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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.1711/2002

New Delhi, this the 14<sup>th</sup> day of November, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shri S.A. Singh, Member(A)

Shri P.S.Ochani  
S/o Shri Sachanand Ochani  
R/o 4/20A Vikram Vihar  
New Delhi-110024.

.. Applicant

(Dr.D.C.Vohra, Advocate)

versus

1. Union of India, through  
The Secretary  
Deptt.of Revenue  
Ministry of Finance  
North Block  
New Delhi.
2. Department of Personnel and Training  
Through its Secretary  
North Block  
New Delhi.


.. Respondents

(Shri V.P.Uppal, Advocate)

ORDER

Justice V.S. Aggarwal

The applicant had joined the Central Secretariat Stenographers Service (CSSS) on 1.7.1976. He was confirmed on 1.8.1980. He was placed in the seniority list of officers of Grade 'B' of the CSSS on 1.8.1982. He was promoted to Grade 'A' of the service on 1.2.1984 with effect from 30.1.1984. While working in Grade 'A', on 5.7.1984, he was placed under suspension and departmental proceedings were initiated against him. In the departmental enquiry, the report received was that the charges were not proved. The advice of the Central Vigilance Commission was taken. Thereupon the applicant was compulsorily retired from service on 13.10.1986 by



the respondents without recording reasons for disagreement with the findings of the inquiry officer.

2. The applicant had challenged the order of compulsory retirement by filing OA No.1417/1987. It was quashed by this Tribunal on 16.3.1993. An opportunity was given to the disciplinary authority to decide further course of action. The applicant was continued under suspension. On 30.9.1993, he was served with a memorandum enclosing therewith a copy of the inquiry report and the advice of the Central Vigilance Commission with a direction to file his representation, if any. The disciplinary authority on 21.1.1994 had forwarded the memorandum indicating his difference with the findings of the inquiry officer. The applicant replied.

3. The applicant superannuated on 30.9.1995, but two days before his superannuation, the proceedings against him were dropped. His order of suspension was set aside. The applicant was reinstated as Stenographer Grade 'A' in service with effect from 28.9.1995. It was directed that the entire period of suspension should be treated as period spent on duty.

4. Another order was passed on 3.11.1995. It was indicated that the period of suspension from 5.7.1984 to 15.10.1986 should be treated as period spent on duty for all purposes. According to the applicant, he became entitled to all the consequential benefits including pay

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and allowances/upgradation in the combined grades of 'A' and 'B' with effect from the date his juniors were so upgraded. However, the applicant was only granted the benefit of increments in the scale of Rs.2000-3500 and two stagnation increments in terms of the order dated 15.11.1995. He had represented that he was entitled to the scale of Rs.3000-4500 which was rejected.

5. The applicant had preferred OA No.1166/2000. This Tribunal had decided the same on 22.3.2001 and the operative part of the order passed by this Tribunal reads:-

"In the circumstances we feel that the interest of justice would be adequately met if we direct the respondents to consider placing the case of the applicant once again before the Selection Committee for proforma promotion from the date of which his juniors have been granted the benefit of promotion/upgradation, keeping in mind the fact that his entire period of suspension has been declared by the President as having been spent on duty for all purposes and our above observations, and if found fit, to grant him all consequential benefits flowing therefrom. We order accordingly. We further direct that this exercise shall be completed within four months from the date of receipt of this order."

6. In pursuance of the directions of this Tribunal, the respondents informed about the action that they had taken. The respondents stated that they had considered the claim of the applicant for promotion to the post of Principal Private Secretary for the years 1988 to 1994 but he had not been empanelled on the ground that officers with better gradings were available for promotion to the said post.

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7. As a result of it, the present application has been filed contending that the post was to be filled up by non-selection method when the applicant was due for promotion. Juniors were considered for promotion to the post of Principal Private Secretary. The post of Principal Private Secretary had been made selection post from the year 1989 while the applicant should have been considered on basis of the existing rules without following seniority cum fitness. The action of the respondents consequently is being challenged and by virtue of the present application, he seeks a direction to set aside the present order that has been passed and a direction to the the respondents to reconsider their decision whereby the benefit claimed by him had been denied.

8. The application has been contested.

9. On behalf of the respondents, it was urged that the question as to whether the claim of the applicant has to be considered as per the amended rules of 1989 or the earlier instructions has already been adjudicated and, therefore, this question cannot be permitted to be re-agitated. This Tribunal recorded:-

"8. We have carefully examined the issue on hand and perused the relevant records placed before us, including the Recruitment Rules. We observe that the post of Private Secretary in the various Ministries of the Union was created only following the Recruitment Rules, 1989 and not earlier though persons belonging to CSSS Grade 'A', were being

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loosely described as Private Secretary. This is what has happened in the case of the applicant who was also being referred to as the Private Secretary in some of the correspondence, which have been brought on record. It also emerges that along with the notification of the Recruitment Rules the two Grades of Stenographers 'A' and 'B' were combined and re-designated as Private Secretary."

10. The abovesaid findings did not decide the controversy as to whether the claim of the applicant if he fell within the zone of consideration before 1989 had to be considered as per the relevant instructions at that time or not. Certain observations had been made only about creation of the post of Private Secretary and that the CSSS Grade 'A' was loosely described as Private Secretary. That has little impact on the present controversy because as already pointed, this Tribunal had directed that if persons junior to the applicant had been promoted, his claim of the applicant had to be considered from the date his juniors were granted the benefit.

11. The learned counsel for the applicant has drawn our attention to the Office Memorandum of 7.10.1987 which reads:-

"The undersigned is directed to say that the recommendation of the Fourth Central Pay Commission that in the Central Secretariat Stenographer Service the posts of Private Secretary to the Secretaries to Government of India and equivalent officers may be upgraded and given the scale of Rs.3000-4500 was accepted by Government vide the Ministry of Finance Notification No.F15(7)/IC'86 dated 13th March, 1987. Accordingly sanction of the President is hereby conveyed to the upgradation of the existing posts of Private Secretary to Secretaries to the Government of India and equivalent officers to the scale of Rs.3000-4500 with immediate effect.

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2. The modalities of filling of these posts by selection method on a centralised basis are under consideration. As it is likely to take some time before final decisions in this regard are taken and notified after consultation with the Union Public Service Commission, it has been decided that, in the meantime, in the Central Secretariat Stenographers Service the cadre authorities in which the posts of Private Secretaries to Secretary to the Government of India or equivalent officers are located may fill up these posts by ad hoc promotion after departmental screening on the basis of seniority-cum-fitness from the erstwhile Grade and Stenographers belonging to the merged Grade A & B (combined) officers belonging to their respective cadres. The ad hoc promotions should be made for a period of three months (with effect from the date of promotion) and shall be terminated on the expiry of the aforesaid period or earlier, as soon as soon as duly empanelled Private Secretaries become available."

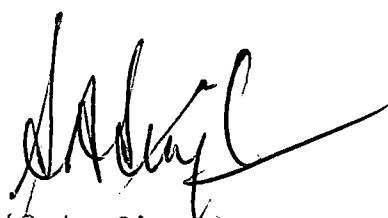
Perusal of the same clearly shows that the grade of Private Secretary to the Secretaries to the Government of India was upgraded and given the scale of Rs.3000-4500 in the CSSS. The post was to be filled up on basis of seniority-cum-fitness. Therefore, the earlier decision will not operate as res judicata. Thus before the recruitment rules of 1989 came into being on 1.3.1989, if the claim of the applicant as per his seniority had fallen due before the said period, he had to be considered for promotion even on ad hoc basis on basis of seniority-cum-fitness.

12. The respondents' learned counsel had fairly made available to us, the minutes of the review committee meeting in pursuance of the direction given by this Tribunal. Since the applicant was under suspension for a long period, he had been assessed on basis of his

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previous Confidential Reports. The committee felt that persons junior to him had better gradings. At this stage, they adopted the method of selection keeping in view the rules of 1989. However, the proceedings did not indicate if the claim of the applicant fell for consideration before 1.3.1989 or not because it makes a major difference pertaining to the method of promotion even if on ad hoc basis. If the method of selection was adopted, we find nothing illegal in same.

13. Resultantly, keeping in view these facts, we allow the present application and direct that the claim of the applicant should be considered afresh and placed before the selection committee for proforma promotion if persons junior to him had been given the scale which we have referred to above before 1.3.1989. The method of promotion shall be considered in the light of the instructions which we have reproduced above. No costs.



(S.A. Singh)  
Member (A)



(V.S. Aggarwal)  
Chairman

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