showing petitioner seniority with effect from 14.12.89. Photostat copy of the seniority list dated 4.1.95 is Annexure 6. A perusal of the seniority list shows that persons placed at Serial No. 8 to 64 were regularised vide order dated 15.4.85 w.e.f. 14.5.79, and similarly the person placed at Serial No. 132 was regularised by order dated 17.1.90 w.e.f. 13.5.84. One Subhash Singh whose name is at Serial No. 8 was given the benefit of his previous service and his seniority fixed accordingly. However petitioner was not given any benefit of his previous service in the department. Hence he has made representations dated 10.3.95 and 25.5.98 claiming seniority from the date of his initial appointment i.e. 18.1.83 vide Annexures 7 and 8. He made further representations and copy of the last representation dated 6.5.2000 is Annexure 2 to the writ petition. However by the impugned order the said representation has been rejected.

It appears that the State Govt. had not made any Service Rules for the department prior to 1993 governing service conditions of Assistant Engineer in the Department of Rural Engineering Service, U.P. For the First time on 10.6.93 the U.P. Rural Engineering (Group B) Service Rules, 1993 came into force i.e. Much after the petitioner's initial appointment on 18.1.83 and regularisation order dated 14.12.89. Hence the petitioner has alleged that he ought to have been regularised in accordance with the executive direction and Government Order from 18.1.83. True copy of the Service Rules, 1993 is Annexure 10.

Aggrieved this writ petition has been filed in this record.

The petitioner filed amendment application and impleaded several persons as respondents vide order dated 25.11.2002. By an amendment application, the petitioner has.....seniority list dated 14.12.2001 which has been annexed to the amendment application.

A counter affidavit has been filed by the State Govt. In Para 5 it is stated that the petitioner was not given regular appointment by the department vide G.O. Dated 14.12.89 and stated in Para 7 that ad-hoc services had not been added for the purposes of seniority.

The petitioner's representation has been duly considered and rejected. In Para it is stated that the petitioner's service was regularised by G.O. dated 14.12.89 in terms of The Regularisation of Adhoc Appointment (within the purview of Public Service Commission) Rules, 1979. In Para 13 it is stated that prior to the coming into force of the Service Rules regarding determination of seniority, the G.O. dated 9.4.80 was issued pertaining draft service rules.

Rejoinder Affidavit has also been filed and we have perused the same. In *Direct Recruit Class II Engineering Officers Association v. State of Maharashtra*, AIR 1990 SC 1607, it was held by the Supreme Court that seniority has to be counted from the date of appointment and not according to the date of confirmation.

In our opinion this decision squarely applies to the facts of the present case. Admittedly the petitioner was appointed as Assistant Engineer on 18.1.83 when the Service Rules, 1993 had not come into force. Subsequently he was confirmed also. It is settled law that seniority is to be counted from the date of continuous officiating on the post in view of the above decision of the Supreme Court.

Following the said decision, this writ petition is allowed. The impugned order dated 26.12.2000 is quashed. The respondents are directed to fix petitioner's seniority with effect from the date of his initial appointment on 18.1.83. The seniority list shall be rectified accordingly.'

35. Aforesaid judgment stands on different footing. In the case of *Narendra Kumar Tripathi (supra)* Court has referred to some G.O. dated 9.4.1980 pertaining draft service rules. There is no reference to the said Government Order in the present case. Secondly, the Division Bench has placed reliance in the decision in the case of *Direct Recruti Class II Engineering Officers Association (supra)* without discussing provisions of the relevant Rules, 1988 or the Rules, 1991 (referred to above). Said decision does not refer to the Apex Court judgment in the case of

Keshav Chandra Joshi (supra) which explained that the conclusion of the Supreme Court in Para 44-Clauses A and B, of its judgment in the case of Direct Recruti Class II Engineering Officers Association (supra) cannot be read in isolation and one has to refer to the other observations also in the judgment. The said Division Bench decision is distinguishable.

Para 13 of the judgment, for convenience reproduced below- '----- if an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequal as equal which would violate the equality clause.'

36. Apex Court in the case of T. Kannan v. K. Nayyar, (1991) 1 SCC 545, held-

'The law is clear that seniority is an incidence of service and when the serve rules prescribe the method of its computation, it is squarely governed by such rules. In the absence of a provision ordinarily the length of service is taken into account. A dispute of this nature normally arises between recruits from two sources, namely, direct and promotees. In this group of cases, however, we are concerned with the inter se seniority between direct recruits alone. The note to Schedule VIII indicated that the inter se seniority of recruits of one year would be on the basis of merit-----'

37. A perusal of the order of regularisation in favour of the petitioners clearly indicate that the services of the petitioners were regularised in accordance with U.P. Ad-hoc Regularisation Rules, 1988 which clearly indicate that a person shall be entitled to seniority only from the date of the appointment after selection in accordance with those rules. Petitioners made no grievance against said order.

38. In view of the above, it is clear that petitioners entered in the cadre of Assistant Engineer after regularisation and hence their ad-hoc tenure by stop gap arrangement, prior to their regularisation under Rules 1988, cannot be taken into account while determining seniority.

39. In the last, Sri Sudhir Agarwal appearing on behalf of respondents referred to the judgment in the case of M.K. Shanmugam and Anr. etc. v. Union of India and Ors., JT 2000 (5) SC 601. Relevant extract of Para 9 of which is reproduced-

'-----If the ad-hoc selection is followed by regular selection, then the benefit of ad-hoc service is not admissible if ad-hoc appointment is in violation of the rules. If the ad-hoc appointment has been made as the stop gap arrangement and where there was a procedural irregularity in making appointments according to rules and that irregularity was subsequently rectified, the principle to be applied in that case was stated once again. There is difficulty in the way of the appellants to fight out their case for seniority should be reckoned by reason of the length of the service whether ad-hoc or otherwise inasmuch as they has not been recruited regularly. As stated earlier, the appellants were regularly found fit for promotion only in the year 1977 and if that period is reckoned their cases could not be considered as found by the Tribunal. The view expressed by this Court in these cases have been again considered in the decisions in Dr. Anuradha Bodi and Ors. v. Municipal Corporation of Delhi and Ors., JT 1998 (3) SC 157 : 1998 (5) SCC 293; Keshav Deo and Anr. v. State of U.P. and Ors., JT 1998 (7) SC 216 : 1999 (1) SCC 280; Major Yogendra Narain Yadav and Ors. v. Bindeshwar Prasad and Ors., JT 1996 (11) SC 555 : 1997 (2) SCC 150; I.K. Sukhija and Ors. v. Union of India and Ors., JT 1997 (6) SC 201, but all these decisions do not point out that in case the promotions had been made ad-hoc and they are subsequently regularised in the service in all the cases, ad-hoc service should be reckoned for the purpose of seniority. It is only in those cases where initially they had been recruited even though they have been appointed ad-hoc the recruitment was subject to the same process as it had been done in the case of regular appointment and that the same was not a stop arrangement. That is not the position in the presents cases at all. Therefore, we are of the view that conclusions reached by the Tribunal appear to us to be correct and call for no interference. However, we make it clear, as noticed earlier, that while amending the rules of recruitment in 1984 all those who are already in service will be borne in mind in adjusting the seniority amongst the promtee inter se and suitable adjustments could be made and so far as the direct recruits are concerned, their cases will go by their quota rule and the view taken by the Tribunal in this regard cannot be taken exception of.

Appeals stands dismissed accordingly.'

40. The Apex Court after referring to various earlier decisions of its own Court, observed 'all these decisions do not point out that in case the promotions had been made ad-hoc and they are subsequently regularised in the service in all the cases, ad-hoc service should be reckoned for the purpose of seniority. It is only in those cases where initially they had been recruited even though they have been appointed ad-hoc the recruitment was subject to the same process as it had been done in the case of regular appointment and that the same was not a stop gap arrangement. That is not the position in the present cases at all.-----'.

41. The above conclusion of the Apex Court, completely belies, petitioners' stand.

42. Learned Counsels for the petitioners have failed to show in the impugned order dated 14.12.2001 any manifest error apparent on the face of record and on the other hand the respondents while deciding the objections rightly held that seniority could not be with reference to the vacancy year and it ought to be on regularisation reckoned w.e.f. the date of substantive appointment in the cadre. Accordingly, we find that above petitions are devoid of merit.

43. The above Writ Petitions are dismissed.

44. We, however, make no order as to costs.