

SH. NARAYAN YESHWANT GORE

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v.

UNION OF INDIA AND ORS.

APRIL 26, 1995

[R.M. SAHAI AND SUJATA V. MANOHAR, JJ.]

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*Service Law :*

*Employee—Deputation—Continuation for a long period with concurrence of parent department—During deputation short term vacancies occurring in parent Department—Such vacancies filled by ad-hoc promotions—No proforma promotion to employee on deputation—On repatriation to parent department employee promoted on ad-hoc basis—Deemed substantive appointment of ad-hoc employees in view of a judicial pronouncement—Repatriated employee treated as substantively appointed from date of repatriation—Held benefit of judicial pronouncement should be extended to repatriated employee also—He should be deemed to have been confirmed from the date of his juniors were confirmed.*

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The appellant working in the National Sample Survey Organisation went on deputation on 6th March, 1961 as Tabulation Officer to the Census Department where he worked upto 21st October, 1969 and was promoted as Assistant Director of Census with the concurrence of the parent department and the UPSC. During deputation, he was considered for promotion in his parent department but as there were only short term vacancies no post was offered to him nor was he asked to come back to his department. Consequently, he continued in the Census department till 31st December, 1974. During this period while his juniors were promoted on ad-hoc basis in his parent department he was not given proforma promotion. However, on his repatriation, he was appointed as Assistant Director on 11.4.1975 on ad-hoc basis. In the meantime in view of the judgment of this Court in *Narendra Chadha v. Union of India*, [1986] 1 SCR 211 the appellants' juniors who were appointed between 1969 and 1975 on ad-hoc basis were deemed to have been substantively appointed from the date of their ad-hoc appointments as a result of which they became senior to the appellant who was substantively appointed from the date of his repatriation. The appellant approached the Administrative-Tribunal claiming the

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**A** same relief which was granted to the persons similarly situated on the basis of the decision in *Narendra Chadha's* case but the same was denied. Hence this appeal.

Allowing the appeal and setting aside the Tribunal's order, this Court

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**HELD : 1.** The appellant was similarly situated along with those who were granted benefit by this Court. The benefit given in *Narendra Chadha* therefore, should be extended to him and he too should be deemed to have been working as Assistant Director on *ad-hoc* basis in the parent Department since October, 1969. He should be deemed to have been confirmed from the date his junior was confirmed. Since one of the juniors of the appellant was promoted as *ad-hoc* on 22nd May, 1986 after the decision was given by this Court calculating his seniority from 1969 and he was given promotion in 1986 as Deputy Director with effect from 17.3.1983, the appellant too shall be deemed to have been promoted as Deputy Director from 17.3.1983. As the appellant has retired he shall be entitled to all the benefits which flow from this order. [806-C-F]

*Narendra Chadha & Ors. v. Union of India & Ors.*, [1986] 1 SCR 211, relied on.

**E** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2896 of 1989.

From the Judgment and Order dated 29.1.83 of the Central Administrative Tribunal, in T.A. No. 493 of 1986.

**F** A.K. Sanghi for the Appellant.

A.N. Jay Ram, Additional Solicitor General, C.V. Subba Rao, T.C. Sharma and Ms. Sushma Suri for the Respondents.

**G** The following Order of the Court was delivered :

This appeal is directed against the order passed by the Central Administrative Tribunal rejecting the petition filed by the appellant for granting and extending to him the same benefits as were granted to the persons similarly situate in view of the decision given by this Court in

**H** *Narender Chadha & Ors. v. Union of India & Ors.*, reported in [1986] 1 SCR

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The brief facts that are necessary to be mentioned are that the appellant joined National Sample Survey Organisation as Inspector on 25th July, 1950. He was promoted as a Scrutiny Inspector on 4th November, 1954. He was further appointed as Assistant Superintendent in 1955. On 6th March, 1961, he came to be deputed to the Census Department at Nagpur and worked there from 6th March, 1961 to 21st October, 1969 as a Tabulation Officer. Then he was granted proforma promotion in his parent department. The post of Tabulator was subsequently redesignated as Superintendent. The appellant while working in the Census Department was promoted as Assistant Director of Census Department operation w.e.f. 21st October, 1969 and continued till 31st December, 1974. While he was working there a question arose about his consideration in the present department. A letter dated 21st January, 1970 which has been extracted by the Tribunal indicates that department considered that since the appellant was in the Census Department and there were short-term vacancies only, it was not necessary to offer the post to the appellants or to ask him to come back to the Department. In these circumstances, he continued in Census Department. He could not be given even proforma promotion as there was no regular vacancy. But his appointment as Assistant Director in the Census Department was with the concurrence of the Census Department, parent Department and the Union Public Service Commission. In 1975, he came back to his parent Department and was appointed as Assistant Director on 11.4.1975 on *ad-hoc* basis. While he was on deputation in the Census Department his juniors had also been promoted as *ad-hoc* in his parent Department. Some of them were appointed in 1969. On 11th February, 1986 the decision in *Narender Chadha* (supra) was rendered by this Court. It was held that all those officers who were appointed as Assistant Directors in the Organisation should be deemed to have been appointed substantively from the date of their *ad-hoc* appointment. In consequence of this decision, those juniors who had been appointed on *ad-hoc* basis in the parent Department between 1969-75 became senior to the appellant. Reason for it was that the decision has confined the applicability of benefit to only those who were working in the Department. Since the appellant was working in the Census Department and he was appointed *ad-hoc* in the parent Department from 1975, he was appointed substantively from that date only. The appellant, therefore, was left with no option except to approach the Tribunal which has recorded every

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A finding in favour of the appellant but expressed its inability to grant any relief as in view of the decision of this Court he could not be deemed to be *ad-hoc* appointee in the Department.

The facts narrated above clearly indicate that the appellant was similarly situated alongwith those who were granted benefit by this Court. B May be, he was working in the Census Department. But since the post in the Census Department and in the parent Department was *ad-hoc* post and the Department itself considered that his continuance in the Census Department did not affect him and, therefore, he was not offered the post of Assistant Director in the parent Department, he could not be C prejudiced. The benefit given in *Narender Chadha* (supra), therefore, should be extended to the appellant and he too should be deemed to have been working as Assistant Director on *ad-hoc* basis in the parent Department in Grade IV since October, 1969. He should be deemed to have been confirmed from the date his junior was confirmed.

D We further find that Sri Chaurasia, one of the juniors of the appellant was promoted as *ad-hoc* on 22nd May, 1986 after the decision was given by this Court calculating his seniority from 1969 and he was given promotion in 1986 as Deputy Director with effect from 17.3.1983. It is not disputed that the post of Deputy Director is a promotional post. It is not E a selection post. Since the appellant was senior to Shri Chaurasia who was promoted as Deputy Director from 1983, the appellant too shall be deemed to have been promoted as Deputy Director from 17.3.83.

F The appeal is accordingly allowed. The order of the Tribunal is set aside. The claim petition of the appellant succeeds in the manner indicated above.

We are informed that the appellant has retired. He shall be entitled to all the benefits which flow from this order. There shall be no order as to costs.

T.N.A.

Appeal allowed.