



**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

CWPOA No.3788 of 2019
Decided on: 17.11.2025

Salochna Devi

.....Petitioner

Versus

Himachal Pradesh State Electricity Board

....Respondent

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting? Yes.*

For the petitioner: Mr. Vishal Singh Thakur, Advocate.

For the respondent: Mr. Anil Kumar, Advocate.

Ranjan Sharma, Judge

Petitioner, Salochna Devi, initially filed CWP No.3434 of 2011 before this Court, which upon creation of Learned State Administrative Tribunal; was transferred to said Tribunal and upon abolition of Tribunal, the matter stood transferred to this Court as CWPOA No.3788 of 2019, seeking the following relief:-

- “(ii) That the impugned order dated 20.05.2010 (Annexure P-1), may kindly be quashed and set aside and the petitioner's adhoc service may kindly be ordered to be regularized w.e.f. 28.06.1991 to 17.11.1995 with all consequential benefits including arrears, promotion etc.”

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

FACTUAL MATRIX:

2. Grievance of the petitioner is that she was appointed as Class-IV in Respondent-Board and she joined on 19.12.1987 as Peon [Class-IV Non-Technical] and was promoted as Clerk on adhoc basis on 28.06.1991 and such adhoc service continued uninterruptedly till regularization on 17.11.1995.

2(i). The petitioner has prayed that adhoc service rendered from 28.06.1991 to 17.11.1995 be counted for seniority, promotion, arrears etc. but the claim of the petitioner was rejected by the Respondent-Board on 20.05.2010 [Annexure P-1], on the ground, that once the adhoc promotion granted in the promotional cadre of Clerks/Meter Readers was in excess of 15% quota meant for Class-IV [Non-Technical Staff] therefore, the said adhoc service cannot be counted for purposes of seniority, promotion or other consequential service benefits.

STAND OF RESPONDENT-BOARD IN REPLY-AFFIDAVIT:

3. Pursuant to the issuance of notice, the Respondent-Board has filed Reply-Affidavit dated 04.01.2012 of Executive Director [Personnel] HPSEBL,

Shimla.

3(i). *Para-1 of Preliminary Submissions of Reply-Affidavit* states that as per Recruitment and Promotion Regulations, 15 % vacancies of Clerks/Meter Readers were to be filled up from eligible Class-IV [Non-Technical Staff], who have completed two years regular service as such and who fulfil Educational Qualifications prescribed in Recruitment and Promotion Regulations [Matriculation or Graduation or its equivalent] as the case may be.

3(ii). *Reply-Affidavit* indicates that in July 1990, Respondent-Board decided to make adhoc promotions from amongst the eligible Class-IV [Non-Technical] Personnel as Clerks/Meter Readers. Based on this decision, the petitioner was promoted as Clerk on adhoc basis on 28.06.1991 and she served as such till her regularization on 17.11.1995. *Reply-Affidavit* indicates that as per 15% quota, meant for eligible Class-IV [Non-Technical Staff], in the promotional cadre of Clerks/Meter Readers. Even a *Tabular Chart* was incorporated in *Reply-Affidavit* showing the incumbency between the period from 06.03.1982 to

August 1990, indicating that total cadre strength of Clerks/Meter Readers was 883 and as per 15% quota, meant for eligible Class-IV *[Non-Technical Staff]*, only 156 incumbents were entitled for promotion as Clerks/Meter Readers, whereas, 208 Class-IV *[Non-Technical Staff]* were already in position as on 14.08.1990 and 143 *Class-IV [Non-Technical Staff]* were already in excess as on August 1990. Reply-Affidavit states that despite the excess, a decision was taken in July 1990, the petitioner and others were promoted as Clerk on *ad hoc* on 28.06.1991 beyond 15% quota, meant for Class-IV *[Non-Technical Staff]*. It is averred that 143 incumbents who were promoted as Clerk *[ad hoc]* from 14.08.1990 till 01.03.1993 including the petitioner was in excess of 15% permissible quota. It is averred that the promotion was purely as stop-gap arrangement and the same was not to confer any right for regularization or other service benefits, including seniority etc. The applicability of the Instructions dated 29.06.1992, which was sought to be relied upon by the petitioner was vehemently denied, by the Respondent-Board. It is in this backdrop, prayer was

made for dismissing the writ petition.

REBUTTAL-REJOINDER BY PETITIONER:

4. Petitioner had filed *Rejoinder* with primary contention that once the petitioner was promoted as Clerk on adhoc basis on 28.06.1991 and such adhoc promotion continued uninterruptedly till regularization on 17.11.1995 then, the entire service rendered by the petitioner was to be counted for the purposes of seniority, promotion and other service benefits in the cadre of Clerks.

5. Heard, Mr. Vishal Singh Thakur, Learned Counsel for the petitioner and Mr. Anil Kumar, Learned Counsel, for the Respondent-Board.

6. *Before proceeding to analyze the claim of the petitioner*, it is necessary to have recap of the mandate of law as to whether an employee who was promoted on adhoc or temporary capacity de hors the Recruitment and Promotion Rules [including quota for promotion prescribed therein], can be granted the benefit of *adhoc service* for the purposes of seniority for further promotion or other service benefits is detailed hereinunder:-

**MANDATE OF LAW: INITIAL ADHOC SERVICE
BEING DEHORS RULES DISENTITLES EMPLOYEE
FOR SENIORITY AND SERVICE BENEFITS:**

6(i). While dealing with the claim for seniority for adhoc or stop-gap service service which was not rendered according to the Recruitment and Promotion Rules [including quota meant for direct vis-à-vis promotes], was negated by the *Constitutional Bench* of the Hon'ble Supreme Court, disentitling the benefit of such initial appointment towards seniority in ***Direct Recruit Class II Engineering Officers' Association. Versus State of Maharashtra and others, (1990) 2 SCC 715,*** in the following terms:-

"47. To sum up, we hold that:

(A) Once an ***incumbent is appointed to a post according to rule***, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that ***where the initial appointment is only ad hoc and not according to rules*** and made as a 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.

(C) When appointments are made from more than one source, it is permissible to fix the ***ratio for recruitment from the different sources,***

and if rules are framed in this regard they must ordinarily be followed strictly.”

6(ii). While adjudicating the claim for counting adhoc service towards seniority, when, the adhoc appointment was not made in accordance with Rules and was made in excess of quota prescribed in Statutory Rules was negated by Three Judge Bench of the Hon'ble Supreme Court in **Keshav Chandra Joshi and others Versus Union of India and others, 1992 Supp. (1) SCC 272**, in the following terms:-

“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 counted 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. To give benefit of such service would be contrary to equality enshrined in Article 14 read with Article 16(1) of the Constitution as unequals would be treated as equals. **When promotion is outside the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service fortuitous.** The previous promotion would be

regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees it would not be proper to do injustice to the direct recruits. ***The rule of quota being a statutory one it must be strictly implemented*** and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1). Therefore, the rules must be carefully applied in such a manner as not to violate the rules or equality assured under Article 14 of the Constitution. This Court interpreted that equity is an integral part of Article 14. So every attempt would be made to minimise, as far as possible, the inequity. Disparity is inherent in the system of working out integration of the employees drawn from different sources, who have legitimate aspiration to reach higher echelons of service. A feeling of hardship to one, or heart burning to either would be avoided. At the same time equality is accorded to all the employees.

26. As stated, the counsel for the promotees placed strong reliance on proposition 'B' while the 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 officiation 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 hand 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. One must discern the difference critically. Proposition 'B' must, therefore, be read along with para 13 of the judgment wherein the ratio decidendi of Narender Chadha was held to have considerable force. The latter postulated that if the initial appointment to a substantive post or vacancy was made deliberately, in disregard of the rule and allowed the incumbent to continue on the post for well over 15 to 20 years without reversion and till the date of regularisation of the service in accordance with the rules, the period of officiating service has to be counted towards seniority. This Court in Narender Chadha case was cognizant of the fact that the rules empower the government to relax the rule of appointment. Without reading paragraph 13 and Proposition 'B' and Narender Chadha ratio together the true import of the proposition would not be appreciated. We would deal with the exercise of power of relaxing the rule later. ***After giving anxious consideration, we are of the view that the latter half of Proposition 'A' would apply to the facts of the case and the rule laid down in that half is to be followed. If the concerned rules provide the procedure to fix inter se seniority between direct recruits and promotees, the seniority has to be determined in that manner.***

29. In an appropriate case ***if the court finds that wanton or deliberate deviation from the rules was made by the implementing***

authority the court should call upon them to explain the reasons therefor and in the absence of proper explanation forthcoming castigate the authority and pass strictures condemning the actions which would discipline the authorities to adhere to the rules.

Undue latitude and acquiescence thereto would not only defeat the due enforcement of the rules but also create disorder and frustration among the members of the services. We have also kept at the back of our minds that the interpretation we are to give to the rules would have far reaching effect, not only for similar services in other States, but also to Indian Forest Service for which the State Services are the feeder source.

34. Accordingly we have no hesitation to hold that the promotees have admittedly been 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 dehors 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 of adhoc 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 direct 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 conditions.”

6(iii). The judgment in the case of **Direct Recruit Class II Engg. Officers’ Assn. [supra]** was reiterated by the Hon’ble Supreme Court in **State of West Bengal and others Versus Aghore Nath Dev and others, (1993) 3 SCC 371**, mandating that if initial appointment is adhoc and made ‘according to Rules’ then only, such continuous adhoc service upon regularization, shall count for seniority *whereas*, in case, the initial adhoc service is stop-gap and not according to Rules then, such adhoc service is not to be counted towards seniority, *in the following terms:-*

“22. There can be no doubt that these two conclusions have to be read harmoniously, and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A). We may, therefore, first refer to conclusion (A). It is clear from **conclusion (A)** that **to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed, according to rules**. The corollary set out in

conclusion (A), then is, that 'where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority. Thus, **the corollary in conclusion (A) expressly excludes** the category of cases where the initial appointment is only ad hoc and **not according to rules**, being made only as a stop-gap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority.

23. This being the obvious inference from **conclusion (A)**, **the question is** whether the present case can also fall within conclusion (B) which deals with cases in which period of officiating service will be counted for seniority. We have no doubt that conclusion (B) cannot include, within its ambit, those cases which are expressly covered by the corollary in conclusion (A), **since the two conclusions cannot be read in conflict with each other.**
24. The question therefore, is of the category which would be covered by conclusion (B) excluding therefrom the cases covered by the corollary in conclusion (A).
25. In our opinion the **conclusion (B) was added to cover a different kind of situation**, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the later expression 'till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the

appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. ***In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity,*** without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not-being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stop-gap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."

6(iv). While dealing with the issue as to whether the incumbents, the Hon'ble Supreme Court in

Vinod Giri Goswami and others Versus State of Uttarakhand and others, (2020) 13 SCC 161, has held as under:-

“17. Essentially, two points require to be determined in these Appeals. The **first relates to the right of the promotees to count the period of their ad hoc service for the purpose of seniority**. The **second pertains** to the correctness of the Office Memorandum dated 21.10.2015. In Direct Recruit Class II Engineering Officers’ Association (supra), this Court held that the seniority of a person has to be counted from the date of his initial appointment if he was appointed in a post in accordance with the Rules. **The corollary is** that where the initial appointment is only ad hoc and not according to Rules and made as a stop gap arrangement, the officiation in such post **cannot be taken into account** for determining seniority. It was further held that the period of officiation **can be counted** if the initial appointment is not made by following the procedure laid down by the Rules but the appointees continued in the post uninterruptedly till the regularisation of his service in accordance with the Rules. This Court settled a controversy relating to the application of the principles laid down in *Direct Recruit Class II Engg. Officers’ Assn.* by a judgment in *Stat of West Bengal v. Aghore Nath Dey*. It was held as follows: (Aghore Nath Dey. Case, SCC pp. 382-83, paras 22-25)

“22. There can be no doubt that these two conclusions have to be *read* harmoniously, and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A). We may, therefore, first refer to conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed ‘according to rules’. The corollary set out in conclusion (A), then

is, that 'where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such posts cannot be taken into account for considering the seniority'. Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stopgap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority.

23. This being the obvious inference from conclusion (A), the question is whether the present case can also fall within conclusion (B) which deals with cases in which period of officiating service will be counted for seniority. **We have no doubt that conclusion (B) cannot include, within its ambit, those cases which are expressly covered by the corollary in conclusion (A),** since the two conclusions cannot be read in conflict with each other.
24. The question, therefore, is of the category which would be covered by conclusion (B) excluding therefrom the cases covered by the corollary in conclusion (A).
25. In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the 'rules' and the latter expression 'till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural

requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stopgap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."

18. In the instant case, the promotees were appointed on ad hoc basis in the year 2004. There is no dispute regarding their appointment on a regular basis in the year 2007. According to the 1982 Rules and the 2005 Rules, appointment by promotion to the post of Deputy Collector shall be as per the

Promotion for Selection in consultation with the Uttar Pradesh Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 1970. Procedure for promotion is laid down in the 1970 Rules which provide that the eligibility list or lists have to be forwarded by the State Government to the Commission which conducts the selection. The appointment of the promotees in the year 2004 is on ad hoc basis for a period of one year without following the procedure prescribed under the Uttaranchal Promotion by Selection in consultation with Public Service Commission (Procedure) Rules, 2003.

19. ***As the promotions in 2004 were made in clear violation of the Rules, the promotees are not entitled to claim seniority from the dates of initial appointments as Deputy Collectors. The High Court committed an error in treating the adhoc appointments of the promotees to be only procedurally defective to give them the benefit of the ad hoc service by applying the judgment in Direct Recruit Class II Engg. Officers' Assn.*** The High Court further went wrong in holding that the promotees were entitled for the benefit of ad hoc service in view of proviso to sub-rule (4) of Rule 24 of 2005 Rules. ***No doubt, according to the proviso to sub-rule (4) Rule 24 a promotee is entitled to count adhoc service provided he continuously worked till he is regularly promoted in a post within the promotee quota.*** No finding is recorded by the High Court on this very important prerequisite whether promotees appointed on ad hoc basis in 2004 continuously worked in a post within the promotee quota.
20. On the other hand, it is clear from the Office Memorandum dated 21.10.2015 that only 2 posts were available in the promotee quota during 2003-2004. Those posts also were allotted to promotees who worked in Uttar Pradesh throughout their career and never joined in the State of Uttarakhand.

Admittedly, they are seniors to promotees in the instant case. Therefore, the High Court was not right in giving the benefit of ad hoc service to the promotees on the basis that the proviso to Rule 24(4) of 2005 Rules comes into play. In view of the above, we do not think it necessary to adjudicate the dispute relating to the proviso to Rule 24 which exists in the English translation and does not find place in the Hindi copy.

21. A close scrutiny of the Office Memorandum dated 21.10.2015 would show that the **exercise done by the State of Uttarakhand in the matter of identification of vacancies within the direct recruit and promotee quota from 2000-2001 to 2006-2007 is correct.** The objection of the promotees is that the Deputy Collectors who were allotted to Uttarakhand never worked in the State of Uttarakhand and they continued to work in the State of Uttar Pradesh from which they retired. The grievance of the promotees is that if such officers are included in the seniority list, the promotees will suffer as they would be placed below the direct recruits who were appointed in the year 2005. The allotment process was delayed due to some officers continuing in Uttar Pradesh on the strength of interim orders in Writ Petitions filed by them challenging the allotment orders. Some of them have retired on attaining the age of superannuation while working in Uttar Pradesh. The allotment process ultimately was finalised on 02.09.2015. After the final allocation, persons who did not join in Uttarakhand and retired in Uttar Pradesh have to be treated as employees of the successor State of Uttarakhand. Moreover, the allotment was made w.e.f. 09.11.2000 which leaves no doubt that they cannot be ignored while finalising the quota for promotees and deciding the allotment of slots for the personnel in the order of their seniority.
22. In view of our conclusion that **the promotees are not entitled to count their ad hoc service for the purpose of computing**

their seniority. For the aforementioned reasons, the Civil Appeal @ S.L.P. (Civil) No.2779 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.6847- 6848 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.9885-9886 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.9910- 9911 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.33762- 33763 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.33750- 33751 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.33759- 33760 of 2012 are allowed and the Civil Appeal @ S.L.P. (Civil) No.18604 of 2019 is dismissed.”

In the backdrop of the mandate of law in ***Direct Recruits, Keshav Chandra Joshi, Aghore Nath Dev and Vinod Giri Goswami [supra]***, as discussed above, the benefit of adhoc promotion can only be extended for the purposes of seniority, in case the initial adhoc promotion is made in accordance with Recruitment and Promotion Rules and within the quota prescribed in Rules and is not a stop-gap arrangement. It is further mandated that if the adhoc promotion was made, in excess of quota or in violation of the Recruitment and Promotion Rules then, the benefit of such adhoc service cannot be extended towards seniority *[as in the instant case]*, in view of the factual matrix made in the preceding Paras.

ANALYSIS:

7. Taking into account the entirety of facts and circumstances and the material on record, this Court is not inclined to accept the prayer of the petitioner, *for the following reasons:-*

7(i). *Perusal of Reply-Affidavit and Rejection Orders dated 20.05.2019 [Annexure P-1]* reveal that as per the Recruitment and Promotion Regulations, 15% posts in promotional post of Clerks/Meter Readers were to be filled up from amongst eligible Class-IV [Non-Technical Staff], who have rendered requisite two years regular service and fulfil Educational Qualifications i.e. Matriculation or Graduation or its equivalent. Prescription of 15% quota in promotional cadre of Clerks/Meter Readers, was sacrosanct and the prescribed 15% quota was to be abided by the Board Authorities. The incumbents promoted as Clerks/Meter Readers in excess or beyond 15% quota can neither have any legal right for seniority nor for promotion or other consequential benefits.

7(ii). Material on record, as is borne out from the *Reply-Affidavit and Rejection Orders dated 20.05.2010 [Annexure P-1]*, negates the case of the

petitioner. *Tabular Chart* in the reply is reproduced here-in-below:-

Sr. No.	Date from which the posts were filled up from open market/ under Employment Assistance Scheme/ Sports quota etc.	No. of posts filled up.
1.	Clerks appointed by direct recruitment upto 14/8/1990.	576 Nos.
2.	Clerks appointed under Employment Assistance Scheme upto 14/8/1990.	173 Nos.
3.	Clerks appointed under Sports Quota upto 14/8/1990.	62 Nos.
4.	Clerks appointed against kith and kin of Ex-serviceman.	4 Nos.
5.	Clerks absorbed from Octrol staff.	60 Nos.
6.	Clerks absorbed from Judiciary staff.	8 Nos.
	Total:-	883 Nos.
i)	Quota works out to Class-IV (Non-Technical) staff @ 15% against these 883 posts.	156 Nos.
ii)	Quota already given to Class-IV (Non-Technical) staff upto 14/8/1990	208 Nos.

Perusal of *Tabular Chart* establishes that there were 883 posts in the cadre of Clerks/Meter Readers in Respondent-Board. Against these 883 posts, 15% posts-incumbents i.e. 156 posts were to be filled up from Class-IV [Non-Technical] Employees, alike the petitioner. Against the earmarked 156 posts as per 15% quota, the Respondent-Board had already promoted 208 Class-IV [Non-Technical] between the period 06.03.1982 to August 1990. These facts establish that as on August 1990,

about 143 Class-IV-Incumbents [Non-Technical Staff] were already in excess in promotional cadre of Clerks/ Meter Readers. In this scenario, once the adhoc promotion given to the petitioner as Clerk on 28.06.1991 was beyond or in excess of 15% quota, meant for the category of the petitioner in the promotional cadre, therefore, the adhoc promotion granted “not as per the Rules” will neither confer any right nor a legally enforceable claim for benefit of service rendered dehors the Rules for service benefits. Service rendered outside the quota will disentitle any employee for such service for seniority. Service not rendered against a vacancy or service rendered beyond the quota will be fortuitous, which cannot be counted towards seniority. Conversely, in case, the adhoc-temporary service is rendered against vacancy and within quota, then, upon regularization, such service confers a right for seniority from initial appointment and not otherwise. Nothing has been placed on record by the petitioner to show that quota meant for promotion in the Recruitment and Promotion Rules was ever relaxed by Respondent-Board.

In these circumstances, once the adhoc promotions of the petitioner was in excess of 15% quota meant in promotional cadre of Clerks and the

initial appointment-adhoc promotion being excess of the quota and dehors the Recruitment and Promotion Rules/ Regulations shall not entitle the petitioner either for seniority or other service benefits. Moreover, the adhoc service rendered by petitioner from 28.06.1991 till her regularization on 17.11.1995, being in excess of quota and not according to Rules and being stop-gap in exigencies of service, cannot be counted for seniority dehors the Rules, in view of the mandate of Hon'ble Supreme Court in the cases of ***Direct Recruit Class II Engg. Officers' Assn.; Keshav Chandra Joshi; Aghore Nath Dev; and Vinod Giri Goswami [supra]***.

**SETTLED POSITION CANNOT BE UNSETTLED
BEHIND BACK OF OTHERS APPOINTED CLERKS
FROM 1991 TILL 1995:**

7(iii). Admittedly, the claim of petitioner for reckoning her seniority as Clerk from the date of her initial appointment/promotion on 28.06.1991 instead of from date of regularization on 17.11.1995, cannot be acceded to, *for the reason, firstly*, the claim for seniority as Clerk from 28.06.1991 shall unsettle seniority given to the petitioner as Clerk from date of her regular promotion on 17.11.1995; and *secondly*,

no retrospective promotion can be granted; and *thirdly*, the persons who are appointed as Clerks by direct recruitment or promotion between 28.06.1991 to 17.11.1995, have not been arrayed as party respondents in the instant petition. Acceding to the prayer of the petitioner, shall certainly unsettle the seniority and shall tantamount to passing an adversarial order behind their back, which is impermissible. In these circumstances, the claim of petitioner for seniority as Clerk from the date of her initial promotion as Clerk, as stop-gap and *dehors* Rules on 28.06.1991, is devoid of any merit and is turned down.

7(iv). Respondent-Board has taken a stand that petitioner cannot claim seniority, promotion or consequential service benefits on the basis of *adhoc* promotion granted as Clerk on 28.06.1991, when such *adhoc* promotion was “*not in accordance with Rules*” but was *dehors* and in excess of 15% quota, meant for category of the petitioner-Class-IV [*Non-Technical Staff*] in promotional cadre. 143 Class-IV were already in excess upto 14.08.1990. That being so, the *adhoc* promotion of the petitioner as Clerk added to the excess

quota violating the Rules. Petitioner has been placed on record *Rejoinder or Supplementary Pleadings [subject to promotion sought for and granted by the Court]* to assert and prove that the adhoc promotion of petitioner was within the 15% quota, meant for Class-IV. In absence of any such cogent and convincing material on record, the stand of the Respondent-Board that adhoc promotion was “Not according to Rules” and was in excess of quota, cannot be disbelieved. Thus, the *Rejection Orders dated 20.05.2010 [Annexure P-1]*, denying service benefits for adhoc promotion being in excess of quota and dehors the Rules and was purely as stop-gap arrangement in exigencies of service does not confer any legal right to claim benefit of said service for seniority, promotion or other service benefits and the claim is turned down.

7(v). Petitioner having been accepted conditions of adhoc service, which have not been assailed in the instant proceedings, is good enough to disentitle the petitioner of benefit of such service for seniority, promotion or consequential benefits. Having accepted

the terms and conditions of adhoc promotion, the petitioner cannot turn around and claim a different status altogether. The adhoc promotion, being in excess of 15% quota and dehors the Rules disentitles the petitioner for benefit of adhoc service for seniority, promotion or consequential benefits. Accordingly, no indulgence can be shown, to the petitioner so far it relates to the *Rejection Orders dated 20.05.2010 [Annexure P-1]*, disentitling the petitioner for the benefit of adhoc service rendered on the promotional post of Clerk from 28.06.1991 till regularization on 17.11.1995 beyond her quota, being dehors the Rules, cannot be counted for seniority, promotion or other consequential service benefits. The *Rejection Orders* being legal and valid, are upheld.

8. No other point pressed/argued.

CONCLUSION AND DIRECTIONS:

9. In view of above discussion and for the reasons recorded hereinabove, the instant petition, ***is dismissed***, in the following terms:-

- (i) *Rejection Orders dated 20.05.2010 [Annexure P-1] is upheld;*
- (ii) Claim of petitioner for seniority as Clerk from

date of initial adhoc promotion on 28.06.1991 which was not as per Rules and in excess of quota and was stop-gap, is declined;

- (iii) Claim of petitioner for seniority without impleading persons who may be affected by the outcome of this petition, disentitles the petitioner for any relief;
- (iv) Claim of petitioner for counting of adhoc service w.e.f. 28.06.1991 to 17.11.1995 for promotion and other service benefits is disallowed when, service benefits are available for service rendered, against vacancy within quota and not otherwise [*as in instant case*]; and
- (v) Parties to bear their respective costs.

Pending miscellaneous application(s), if any, shall also stand disposed of.

(Ranjan Sharma)
Judge

November 17, 2025
[Bhardwaj]