

Pushpa Sinha and ors. Vs. Union of India (Uoi) and ors.

Pushpa Sinha and ors. Vs. Union of India (Uoi) and ors.

SooperKanoon Citation : sooperkanoon.com/54705

Court : Central Administrative Tribunal CAT Patna

Decided On : Nov-14-2005

Reported in : (2007)(1)SLJ203CAT

Judge : P S Vice, S a a.K.

Appellant : Pushpa Sinha and ors.

Respondent : Union of India (Uoi) and ors.

Judgement :

1. O.A. 562 of 1998 was originally filed by Late Shri Niranjana Prasad Sinha S/o Late Shri Kapildeo Narayan Sinha under Section 19 of the Administrative Tribunals Act, 1985.

2. Shri Sinha, however, died on 21.8.2004 and hence his legal heirs namely Smt. Pushpa Sinha, Wife, Shri Sanjay Kumar Sinha, Son and Shri Subodh Kumar Sinha, another son of Late Shri Niranjana Prasad Sinha filed a M.A. No. 157 of 2005 on 2.12.2004 for substitution of the names of heirs in place of Shri Sinha in O.A. No. 562 of 1998. The request was allowed. There was, however, a delay of fifteen days in filing the impugned M.A. which too was condoned by the Tribunal vide, order dated 30th May, 2005 on sufficient grounds advanced by the successor applicants. These applicants are represented by their Counsel Mr. S.N.Shukla.

3. The case was originally fixed for hearing on 31.8.2005. Due to non-appearance of the learned Counsel for the applicant Mr. S.N.Shukla, the O.A. in question was

dismissed for default. Subsequently, Mr. Shukla appeared before the Tribunal and explained the reasons for his absence. The Tribunal on being satisfied restored the Original Application 562/1998 to its original position.

4. O.A. in question has been filed on the grounds that the applicant has lost his seniority in the grade of 'Chargeman' Group 'B' by six years and two months due to arbitrary and discriminatory act of Railway Administration in not holding the test for more than six years.

5. Brief facts of the case are that the applicant was promoted to the post of Mistry Grade I in Production Control Organisation of Samastipur Railway Workshop in the pay scale of Rs. 380-560 w.e.f. 1.8.1978.

The applicant underwent suitability test conducted in the Workshop and he was promoted as Mistry Grade I. The post was upgraded as Chargeman and the applicant received consequential benefits like arrears of pay etc. w.e.f. 1.1.1979. He was appointed as Chargeman 'B' w.e.f. October 1978 but on ad hoc basis. There were several Railway Workshops located at Gorakhpur, Izzatnagar and Samastipur. The Mistries of Gorakhpur and Izzatnagar did not appear in the aforesaid suitability test conducted for the aforesaid promotion to the grade of Chargeman 'B', conducted by Railway Administration.

6. The applicant even though appeared at the suitability test and also passed the same, he could not get his requisite seniority in the grade from the date of his promotion. The applicant was promoted on ad hoc basis on the post w.e.f. October 1978. The post was subsequently upgraded w.e.f. 1.1.1979.

7. There were 7 temporary posts of Mistry Grade-I PCC which were upgraded as Chargeman 'C' and amongst these there was one post of Mistry which related to Welding Trade. The applicant's appointment as Mistry Grade-I was in the Welding Trade, while the appointment of remaining Mistries was in other disciplines.

8. The applicant was promoted as Chargeman 'C' w.e.f. October, 1978 vide Dy. Chief Workshop Manager Samastipur's communication NE/230/11/19/W dated 31.10.1978. These posts were to be filled up by Headquarters of the Railway

Administration till 18.5.1983 and General Manager, Gorakhpur exercised cadre control in respect of the same. As the Headquarters of General Manager were located at a distant place, the organisation failed to conduct the examination in time and hence the combined seniority list in the grade could not be prepared in time. The power of selection to the impugned grade was subsequently decentralised and selection process for the same was completed at Samastipur on 3.12.1985. After the completion of selection process, the applicant was promoted as Chargeman 'B' on regular basis in 1985 and he thereby lost his seniority by six years and two months. Dy. Chief Workshop Manager N.E. Railway, Samastipur reminded the Chief Personnel Officer, Gorakhpur twice i.e., first on 26.1.1995 and then on 3.4.1995 to regularise the continuous service of the applicant in the grade of Chargeman 'B' with effect from the date of his appointment to this grade. The applicant again represented claim of regularisation to Competent Railway Authorities in 1997 and then in 1998 but the Railway Administration again turned a deaf ear to their request. Being aggrieved by the indifferent attitude of the Railway Administration they have filed this O.A. before us.

(i) The period of ad hoc appointment of the period from 1.11.1978 to 31.12.1985 should be counted on regular basis.

(ii) Applicant's seniority should be refixed from the relevant date of his continuous officiation to the grade of Chargeman 'B' i.e.

1.11.1978.

(iii) Based on the above seniority he should be promoted just above his juniors as and when they were regularly promoted to various higher grades.

(iv) On the basis of revised seniority so determined, he may be accorded all promotional benefits due to him and on that basis, his salary may be revised and consequential arrears be paid to him.

(v) Last of all, his retirement benefits should be refixed as he has already superannuated on 31.1.1998. He also sought an interim relief of regularisation w.e.f. 1.11.1978 on the post of Mistry grade I (i.e. The entire adhoc period of

service should be regularised).

10. Notices, accordingly, were issued to respondents namely Railway Administration to file their counter reply/written statement. The respondents submitted their written reply on 19.7.1999 in which they inter alia made the following submissions: (i) That the O.A. in question is not maintainable in Law and is barred by limitation and there are delays in latches on the part of the applicant.

(ii) The claim of applicant for counting (head hoc engagement made in the year 1978 for being counted as regular service in 1998 after the lapse of more than 20 years is apparently not tenable and is fit to be rejected at the very outset. The petitioner retired on 31.12.1997. He was initially appointed as Trade Apprentice on 1.5.1958 in the scale of Rs. 35-38/-. He was given promotion, thereafter, to the post of Skilled Welder Grade III in the pay scale of Rs. 110-180 w.e.f. 1.1.1962. Subsequently, he was promoted to the next higher grade of Skilled Welder Grade II in the scale of Rs. 330-480 with effect from 1.6.1978 and to Grade I carrying pay scale of Rs. 380-560 with effect from 1.8.1978.

(iii) The applicant appeared in the suitability test for Mistry Grade I in the scale of pay of Rs. 380-560 in October 1978. He was declared to have passed the aforesaid test and was, accordingly asked to officiate in the grade temporarily.

(iv) In view of MIA BHA award, the post of Mistry Grade I, was replaced by equivalent number of post of Chargeman 'C' in the production controlled Organisation (PCO) of Samastipur Workshop in the scale of Rs. 205-280 as per orders of the Railway Board which was implemented by General Manager of the Zone vide Memorandum No. E/59/Mech/UPGD/Mistry/ WS/3(IX) dated 14.6.1979.

(v) Up to this period, the post of Chargeman 'C' was centralised under the control of Zonal Headquarters, Gorakhpur. There was also no clear direction issued to General Manager, Gorakhpur as to how these posts were to be filled in by the Railway Board. Hence it was decided at local level of Works Manager, Samastipur, in response to General Manager's Memorandum dated 14.6.1979, to allow the applicant and others who were working as Mistry Grade-I to function as Chargeman 'C' in the scale of Rs. 205-280/ - AS/425-700 (RS) with effect from

1.11.1978. It was clearly stipulated in the order that the appointment was only local and on 'ad hoc basis' till the said posts are filled up by the Headquarters. It was also stipulated that the said appointment would not confer upon them, any claim for permanent retention against the post of Chargeman 'C' or any seniority above their erstwhile senior.

(vi) In the year 1982 the cadre control for post of Chargeman 'B' was decentralised and the selection process in the grade was completed on 3.12.1985. The applicant appeared in the said selection and was declared to have passed the test and accordingly was promoted as Chargeman 'B' in the scale of Rs. 425-700 w.e.f.

3.12.1985 on a regular basis vide office order No. E/210/II/...

(KAR) dated 12.12.1985.

(vii) In view of these facts and circumstances of this case it is abundantly clear that applicant was not given any regular appointment or promotion w.e.f. 1.11.1978 as Chargeman 'C' as claimed by him. It is clearly mentioned in letter dated 9.7.1979 of Works Manager that the appointment of the applicant is on purely ad hoc basis and that the same will not confer any right of seniority etc. in the aforesaid post. Respondents also submitted that the claim of applicant for regularisation was also hit by the principle of promissory estoppel.

(viii) They also submitted that the claim of the applicant that he was promoted to the grade of Mistry Grade-I w.e.f. 1.8.1978 was not correct. In fact, he was promoted to this grade only w.e.f.

31.10.78. He also submitted documentary evidence in support of his statement. The respondents further submitted that the post of Mistry Grade-I was replaced by equivalent number of post of Chargeman 'C' which was an upgraded post in the scale of Rs. 205-280 (Unrevised)/Rs. 425-700/- (Revised). The pay scale of Mistry Grade-I was Rs. 150-240 (Unrevised) and Rs. 380-560 (Revised).

11. The applicant was working as Chargeman Grade 'C' provisionally and was given only ad hoc promotion and not regular promotion. As a result of this ad hoc promotion arrears of pay etc., were paid to him with effect from the date of his

taking charge in the Production Control Organisation (PCO) and not with effect from 1.1.1979 as stated in the O.A. The appointment of the applicant to the aforesaid post was made only with a view to tide over the immediate administrative problems.

12. The respondents contested the claim of the applicant that there was no delay in the conduct of selection of Chargeman Grade 'B', as a result of which the interests of applicant suffered. They further submitted that the conduct of selection process of Chargeman Grade 'B' was completed at the earliest point of time.

The cadre control for the post of Chargeman Grade 'B' was decentralised with effect from 15.7.1982 and not from 18.5.1983 as averred by the applicant and that no prejudice whatsoever has been caused to him, in any manner, in the case.

13. The applicants and the respondents were duly heard in person on 25.10.2005. The applicants were represented by learned Counsel Mr. S.N.Shukla. Mr. A.A. Khan, learned Standing Counsel for the Railways represented the respondents.

14. The learned Counsel for the applicant reiterated his submissions made in O.A. 562/ 98 at the time of oral hearing. While narrating the entire sequence of events till the stage the applicant was promoted to the post of Chargeman Grade 'B'. He further submitted that his client has suffered a loss of seniority of more than six years as a result of which he could not get promotion to other higher posts and had to retire only as a Section Engineer. He also submitted that his client suffered loss of seniority of over six years and two months due to the fault of the Railway Administration in not holding the prescribed test for the post of Chargeman Grade 'B' for more than six years. He also submitted that even though the Dy. Chief Workshop Manager tried to awake the Railway Administration twice to regularise the seniority of his client, they did not come out of their dogmatic slumber and as a result of the same his client suffered severe injustice and had to retire as a Section Engineer. He could not be promoted to higher positions in the cadre and was also deprived of consequential benefits on retirement. He also lamented that as a result of indifferent attitude of Railway Authorities his client was placed lower in seniority even to his juniors like Shri N. Lakra, Shri Om Prakash and Shri Javed Jaheer, some of whom were working at apprentice in the year 1978 when his client was

working as Chargeman Grade 'B'. He also submitted that while determining his seniority in the grade, Railway Administration ignored even departmental instructions, in force, on the subject.

15. Applicant, accordingly, prayed for direction to the respondents to fix up his seniority higher than those who were junior to him in the grade and to regularise his services in the grade of Chargeman Grade 'B', from the date of his continuous officiation and to grant benefit of promotion and consequential retirement benefits. He also cited Apex Court judgment in the case of L Chandrasekhar Singh v. State of Manipur and Ors. as well as CAT, Jabalpur Bench decision in the case of P.N.Gaur v. Union of India and Ors. He also cited several other rulings of various other Courts on the subject.

16. Mr. Khan, learned Standing Counsel appearing on behalf of the respondents, on the other hand, submitted that O.A. in question was barred by limitation. If the period from the date of engagement i.e., 1978 is counted as regular now, then there will be a lapse of over 20 years and the O.A. filed by the applicants will be rendered untenable and not maintainable in Law. He also submitted that the applicant was initially appointed as trade Apprentice on 1.4.1958 in the scale of Rs. 35-38. Subsequently, he was promoted to the post of Skilled Welder Grade-III in the pay scale of Rs. 110-180. He was again promoted as Welder Grade-II in the pay scale of Rs. 330-480 w.e.f. 1.6.1978 and thereafter to Grade-I carrying the pay scale from Rs. 380-560 w.e.f.

1.8.1978.

17. The applicant appeared at suitability test for Mistry Grade-I also and was temporarily declared to have passed the same as per Order No.E/210/II/2 (W) dated 31.10.1978 and was only temporarily asked to officiate in the grade.

18. In view of MIA BHA award, the post of Mistry Grade-I was replaced by equal number of the posts of Chargeman 'C' in the Production Control Organisation of Samastipur Workshop in the scale of Rs. 205-280.

19. As there was no clear direction as to how the posts of Chargeman was to be filled in, the local administration of Samastipur Railway Workshop decided to fill in the posts on adhoc basis. It was also specifically stated in the orders of appointment that the appointment was purely local and on ad hoc basis and that the said posts were to be filled in on a regular basis by the Headquarters Administration.

However, after decentralisation of the post of Chargeman Grade B, in the scale of Rs. 425-700 the cadre control for the post was decentralised and the selections for the post of Chargeman Grade 'B' were completed on 3.12.1985. This applicant appeared at the test conducted, passed the same and was accordingly selected for appointment to the post.

20. In view of these facts, the learned Counsel for the respondents argued that the applicant had not been given any regular appointment or promotion and that he was appointed purely on ad hoc basis and hence was not entitled to any retrospective seniority from the date of his adhoc appointment or promotion. He also submitted that Rules framed in this regard did not confer any right of seniority or promotion in case of employees appointed on adhoc or temporary basis. He cited Court rulings to the effect that notings in departmental files do not create a right to place reliance in judicial proceedings. He, accordingly, prayed for dismissal of the O.A. in question.

21. We have carefully considered the submissions made by the learned Counsel on behalf of the applicant as well as respondents.

22. We find that initial object of time bar in respect of O.A. 562/1998 raised by the learned Counsel for the respondents is not tenable in view of special facts and circumstances of this case. Annexure 6 of the O.A. contains the seniority list of Chargeman Grade 'B' dated 9.1.1995/17.11.1995 circulated by General Manager (Personnel) in the Railway Board. Objections were invited from the employees affected by seniority so fixed, in the aforesaid grade. This applicant represented against the impugned decision through his immediate superiors namely, Dy. Chief Works Manager, NE Railway, Samastipur as any request as per rules had to be routed through proper channels. It also appears from the record that the applicant

had represented his case before the authorities even earlier, and his request for regularisation in the aforesaid grade was accordingly duly recommended by the Dy. Chief Works Manager, Samastipur vide his-office reference D.O. No.E/210/III/Pt-6/94 dated 15.5.1995 and again vide his second reference dated 11.11.1995. Since the applicant's request were duly recommended by the Dy. Chief Works Manager, it was only natural on the part of this applicant to have hopefully waited for a positive response in the matter. However, this did not happen and he finally retired on 31.1.1998. Ultimately, he had no other alternative except to file this O.A. No. 562/1998 on 25.8.1998, before this Tribunal for grant of necessary relief in the matter. From the facts and circumstances of this case, thus, it clearly transpires that the applicant had sufficient cause for not making the application within the period of one year as specified in Clause (a) or Clause (b) of Sub-section 1 of Section 21 of the Administrative Tribunals Act, 1985. The case of the applicant appears to be fully covered by the provisions of Sub-section (3) of Section 21 which reads as under: Notwithstanding anything contained in Sub-section (1) or Sub-section (2), an application may be admitted after the period one year specified in Clause (a) or Clause (b) of Sub-section (1) or as the case may be, the period of six months specified in Sub-section (2), if the applicant satisfies the Tribunal that he had sufficient case for not making the application within such period.

In view of sufficiency of cause available on record in the case, this appears to be a fit case for condonation of delay. Hence, delay involved in filing the application is, accordingly, condoned.

23. Coming to merits, we find that merits of the case heavily weigh in favour of the applicant. The Apex Court through a series of judgments has settled the point of Law relating to seniority particularly in case of ad hoc or temporary appointments. Their Lordships of the Supreme Court, in the case of Direct Recruit Class II Engineering Officers Association , have held that, If the initial appointment is not made by following the procedure laid down in 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 for the purpose of determination of seniority.

In the case of Narinder Chadha and Ors. , the apex Court, had held the same view. In this case also, their Lordships held that, If adhoc promotees or appointees are allowed to continue as such for long years without being reverted or challenged, they would be deemed to have been regularised. Singh v. Delhi Administration ...Once an ad hoc appointee is eventually selected for the post in a regular selection, the regular appointment would relate back to the date of ad hoc appointment. To that extent, therefore, the period during which an ad hoc appointee has served as such in the appointment, contributed to his service career and, therefore, legitimately forms basis of a certain right that accrues by subsequent appointment. Baleshwar Dass and Ors. v. State of U.P. and Ors.

, their Lordships of the Supreme Court while interpreting the scope of United Provinces Service of Engineers Class II, Irrigation Branch Rules, 1966, specially Rule 3(b) and Rule 4 held that "substantive capacity refers to the capacity in which a person holds the post and not necessarily to the nature and character of the post. Even appointment to a temporary post for long duration would be sufficient to hold that such a person was holding the post of a substantive capacity." L. Chandra Kishore Singh v. State of Manipur the Apex Court held the same view. The Apex Court in the case held that "seniority based on length of service is an acquired right of an employee which entitles him to be considered for further promotion...."

24. The principles enunciated by the Hon'ble Apex Court and the High Court of Delhi squarely apply to the facts of this case. It is on record that the applicant was initially appointed as Trade Apprentice on 1.4.1958 in the scale of Rs. 35-38. Thereafter, he was given promotion to the post of Skilled Welder Gr. III in the pay scale of Rs. 110-180 with effect from 1.1.1962. He was further promoted to the next higher grade of High Skilled Welder Grade II in the pay scale of Rs. 330-480 w.e.f. 1.6.1978 and to Grade I (in the pay scale of Rs. 380-560) w.e.f. 1.11.78. The applicant appeared at suitability test for Mistry Grade I and passed the same and was temporarily appointed to officiate in that grade. In view of MIA BHAI AWARD, the post was subsequently upgraded and re-designated as Chargeman Grade 'C' and on IIIrd Pay Commission Recommendations, it was again redesignated as Chargeman Grade 'B'. Since his initial ad hoc or temporary appointment i.e. on 1.11.78 till the period of his regularisation i.e. On 31.12.1985, the applicant, without any break in service, continued to officiate on the same post. It is no doubt

true that the post in question was being upgraded from time to time and the post was first upgraded as Chargeman Grade 'C' and then to Chargeman Grade 'B' in view of MIA BHAJ Award and IIIrd Pay Commission Recommendations, respectively with the passage of time.

25. It is also on record that the same post of Mistry Grade I was upgraded and re-designated as Chargeman Grade 'C' under General Manager's Memorandum No. E/59/ MECH/UPGP-Mistry/WS/3(ix) dated 14.6.1979 as a result of MIA BHAJ AWARD. It is also on record that the applicant continued on the post without any break in service in the grade w.e.f. 1.11.1978. Even the respondents have conceded that applicant had appeared in the suitability test in the month of October 1978 and had passed the same and was appointed on 1.11.1978 and has been continuously working on the post since then. It is also a fact that the post of Mistry Grade I was upgraded and re-designated twice, First, on the basis of MIA BHAJ AWARD and then on the recommendations of IIIrd Pay Commission Recommendation but the essential nature, functions and responsibilities of the post remained the same. What happened in this case was only a change in name and form and not in substance in so far the post of Mistry Grade I was concerned. Hence as per Law settled by the Apex Court, in this context, the relevant date of continuous officiation of the applicant on the post i.e. 1.11.1978 should have been taken into consideration while deciding finally the seniority of the applicant in the grade of Chargeman Grade 'B'. It is also not clear from record as to why even Railway Board's instructions contained in their letter No. E(I-80) SR-6-107, New Delhi dated 3.11.1981 were not taken into consideration while deciding the seniority of the applicant in the above grade. The impugned circular letter of the Railway Board reads as under: That intention is that after staff has been identified for filling of upgradation post, benefit should accrue respectively to the staff ultimately fitted in the posts from the date of upgrading consequent on restructuring in the relevant grade. Where selection or tests are to be held there is bound to be a time lag but the intentions that identified staff will reckon the date of upgrading as the date of entry into the grade for the purpose of seniority.

It is abundantly clear on record that the post of Chargeman Grade 'C' was simply merged into the grade of Chargeman Grade 'B' as a result of Pay Commission

recommendations.

In this context, our attention is drawn to Chief Workshop Engineer, Eastern Railway, Gorakhpur Memorandum No. In terms of Railway Boards Letters No. PC/72/RLT/69/2 Part II dated 6.4.1973 & E (P&A)-77/RS/5 WS/18 dated 22.1.1979, sanction is accorded to the replacement of 7 temporary posts of Mistries Grade I in scale of Rs. 150-240 (AS) by the equivalent number of posts of Chargeman 'C' in the scale of Rs. 205-280(AS) in the Production Control Organisation of SPJ Workshop.

26. Railway Authorities should have taken into consideration at least the date of upgradation of the post of Mistry Grade I into the grade of Chargeman Grade 'C' while determining the final seniority of this applicant in the grade which, as per record is, 14.6.1979. These instructions, which were issued by respondents themselves have also been conveniently ignored in fixing the final seniority of the applicant in the relevant grade for reasons best known to Railway Administration.

27. We also find that the decisions of the Apex Court, as per Article 141 of the Constitution of India are binding on all subordinate Courts as well as executive authorities in the country.

28. As such, the respondents were duty bound to fix the seniority of the applicant on the basis of his continuous officiation in the relevant grade. Even the respondents concede that the post of Mistry Grade I was upgraded and redesignated as Chargeman Grade 'C' and was simply merged in Grade 'B' with an improved pay scale. The chronological sequence of the appointment of the applicant as well as continuous officiation in the grade, as conceded by even respondents, can be stated as under: The applicant on the basis of a successful test was promoted to the grade of Mistry Grade I and was appointed to this post on 1.11.1978 and has been continuously officiating on the post, without any break since then. Even on upgradation/conversion of the post into the grade of Chargeman Grades 'C' and 'B', the applicant continuously officiated on the post without any break in service. Hence, the relevant date i.e. 1.11.1978 should have been taken into consideration while deciding the seniority of this applicant. This has not been done as a result of which this applicant suffered a grave injustice. In

view of the facts and circumstances of the case, and also in view of the points settled by the Apex Court through a series of judgments as discussed in preceding paras, we are left with no other option except to direct the respondents to take into consideration the relevant date i.e. 1.11.1978 for determination of the seniority of the applicant in the aforesaid grade. For the same reasons we also hold that the applicant will be placed higher in seniority than Shri Javed Zaheer, Om Prakash and others who were neither appointed on or before 1.11.1978 nor even officiated on the post of Mistry Grade I, since 1.11.1978, either in a temporary or a substantive capacity.

29. We also hold that the applicant will be entitled for only notional promotion, on the basis of his revised seniority and consequent promotion but will not be entitled to any back wages, or arrears of pay etc. The Apex Court's established Rule of 'no work, no pay' in a series of historical pronouncements will hold good even in this case [for example, see *Virendra Kumar v. Avinash Ch. Chadha* 1991 SCC (L&S) 62].

Since the applicant would not be able to hold these posts retrospectively, he will not be entitled to any regular promotion with consequential benefits of arrears of pay etc. He will, however, be entitled for notional promotion in case he is otherwise found fit and eligible for the same. In the event of his notional promotion his salary and allowances will have to be re-worked out on that basis and in consequence thereof his retiral and pensionary benefits will have to be raised upwards and arrears shall be paid to the applicants as per law.

30. The above exercise should be completed within a maximum period of three months from the date of issue of this order.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com