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C.A.No. 5177 OF 1997

ITEM NO.101

COURT NO.4

SEC - XIIA

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 5177 OF 1997@@
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The Director of Settlement & Ors. Appellant(s)

VERSUS

D. Ram Prakash Respondent(s)

(With office report)

DATE :16-8-2001 This matter was called on for hearing today.@@
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CORAM:

HON'BLE MR. JUSTICE G.B. PATTANAİK
HON'BLE MRS. JUSTICE RUMA PAL

~For Appellant(s): Mrs. K. Amreshwari, Sr. Adv.
Mr. Guntur Praphakar, Adv.

~~For Respondent(s) Mrs. Bina Madhvan, Adv.
Mr. S. Udaya Kumar Sagar, Adv.

UPON hearing counsel the Court made the following
O R D E R

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.....L.....I.....T.....T.....T.....T.....T..J.
.SP2

The appeal is allowed in terms of the signed order
with no order as to costs.

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(R.K. Dhawan) (D.D. Jindal)
Court Master Assistant Registrar

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPEALLATE JURISDICTION

CIVIL APPEAL NO.5177 OF 1997@@
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The Director of Settlement & Ors. Appellant(s)

versus

O R D E R@@
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.....L.....I.....T.....T.....T.....T.....T.....T.....J
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This appeal is directed against the impugned order of the State Administrative Tribunal constituted under the Administrative Services Act, 1985 and the question for consideration is whether the respondent was entitled to count the period of training from 1-10-1971 till 1-2-1972 the date on which he was appointed on probation for the purposes of his seniority in the cadre of Surveyor. The service conditions of the Surveyors are governed by a set of rules framed under the proviso to Article 309 of the Constitution of India called 'Andhra Pradesh Survey and Land Records Subordinate Service Rules' issued in G.O.Ms. No.601, Revenue, dated 6-4-1964, (hereinafter referred to as the 'Special Rules'). In the State of Andhra Pradesh there exists yet another set of rules called 'Andhra Pradesh State Subordinate Service Rules,1962' (hereinafter referred to as the 'General Rules'). Rule 2 of Part II of the General Rules clearly stipulates that if any provision in the rules contained in this Part is repugnant to a

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provision in the Special Rules applicable to any particular service, then the latter shall in respect of that service prevail over the provision in the Rules in this Part. Rule 3(1) of the General Rules defines the expression 'Appointed to a service' to mean, a person is said to be appointed in service when in accordance with these rules or in accordance with the rules applicable at the time, as the case may be, he discharges for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof.

Rule 3(10) defines the expression "Member of a service" to mean, a person who has been appointed to that service and who has not retired, or resigned or who has not been removed or dismissed, or substantively transferred or reduced to another service, or who has not been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of that service.

Special Rules, Class 1, constitutes five categories of service and the Surveyor comes within Category 3. Appointment to the post of Surveyor is made by direct recruitment.

Rule 9 of the Special Rules provides that every person appointed by direct recruitment to a category

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shall, from the date on which he joins duty, be on probation for a total period of two years on duty within a continuous period of three years.

Rule 11 of the Special Rules provides for training which is required when a member appointed to a category or class in this service by transfer is required to undergo the training to the satisfaction of the appointing authority. Rule 13 of the Special Rules

provides, notwithstanding anything contained in Rule 33 of the General Rules for the State and Subordinate Services, a member of the Service shall count seniority in any of the posts specified in column (1) of Annexure II from the date of his first appointment in accordance with the rules to any of the posts specified in the corresponding entries in columns (2) to (4) thereof.

Rule 13 of the Special Rules therefore would obviously govern the question of seniority of the respondent in the cadre of Surveyor to which he was appointed by direct recruitment. The post being one in Category 3 of Class 1, therefore, necessarily, it has to be determined as to which is the date of the first appointment of the respondent in accordance with the rules to the post of Surveyor. The expression 'first appointment to the service' has not been defined in the Special Rules. Therefore, one will have to look at Rule 3(1) of the General Rules for the purpose of the

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aforesaid provision. Rule 3(1) of the General Rules unequivocally indicates the date on which the appointee discharges for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof. Therefore, necessarily, in the case of respondent, the aforesaid date would start running from 1-2-1972, the date on which the respondent was appointed on probation. The Tribunal, however, on consideration of Rule 3(1) came to the conclusion that it should start counting the period from the date on which the respondent was put on training i.e. 1-10-1971. The Tribunal obviously committed an error inasmuch as the expressions 'probation, instruction or training' used in Rule 3(1) are disjunctive. Consequently, for certain posts, where probation is provided for, the person can be said to be appointed from the date of probation; for certain posts where instruction is provided for, from the date of instruction and for certain posts where training is prescribed, it should start from the date of training. On going through the different provisions of the Rules, we have no manner of doubt that the Tribunal committed gross error in interpreting the aforesaid provision of Rule 3(1) and directing that the respondent's appointment to the service must be from the date of his training i.e. on 1-10-1971.

It would be appropriate for us at this stage to

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look at the very letter of appointment under which the respondent, including 25 others, had been appointed provisionally. The very letter itself is unequivocal and indicates that the selection is for being appointed to the posts of Surveyors. It further indicates that they will receive a stipend during the period of training for four months and it is only after completion of the aforesaid period of training of four months, that they would be required to undergo the prescribed period of probation of two years, as provided under Rule 9(1) of the Special Rules. Paragraph 8 of the aforesaid order clinches the matter by indicating that on successful completion of training, as prescribed, they would be appointed as Surveyors in this department on probation. The aforesaid letter of appointment indicates that the appointment of the respondent to the service would begin from the date on which he is appointed on probation and by no stretch of imagination the period which he has been

given training for four months from 1-10-1971 to 1-2-1972 would count for the purposes of his seniority in the cadre of Surveyor inasmuch as that period cannot be held to be a part of the service, in view of the construction that we have already put to Rule 3(1) of the General Rules.

That apart, we find sufficient force in the submission of Mrs. K. Amreshwari, learned senior counsel appearing for the appellants, that the respondent

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was appointed as a probationer way back in 1972 and his seniority in the cadre of Surveyor was determined taking his entry into the service w.e.f. 1-2-1972. On that basis already he has been promoted to two higher cadres in Category 2 and Category 1. In the year 1985, he had filed a representation claiming that the period of training from 1-10-1971 to 1-2-1972 shall be counted for the purposes of his seniority and that was rejected. Again in 1976 a fresh representation appears to have been filed for self same relief which stood rejected by Order dated October 17, 1996. Whereafter he filed the present O.A. No.6904 of 1996 before the Tribunal. The Tribunal should have rejected his claim on the ground of limitation as provided under Section 21 of the Act. We agree with this submission of the learned counsel for the appellant and hold that the Tribunal ought not to have entertained this application and should have rejected the same on the ground of limitation.

Thus, both on interpretation of the relevant rules as well as on the terms of the very letter of appointment in favour of the respondent as well as on the ground of limitation the impugned order of the Tribunal cannot be sustained. We, accordingly, set aside the

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impugned order of the Tribunal and allow this appeal. The O.A. filed by respondent stands dismissed. However, there will be no order as to costs.

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.....J.
(G.B. PATTANAİK)

.....J.
(RUMA PAL)

New Delhi,
August 16, 2001