

Central Administrative Tribunal
Principal Bench

Case No. 413/1999

New Delhi, dated this the 2nd July, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Shri Ch. Narayana Rao,
S/o late Shri Ch. Naidu Reddy,
Stenographer Grade III,
O/o Asst. Commissioner of Income Tax,
Circle-2(1), Arora Building,
Raipur, M.P.
2. Shri P.V. Srinivasa Rao,
S/o late Shri Peri Sitaramayya,
Stenographer Grade III,
O/o Dy. Commissioner of Income Tax,
Range-I, Central Revenue Building,
Civil Lines,
Raipur, M.P. Applicants

(By Advocate: Mrs. Meera Chhibber)

Versus

1. Union of India through
the Secretary,
Central Board of Direct Taxes,
North Block, New Delhi.
2. Chief Commissioner of Income Tax,
Aayakar Bhawan,
Hoshangabad Road,
Bhopal, M.P.
3. Commissioner of Income Tax,
Central Revenue Building,
Napier Town,
Jabalpur, M.P. Respondents

(By Advocate: Shri V.P. Uppal)

ORDER

S.R. ADIGE, VC (A)

Applicants seek a direction to treat them as regularly appointed w.e.f. from the date of their initial appointment and to count the period of ad hoc service rendered by them for the purpose of seniority and other service benefits.

2. After completion of pleadings including filing of reply and rejoinder, this OA came up for hearing on 5.10.99. On that date Mrs. Chhibber appeared for applicants. None appeared for respondents. After hearing Mrs. Chhibber going through the materials on record including respondents' reply and applicants' rejoinder the Tribunal by its ex parte order dated 13.10.99 allowed the OA and directed respondents to treat applicants as regularly appointed with effect from the date of their initial adhoc appointment and to count the period of adhoc service rendered by them as regular service for purposes of seniority and other service matters.

3. Thereupon respondents filed MA No. 593/2000 seeking recall of the aforesaid order dated 13.10.99 and praying that the OA be restored to its original position and heard on merits. Notice was issued on the MA to applicants and after they filed their reply, the MA was heard in the presence of both parties and by detailed order dated 4.1.2001 the MA was allowed. The Tribunal's order dated 13.10.99 was recalled, and the OA was ordered to be listed in the presence of both parties.

4. We have heard Mrs. Chhibber for applicants and Shri Uppal for respondents. We have perused the materials on record and considered the matter carefully.

5. Admittedly applicant No.1 was appointed as Steno (OG) on purely temporary and adhoc basis vide order dated 26.11.81 (Annexure-A1) and applicant No.2 was similarly appointed as Steno (OG) on purely temporary and adhoc basis vide order dated 13.2.81 (Annexure-A2). In the case of applicant No.2 the order

dated 13.2.81 clearly stated that the appointment would be terminated as and when candidates were sponsored by Staff Selection Commission.

6. It is therefore clear that as per rules, appointment of Stenos (OG) in respondent Organisation was to be made through SSC.

7. Applicant No.1 filed OA No.248/87 seeking regularisation in service and restraining respondents from terminating his service. That OA along with other OAs filed by similarly placed adhoc stenos seeking the aforesaid relief was disposed of by CAT Jabalpur Bench by common order dated 23.10.89. Similarly Applicant No.2 along with similarly placed adhoc Stenos filed TA No.362/86. That TA was also disposed of by CAT Jabalpur Bench by its order dated 19.12.90.

8. In both orders responders were directed to examine and review as to whether it was possible to regularise applicants' services by relaxing the rules requiring their recruitment through SSC. If that was not considered feasible, respondents were directed to continue applicants in service and respondents were restrained from terminating their services till 2 opportunities were given to them to attain proficiency in stenography and clear the test with requisite standard of speed in shorthand etc. in consultation with SSC. If applicants were unable to clear the prescribed test, they were to be reverted back as LDC, and if they had not even been approved for the post of LDC their services were liable to be terminated. These directions were to be implemented within 4 months from the date of communication of the orders.

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9. As per aforesaid order, applicants themselves state in para 4.2 of the OA that both of them were put to test by SSC and upon qualifying in the very first attempt applicant No.1 was regularised as Steno (OG) vide order dated 21.6.93 (Annexure-A5) and similarly Applicant No.2 was regularised as Steno (OG) vide order dated 7.6.93(Annexure-A6).

10. The question for adjudication is whether applicants are entitled to count their adhoc service from 1981 till their regularisation in 1993 towards seniority and whether they are entitled to be treated as regular Stenos (OG) from 1981 itself.

11. It is clear that if CAT Jabalpur Bench was of the view that applicants were entitled to regularisation as Stenos(OG) from 1981 itself it would have stated so explicitly. This was a matter directly in issue between applicants and respondents in the two OAs, and the claim not having been granted them, applicants' attempt to agitate these claims in the present OA is squarely barred by resjudicata, because nothing has been shown to us to establish that the aforesaid two orders of CAT Jabalpur Bench have not become final and/or applicants were given leave to agitate these claims through this OA.

12. That apart applicants' claims are severely hit by several Hon'ble Supreme Court's rulings.

13. In State of West Bengal & Ors. Vs. Aghore Nath Dey & Ors. and connected cases (1993) 24 ATC 932, a 3 Member Bench of the Hon'ble Supreme Court had occasion to rule as to the circumstance in which the benefits of adhoc service were admissible when it was followed by regular service. Their Lordships while explaining the scope of applicability of the corollary to Conclusion(A) and Conclusion(B) in the Direct Recruit Class II Engineering

Association case (1990) 13 ATC 348 held that the corollary disallowed the benefit of adhoc service made as a stop gap arrangement, whereas Conclusion (B) allowed the benefit of service in cases where there was procedural irregularity in making appointment according to rules and this irregularity was subsequently rectified.

14. During hearing Mrs. Chhibber sought support from Conclusion (B) on the Direct Recruits' case (supra), but it is clear that applicants' initial adhoc appointment in 1981 was not on account of any procedural irregularity. Indeed in para 25 of the judgment in Aghore Nath Dey's case (supra) it has been clearly stated that Conclusion (B) would cover cases where the initial appointment was made against an existing vacancy not limited to a fixed time or purpose by the appointment order itself (emphasis supplied)

15. In the case of Applicant No.2, the appointment order dated 13.2.81 made it clear that his adhoc appointment would be terminated as soon as candidates were sponsored by SSC. Thus notwithstanding the fact that he was allowed to continue uninterruptedly adhoc Steno (OG) till he was eventually regularised on 1993, it is evident that the adhoc appointment of applicant No.1 was limited to the fixed time till candidates were sponsored by SSC. It is true that in the case of Applicant No.1, such a specific time period was not fixed, but in his case also it is not any procedural irregularity which led to his appointment as Steno (OG) on adhoc basis in 1981. The rules required applicants to come through the SSC, but applicants' adhoc appointment in 1981 was not made through SSC. Hence neither Conclusion (A) nor Conclusion (B) covers their cases, and they are therefore hit by the corollary to Conclusion (A).

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16. Mrs. Chhibber relied upon the Hon'ble Supreme Court's ruling in Rudra Kumar Sain Vs. UOI & Ors. 2000 (6)SCALE 54 in support of applicants' claim, but that case involved the question of interse seniority between direct recruits and promoters and is therefore distinguishable on facts. In that case the Hon'ble Supreme Court held that a person who possessed the requisite qualification for being appointed to a particular post and then was appointed with the approval and consultation of the appropriate authority (emphasis supplied) and continued as such for a fairly long period could not be said to hold the post on stop gap or fortuitous or purely adhoc basis. In that case the appropriate authority was the High Court and the appointment had been made in consultation with the High Court. In the case before us, for applicants to be covered by the ruling in Rudra Kumar Sain's case (supra) their adhoc appointments in 1981 should have been made with the approval and consultation of the Staff Selection Commission but that clearly was not done, requiring them to appear before the SSC in 1993. In the light of the above, the ruling in Rudra Kumar Sain's case (supra) does not help the applicants.

17. Before we conclude, we may observe that applicants' claims are ^{also} squarely hit by the Hon'ble Supreme Court's ruling in Dr. A. Bodu & Ors. Vs. MCD & Ors. 1999(1) SLJ 13

18. The OA is therefore dismissed. No costs.

A. Venkatesh
(DR. ANUVEDAVALLI)
MEMBER (J)

Amjad Ali
(S. R. ADIGE)
VICE CHAIRMAN (A)