

*Before M.M. Kumar & T.P.S. Mann, JJ.*

**UNION OF INDIA,—Petitioner**

*versus*

**GURBAX PAL AND OTHERS,—Respondents**

**C.W.P. No. 17003/CAT of 2004**

5th January, 2011

*Constitution of India, 1950—Art. 226—Dispute regarding fixation of inter se seniority from date of initial joining as Enquiry-cum-Reservation Clerk on ad hoc basis—Matter attained finality upto Supreme Court—UOI ordering to withdraw benefit of seniority for the period of ad hoc service—Tribunal quashing order while granting liberty to pass a fresh order after giving an opportunity of hearing to applicants—UOI again ordering alteration of dates of promotion by excluding period spent on ad hoc basis—Tribunal quashing order while holding applicants entitled to benefit of seniority from date of their initial joining—Challenge thereto—Supreme Court as well as Tribunal recognizing rights of parties to count period of ad hoc service for purposes of seniority—Violation of directions of Supreme Court—Petition dismissed with costs.*

*Held*, that once Hon'ble the Supreme Court as well as the Tribunal has recognized the rights of the parties to count the period of *ad hoc* service for the purposes of seniority, it was not open to the Officers of the Union of India-petitioner to resurrect the same ground on which they have lost the legal battle between them and applicant-respondent Nos. 1 to 3 up to Hon'ble the Supreme Court. Likewise they could not nullify the directions issued by the Tribunal which granted the same benefit to Shri Naresh Joshi *vide* order dated 7th March, 1990. Therefore, the writ petition is liable to be dismissed with heavy costs.

(Para 9)

Puneet Jindal, Advocate *for the petitioner*.

Suvir Sehgal, Advocate *for respondent No. 1*.

**M.M. KUMAR, J.**

(1) The Division Personnel Officer, an officer of the Union of India has approached this Court under Article 226 of the Constitution with a prayer for quashing order dated 23rd July, 2004 (P-9), passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity '**the Tribunal**'). The Tribunal has allowed the application filed by applicant-respondent Nos. 1 to 3 challenging order dated 9th May, 2003 passed by the Senior Divisional Personnel Officer, Northern Railway, Ferozpur snatching the benefit of seniority given to them by judicial orders passed from time to time as would be clear from the succeeding paras.

(2) There was an employee with the name Shri Naresh Joshi, who was working as Enquiry and Reservation Clerk. On the basis of an earlier judgment of the Tribunal he succeeded in getting the relief for fixation of his seniority from the petitioners on the basis of order dated 7th March, 1990 rendered in the case of **Naresh Joshi versus Union of India** (O.A. No. 710/JK/88, decided on 7th March, 1990) (A-8). According to the aforesaid order passed by the Tribunal, Shri Naresh Joshi was granted the benefit of earlier judgment passed by the Tribunal on 27th April, 1987 in the case of **Vijay Kumar versus Union of India**. The order of the Tribunal in the case of Vijay Kumar passed on 27th April, 1987 reads as under :—

“We have considered the arguments advanced by both the parties.

It is the admitted case of the parties that the applicant has been performing the duties of Enquiry and Reservation Clerk from 2nd May, 1977 which post carries the pay scale of Rs. 330–560 although there is no order to show that the applicant was ever promoted or ordered to officiate as Enquiry and Reservation Clerk. We are not in agreement with the contention of the learned counsel for the respondents that the services of the applicant can be utilized as Enquiry and Reservation Clerk without the grant of pay scale of that post. The work and conduct of the applicant has been satisfactory. The respondents are directed that the applicant be deemed to be promoted as Enquiry and Reservation Clerk for the period he has actually worked on that post on *ad hoc* basis in the pay scale of Rs. 330-560 and he should be granted all the consequential benefits of that post.

In view of what has been stated and discussed above, the application is allowed with no order as to costs.”

(3) In other words, Shri Naresh Joshi was also deemed to be promoted as Enquiry and Reservation Clerk for the period he has actually worked on *ad hoc* basis in the pay scale of Rs. 330-560. The Tribunal also issued directions for grant of all consequential benefits of working on that post. In the case of Vijay Kumar (*supra*), the date of *ad hoc* promotion as Enquiry and Reservation Clerk was 2nd May, 1977 and in the case of Naresh Joshi it was October, 1977.

(4) The starting point of problem is when the petitioner placed Shri Naresh Joshi over and above applicant-respondent Nos. 1 to 3, under the garb of implementation of the order passed by the Tribunal on 7th March, 1990 (A-8) and in purported compliance with the observations made in Contempt Petition No. 70 of 1991 filed before the Tribunal. The order dated 6th July, 1994/24th August, 1994 purporting to implement the directions issued by the Tribunal in the case of Naresh Joshi on 7th March, 1990, were challenged by applicant-respondent Nos. 1 to 3 by filing O.A. No. 76/PB/1995 because in pursuance to order dated 6th July, 1994/24th August, 1994 applicant-respondent Nos. 1 to 3 were made junior to Shri Naresh Joshi. The Tribunal *vide* order dated 10th October, 1995 upheld the order dated 6th July, 1994/24th August, 1994 placing Shri Naresh Joshi over and above applicant-respondent Nos. 1 to 3 alongwith one Shri Shiv Charan Kumar Dhawan. Against the order of the Tribunal dated 10th October, 1995, applicant-respondent Nos. 1 to 3 alongwith another approached Hon'ble the Supreme Court. The directions issued by Hon'ble the Supreme Court *vide* order dated 2nd December, 1996 (P-2) are self speaking and deserve to be read verbatim, which are as under :—

“GURBAX PAUL AND ORS.,—*Petitioner(s)*

*Versus*

UOI AND ORS.,—*Respondents*

ORDER

Special leave granted.

The four appellants claimed seniority over respondent No. 4 Naresh Kumar Joshi. It may be noticed that respondent No. 4 Vijay Kumar filed an application No. 755/86 before the Senior Sub Judge, Amritsar which came to be transferred to Central Administrative Tribunal, Chandigarh Bench in which he succeeded on 27th April, 1987; the Tribunal holding that he should be deemed to be promoted as Enquiry-cum-Reservation Clerk for the period he had actually worked on that post on *ad hoc* basis in the pay scale of Rs. 330-560 and he should also be granted all consequential benefits therefor. Thereafter, respondent No. 4 Naresh Kumar Joshi filed an application No. 710/JK/88 before the Central Administrative Tribunal which application was decided on the force of the judgment rendered in Vijay Kumar's case by the Tribunal and the Tribunal ordered as under :

“In line with the aforesaid decision (reference is to Vijay Kumar's decision) we hereby declare that the applicant shall be deemed to have been promoted as Enquiry and Reservation Clerk with effect from October, 1978 in the pay scale of Rs. 330-560 and that he is also entitled to all the consequential benefits admissible to him.”

As a result of implementation of this order respondent No. 4 was taken as promoted with effect from October, 1978 and he was granted consequential benefits. Moreover, the result of this order was that it made Naresh Kumar Joshi senior to the applicants even though, admittedly, the appellants were in the Enquiry-cum-Reservation Clerk Cadre from the year 1977. The learned counsel for respondent No. 4 was unable to point out how respondent No. 4 claimed seniority over the appellants for the obvious reason that the appellants being entrants of 1977 were senior to respondent No. 4. The Union of India contends that they have given seniority to him because of the order of the Tribunal. We fail to see how the seniority of the applicants could be disturbed by the order passed in the case of Naresh Kumar Joshi. Till the question of seniority of Naresh Kumar Joshi cropped up, the appellants had no reason to doubt their seniority.

Therefore, taking an overall view of the matter it seem clear to us that respondent No. 4 Naresh Kumar Joshi was always junior to the appellants and, therefore, he cannot steal a march over the appellants in the matter of fixation of seniority. That being so, the impugned order of the Tribunal has to be modified, in that, the appellants will be shown as seniors to respondent No. 4. *Inter se* seniority will be fixed accordingly regardless of the order in Naresh Kumar Joshi's case. The appeal will stand disposed of accordingly with no order as costs."

(5) A perusal of the directions issued by Hon'ble the Supreme Court would clearly show that *inter se* seniority between applicant-respondent Nos. 1 to 3 and Shri Naresh Joshi was considered, which has attained finality. Accordingly, the applicant-respondent Nos. 1 to 3 were to rank senior to Shri Naresh Joshi as they belonged to the cadre of the Enquiry-cum-Reservation Clerk from the year 1977 whereas Shri Naresh Kumar Joshi started working as such from October, 1978. It has been categorically held that Shri Naresh Joshi had always been junior to applicant-respondent Nos. 1 to 3. Once the matter had travelled up to Hon'ble the Supreme Court, there was hardly any room left for either the parties to entertain any doubt with regard to *inter se* seniority of applicant-respondent Nos. 1 to 3 and Shri Naresh Joshi. In compliance with the directions issued by Hon'ble the Supreme Court on 2nd December, 1996, an order was passed by the petitioner on 5th March, 1997. Accordingly, applicant-respondent No. 1 to 3 were granted seniority above Shri Naresh Joshi by taking into account their date of working as Enquiry-cum-Reservation Clerk in the pay scale of Rs. 1,200-2,040.

(6) On the excuse of some error in the order dated 5th March, 1997 another order was passed on 27th March, 1997. According to the aforesaid order, the petitioner-Union of India felt that applicant-respondents No. 1 to 3 were crroneously allowed the benefit of seniority for the period of *ad hoc* service alleging that the aforesaid issue never arose for consideration before Hon'ble the Supreme Court. They also took shelter of para 302 of Indian Railways Establishment Manual Vol.-I asserting that the seniority was to be assigned from the date of regularisation in the respective cadre. The aforesaid order was challenged by applicant-respondent Nos. 1 to 3 again in O.A. No. 155/PB of 1998, which was decided on 22nd January,

2002. The Tribunal quashed the order dated 27th May, 1997 after observing that the petitioner could not have gone against the mandate of the directions issued by Hon'ble the Supreme Court on 2nd December, 1996 and it would be committing contempt of the orders passed by Hon'ble the Supreme Court, which in fact had considered the rival claims of the parties on the issue of seniority. The Tribunal, however, granted liberty to the petitioner to pass a fresh order in accordance with law after giving an opportunity to applicant-respondents Nos. 1 to 3.

(7) In purported implementation of the directions issued by the Tribunal *vide* order dated 22nd January, 2002 (P-5), the order fixing the seniority was again passed on 9th May, 2003 in complete violation of the directions issued by Hon'ble the Supreme Court on 2nd December, 1996 (P-2). The adamant petitioner again altered the dates of their promotion by excluding the period spent by applicant-respondents Nos. 1 to 3 on *ad hoc* basis on the post of Enquiry-cum-Reservation Clerk. The aforesaid order was again challenged by applicant-respondents Nos. 1 to 3 and while quashing the order the Tribunal in paras 8, 9 and 10 has observed as under :—

- “8. It is settled law that once in service disputes regarding their rights of *inter se* seniority have attained finality, Administrative Officers have no jurisdiction to re-open those questions by passing of orders like Annexure A-1. Even though Annexure A-1 makes mention of judgment in the case of Naresh Joshi *versus* Union of India bearing O.A. No. 35/PB/98 and judgment at Annexure A-11 as passed by Hon'ble the Supreme Court, we are of the opinion that in-fact without appreciating the import of those judgments. Annexure A-1 violates the mandate of both Annexures A-8 and A-11. For the parties to the present O.A. the respondents could not have taken shelter of para 302 of I.R.E.M. for considering the continuance of the applicants on the post of ERC on *ad hoc* basis. as in view of the judgment at Annexure A-8. the said promotion was deemed to be with effect from the initial date of Shri Joshi performing duties on the said post. The benefit of judgment was given to the persons senior to him and Hon'ble the Supreme Court recognized this right of the other applicants in A-11.

9. We thus declare the order at Annexure A-1 to be passed in violation of Annexures A-8 and A-11 and quash the same. We hold the order at Annexure A-2 dated 5th March, 1997 was correct compliance of the judgments mentioned in Annexure A-1.
10. The present O.A. is, therefore, allowed. Annexure A-1 has already been quashed and set aside in view of the observations above. We hold the applicants entitled to the benefit of seniority from the date of their initial joining as Enquiry-cum-Reservation Clerk and thus declare that the order dated 5th March, 1997 (Annexure A-2) was correctly passed. They are held entitled to counting their seniority as per Annexure A-2 on the post of ERC and thereafter as per their right on the next higher post on its basis. Needless to mention that they are entitled to all the consequential benefits of such promotion and fixation of their *inter se* seniority as given in Annexure A-2."

(8) Feeling aggrieved the Officer of the Union of India has again approached this Court challenging the directions issued by the Tribunal.

(9) We have heard learned counsel for the parties and have perused the record with their able assistance. It is indeed a strange case where the Officers of the Union of India are bent upon violating the directions issued by Hon'ble the Supreme Court in its order dated 2nd December, 1996 (P-2), recognising the rights of applicant-respondent Nos. 1 to 3 to add their ad hoc service for the purposes of seniority. In order words, since the day they started discharging the duty on the post of Enquiry-cum-Reservation Clerk, they have been deemed to be promoted as such and were held entitled to seniority being a consequential benefit. The same benefit was granted to Shri Naresh Joshi, who had started discharging the duty of the post of Enquiry-cum-Reservation Clerk since October, 1978. However, the Officers of the Union of India have brushed aside the direction issued by Hon'ble the Supreme Court on 2nd December, 1996 (P-2) and the judgment of the Tribunal rendered on 7th March, 1990 (A-8) in the case of Naresh Joshi (O.A. No. 710/Jk of 1988). Therefore, we are of the view that such an approach adopted by the petitioner smacks of extraneous consideration and is wholly ill advised particularly when they

cite para 302 of IREM, Vol.-I. It is trite to observe that the orders passed by the Court cannot be brushed aside by the authorities like the Officers of the Union of India. However, in the present case, the facts show to the contrary. Once Hon'ble the Supreme Court as well as the Tribunal has recognized the rights of the parties to count the period of *ad hoc* service for the purposes of seniority, it was not open to the Officers of the Union of India-petitioner to resurrect the same ground on which they have lost the legal battle between them and applicant-respondent Nos. 1 to 3 upto Hon'ble the Supreme Court. Likewise they could not nullify the directions issued by the Tribunal which granted the same benefit to Shri Naresh Joshi *vide* order dated 7th March, 1990 (A-8). Therefore, the writ petition is liable to be dismissed with heavy costs.

(10) As a sequel to the aforesaid discussion, the writ petition fails. The order of the Tribunal is upheld. However, applicant-respondent Nos. 1 to 3 shall be entitled to their costs which are quantified at Rs. 10,000 for each of applicant-respondent Nos. 1 to 3. The costs be paid by a demand draft in their favour.

---

**R.N.R.**