

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1351/2001

New Delhi, this the 2nd day of November, 2001

Hon'ble Shri Govindan S.Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Ms. Nirmal Kanta
D/o Budhi Prakash
R/o 90, Radhey Shyam Park
Parwana Road, Delhi - 110 051.

...Applicant

(By Advocate Mrs. Avnish Ahlawat
with Shri B.C.Pandey)

V E R S U S

UNION OF INDIA : THROUGH

1. Secretary
Dept. of Tourism
Transport Bhawan
New Delhi.
2. The Director General (Tourism)
Dept. of Tourism
Transport Bhawan
New Delhi.
3. The Regional Director (North)
Govt. of India Tourist Office
88, Janpath, New Delhi - 110 001.

...Respondents

(By Advocate Shri R.N.Singh)

O R D E R

By Shri Govindan S.Tampi,

The applicant in this OA seeks that she be declared as regular UDC w.e.f. 25-6-1996, when she was appointed as ad hoc UDC with all consequential benefits accruing therefrom. The interim relief has been granted at the admission stage against reverting her from the post which she is presently officiating in.

2. Heard Mrs. Avnish Ahlawat along with Shri B.C.Pandey, learned counsel for the applicant and Shri R.N.Singh, learned counsel for the respondents.

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3. The applicant who joined as LDC/Telephone Operator on 7-7-1987 on ad-hoc basis was regularised w.e.f. 13-6-1988. In the combined seniority list of UDCs/Junior Stenographers/FPOs and LDCs/Telephone Operators dated 13-7-1992, she was placed at S1.No.5. LDCs can be promoted either as Junior Stenographers by Departmental examination or by direct recruitment or as UDCs, which is their direct channel of the promotion. On 28-5-1996, LDCs ~~with~~ ² requisite qualifications were directed to send their options for appearing in the Departmental examination for the post of Junior Stenographer, but the applicant did not do so as she felt that being a senior she will automatically be promoted as Junior Stenographer or UDC, while another candidate Ms. M.Sitalakshmi who was the only candidate who appeared was appointed as Junior Stenographer without proper selection w.e.f. 10-9-1999. The appointment given to M.Sitalakshmi was challenged by the Association by filing OA 2269/97 which was dismissed and the said dismissal was upheld by Hon'ble High Court in CWP 2529/2000. The applicant, ^{had been} in the meanwhile, promoted as UDC on ad-hoc basis on 25-6-1996 and this was against the clear post existing at the relevant time, but her regularisation in the grade of UDC came only on 11-1-2001 ^{by} 's order dated 15-1-2001. In the meanwhile, M.Sitalakshmi who was posted as Junior Stenographer on ad-hoc basis on 10-9-1997 had moved the Tribunal and obtained an order on 15-3-2001 directing that she be regularly appointed as Junior Stenographer w.e.f. 10-9-1997. At the same time, the applicant who was originally senior to M.Sitalakshmi has been regularised only on 11-1-2001. The principle laid down by the Tribunal in the case of

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M.Sitalakshmi for regularisation from the date of her ad-hoc promotion was clearly applicable in her case as well. In the above circumstances, she had thought she would also get the same benefit and her promotion as UDC would be regularised from the date on which she was promoted on ad-hoc basis. Her representation in this regard have not met with any success. Hence this OA.

4. According to the applicant, since she was promoted from the post of LDC to the post of UDC against a clear vacancy, she should have been regularised with all consequence from the same date i.e. 25-6-1996 and not from the later date of 11-1-2001. The action of the respondents has been illegal, arbitrary, malafide and against the principles laid down by the Tribunal itself in the OA 2520/2001 filed by M.Sitalakshmi Vs. Union of India, more so as she was a SC candidate. The applicant is entitled to count the period of her officiation towards seniority and her right should not be defeated by procedural delays and inaction on the part of the respondents, for which the applicant was not at all responsible.

5. In the reply filed on behalf of the respondents, it is pointed out that the applicant - Ms. Nirmal Kanta cannot be regularised with effect from the date of her ad-hoc appointment on 25-6-1996, as she had been promoted against an ad-hoc vacancy created by the promotion of the previous occupant's ad-hoc promotion. When the said person was regularly promoted on 10-1-2001 resultant regular vacancy of UDC

arose and the applicant was so regularised. The applicant's reference to the decision of the Tribunal in OA 2520/2001 dated 15-3-2001 in the case of M.Sitalakshmi was not relevant as the latter had been appointed though originally on ad-hoc basis, but against a clear cut regular vacancy. This is the distinction between the two situations. Though the applicant had become UDC w.e.f. 25-6-1996 on ad-hoc basis, a year prior to the appointment of M.Sitalakshmi as Junior Stenographer, the applicant ~~had applied~~ for the post of Junior Stenographer as she did not know the stenography. In the absence of a regular vacancy in the grade of UDC at the time of the ad-hoc promotion of the applicant, she could not have been regularly promoted. In January and March, 2001, regular vacancies in the grade of UDCs arose following the regular promotion of three permanent UDCs i.e. Smt. Shashi Khera, Shri N.X.Baxla and Shri M.L.Wadhwa, which resulted in a regular promotion of two UDCs including the applicant. Therefore, she cannot claim any seniority or regularisation from any earlier date. The applicant's ~~request~~ ^{request} for laid down extending the principle in the case of M.Sitalakshmi, ^{to be case of} ₂ was not at all relevant as they were on different footing. It is further stated by the respondents that the applicant was holding an ad-hoc appointment as UDC in the vacancy of a senior UDC who had been promoted on ad-hoc basis to the still higher grade of Information Assistant and till such time he was regularised in the higher post, he did not release the regular vacancy in the grade of UDC. Therefore, a regular vacancy was not available to accommodate the

applicant or to regularise her. The application, therefore, has no merit and is liable to be rejected, plead the respondents.

6. In the rejoinder, it is pointed out by the applicant that the averments made by the respondents are not correct and she should be granted the benefit of seniority and regularisation as UDC from the date of her first appointment i.e. 25-6-1996, so that for the next promotion she would regain her seniority over M.Sitalakshmi, who was originally her junior as LDC/Telephone Operator. It is this right of her which has been denied by the respondents and for which she was seeking relief and in all fairness she should get it, is her plea. Smt. Avnish Ahlawat, learned counsel very forcefully argued this point on behalf of the applicant.

7. We have carefully considered the matter. It is not denied that in the original seniority list of UDCs/Junior Stenographers/FPOs and LDCs/Telephone Operators as on 1-7-1992, Smt. Nirmal Kanta - the applicant was at Sl.No.5 as against M.Sitalakshmi who was at Sl.No.10. It is also not disputed that the applicant was given an ad-hoc promotion in 1996 as UDC while M.Sitalakshmi was promoted on ad-hoc basis on the basis of a test w.e.f. 10-9-1997. But the fact, however, remains that M.Sitalakshmi's appointment has been regularised in terms of the order of the Tribunal dated 15-3-2001 passed in OA 2520/2000 by the Bench in which one of us [Govindan S.Tampi, Member (A)] was a Member holding that her promotion as Junior Stenographer was on the basis of a test against a

specific and clear cut vacancy and, therefore, she had a right to be granted regular promotion from 1997. It is also pertinent to mention that M.Sitalakshmi's promotion was challenged by the Association in OA 2269/97, which was repelled by this Tribunal and the said order of the Tribunal was upheld by the Hon'ble High Court in CWP 2529/2000 thereby setting the stamp of approval on the said appointment. On the other hand, the applicant's promotion as UDC was not against a clear cut regular vacancy, but only against an ad-hoc vacancy following the promotion of one Smt. Shashi Khera, who was given ad-hoc promotion to the higher grade of Information Assistant. Latter was regularised in the higher post only in 2001, thereby releasing the vacancy of UDC on a regular basis. The applicant could not have been promoted on a regular basis against an ad-hoc vacancy. She has no claim for such promotion and such claim cannot be entertained. The fact that M.Sitalakshmi originally was junior to the applicant before her elevation as Junior Stenographer as well as that the applicant herself became ^{Ad hoc} _{UDC} on an earlier date than M.Sitalakshmi's becoming Junior Stenographer, does not alter the situation in any manner as the latter had offered herself for being tested for the post of Junior Stenographer, which was a clear cut vacancy and which selection has been approved both by the Tribunal and the High Court. On the other hand, applicant was only promoted on ad-hoc basis against an ad-hoc vacancy in 1996. This is not a case where the respondents can be directed to consider promotion of the applicant on regular basis from an earlier date. As has been laid down by the Hon'ble Supreme Court in a number of cases

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culminating in that of Rudra Kumar Sain & ors. Vs. Union of India & Ors. (2000 SCC (L&S) 1055). The benefit of ad-hoc service would be considered for the purposes of seniority and regularisation only if such promotion was against a regular and clear cut vacancy and the promotion was in accordance with law. Vacancy of UDC, to which the applicant was promoted in 1996 was only an ad-hoc vacancy and, therefore, the applicant could not have been promoted on a regular basis to that post. The respondents have, in the circumstances, correctly acted and their action cannot be assailed in law.

8. The application, in the result, fails and is accordingly dismissed. No costs.

S.Raju
(Shanker Raju)
Member (J)

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G.S.Tampi
(Govindan S.Tampi)
Member (A)