

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 5103 OF 2001

RAJ KUMAR MAHAJAN Appellant (s)

VERSUS

STATE OF U.P. & ORS. Respondent(s)

(With office report)

Date: 31/10/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s) Mr. Ashok Mathur,Adv.
For Respondent(s) Mr. Anil Kumar Sangal,Adv.
Mr. Nalin Sangal, Adv.
Mr. Siddhanta Sangal, Adv.
Mr. Pramod Swarup ,Adv
Mr. Chandra Prakash, Adv.
Mr. Prashant Chaudhary, Adv.

UPON hearing counsel the Court made the following
ORDER

We see no reasons to interfere with the well-merited findings recorded by the Service Tribunal and affirmed by the High Court. The appeal is, accordingly, dismissed in terms of the signed order.

(Ravi P. Verma) (Anand Singh)
Court Master Court Master

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5103 OF 2001

RAJ KUMAR MAHAJANAPPELLANT(S)

Versus

STATE OF U.P. & ORS.RESPONDENT(S)

ORDER

We have heard the appellant at length.

Challenge in this appeal is to the order of the High Court whereby and whereunder the order of the U.P. Public Service Tribunal No.5, Lucknow, recorded on 21/10/1992 came to be affirmed.

The dispute involved in this appeal is with regard to the inter-se seniority in the cadre of Stenographer. It is the case of the appellant that on 22/12/1973 he was appointed as a stenographer in Food & Civil Supplies Department. He served in the same post upto 1/4/1974. Thereafter, it is stated that the appellant served as stenographer in the department of Agricultural Production Commissioner from 2/4/1974 to 23/8/1974. It is further the case of the appellant that thereafter he was appointed on 17/8/1974 as stenographer in Rural Engineering Service on deputation and he joined the said post on 24/8/1974. It is the case of the appellant therefore that while fixing his seniority his past

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service be reckoned w.e.f. 22/12/1973, the date on which he was appointed as stenographer in the Food & Civil Supplies Department. Both the Tribunal and the High Court have held that appellant's appointment as stenographer in Rural Engineering Services by an order dated 17/8/1974 was not on deputation but it is a direct appointment and, therefore, his past service cannot be counted for the purpose of seniority. Learned counsel for the appellant drew our attention to the order dated 17/8/1974 and submitted that the appellant's appointment was on deputation, temporarily for a period of three months. He has also invited our attention that thereafter, by an office order dated 7/9/1982 his services has been declared as permanent against the sanction post of stenographer.

While it is true that the wording in the order dated 17/8/1974 appears to be appointment on deputation, temporarily. In fact, it is in substance a direct appointment as held by the Service Tribunal and affirmed by the High Court. We say so because the appointment was made on 17/8/1974 pursuant to an application dated 7/8/1974 filed by the appellant addressed to the Chief Engineer, Rural Engineering Service, U.P. Lucknow. The application dated 7/8/1974 is relevant for the purpose of disposal of this appeal and it is extracted as under:-

"A few months ago, I had appeared in a test for the post of Stenographer in your office and I had also cleared the same. Due to some reason I could not join at that time. For the present, I am serving in the Office of Commissioner, Agricultural Production as a Stenographer in the pay scale of 300-500, but the said post had become vacant due to its incumbent going on deputation. But now there is a possibility of his coming back to his parent posting. In such situation, you are requested to give me an opportunity for serving in your office at the earliest. Earlier to it I have served as Stenographer in the Office of Chief Accountant, Food and Civil Supplies Department, U.P, Lucknow in the pay scale of 250-425 from 22/10/1973 to 31/03/1974.

I shall be very grateful."

In the application itself it is noticed that he appeared in a test for the post of stenographer pursuant to which an appointment letter dated 17/8/1974 was issued to him and he joined the said post on 24/8/1974 (Annexure R-2). It is also noticed that in a letter dated 23/8/1974, the appellant is stated that he has been appointed on deputation but the same was scored out by him and the word appointment has been substituted. Therefore, in our view, the conduct of

the appellant all throughout the proceedings is not found to be clear and fair.

For the reasons afore-stated, we see no reasons to interfere with the well-merited findings recorded by the Service Tribunal and affirmed by the High Court. The appeal is, accordingly, dismissed.

.....J.
(H.K. SEMA)

New Delhi;
October 31, 2007.

.....J.
(LOKESHWAR SINGH PANTA)