

12

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1110/1998

New Delhi this the 22nd day of February, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMN)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Shri Gurcharan Singh Jassel
Son of Shri Dalip Singh Personal Assistant
Adjutant General Branch/
Directorate of Organisation
Army Headquarters, Sena Bhawan,
DHQ PO, New Delhi - 110011.
2. Shri Amar Nath Batra
Son of Shri Shobha Ram Batra
Personal Assistant
Directorate of Submarine Acquisition
Naval Headquarters, Sena Bhawan,
DHQ PO, New Delhi - 110011.
3. Shri Vinay Kumar Khullar
Son of Shri V.P. Khullar
Personal Assistant
General Staff Branch/Financial Planning Dte
Army Headquarters, South Block,
DHQ PO, New Delhi - 110011.
4. Shri Sita Ram Juneja
Son of Late Shri Ganga Ram
Personal Assistant
MGO Branch/OS Dts
Army Headquarters, B Block,
DHQ PO, New Delhi - 110011.
5. Shri Shyam Sunder Bajaj
Son of Shri Madan Lal
Personal Assistant
General Staff Branch/Financial Planning Dte
Army Headquarters, South Block,
DHQ PO, New Delhi - 110011.

...Applicant

(By Advocate: Shri S.P. Mehta)

-Versus-

Union of India & Others

1. through the Secretary to the Government of India,
Ministry of Defence,
New Delhi.
2. The Joint Secretary (Training) and Chief
Administrative Officer
Ministry of Defence,
New Delhi.
3. Kum Uma Arora >
Private Secretary >
>
4. Shri C. Shaji > Service through
Private Secretary > Respondent No.2
>
5. Shri Arun Kumar >
Personal Assistant >

Respondents

(By Advocate : Sh.K.C.D. Gangwani)

13

(E)

Respon

O R D E RBy Mr. Shanker Raju, Member (J):

MA-1133/98 for joining together in one application is allowed. The applicants, five in number, who have been working as Stenographer Grade 'C' with the respondents have sought a relief for amending their seniority position, taking into reckoning the total length of service, including temporary service rendered by them as Stenographers Grade 'C' with consequential benefits. The applicants who had been appointed as Grade 'D' Stenographers and thereafter have been initially promoted to the posts of Stenographer Grade 'C' on ad hoc basis w.e.f. 1993, 1994, 1993, 1982 and 1985 respectively and are seeking inclusion of their temporary officiation towards the seniority in regular grade 'C' in the posts of Stenographers Grade 'C'. The applicants have also filed MA-434/98 for condonation of delay in filing the present application. The respondents in their reply took an objection contending that the OA is barred by limitation as the applicants are challenging a cause of action which had arisen between the applicant 1982-1994. It is contended by the respondents that no reasonable explanation of delay has been assigned by the applicants to justify the delay. It is further contended that the seniority once settled cannot be unsettled subsequently to the detriment of others.

2. We have perused the reasons assigned by the applicants in their application whereby it is contention that as the seniority list is issued only on 7.4.97 and against which they preferred their representation, there is

a delay of above 1-1/2 months on account of pre-occupation and pressure of work on the applicants. It is further contended that the delay is neither intentional nor below the control of the applicants.

3. We have given careful thought to the condonation of the applicants regarding contention of delay. It is admitted that the Armed Forces Headquarter Stenographers Rules, 1970 (hereinafter called the Rules) have been framed in the year 1970. The applicants have been regularised in the posts of Stenographers Grade 'C' w.e.f. 4.10.95. As such the cause of action had arisen to them on 4.10.95 to raise their grievance regarding counting of their temporary service. The subsequent seniority list issued by the respondents on 27.3.97 would not extend the period of limitation of the applicants as the applicants have prayed for counting of their temporary service in the posts of Stenographer Grade 'C' and subsequently their claim of granting them their due seniority is a relief which has been consequential to the relief of counting of length of service. The applicants were very much aware about the date of their regular promotion and the seniority list issued later on could not have extended the period of limitation, as unless the length of service is counted towards the seniority the applicants would not be eligible for grant of due place in the seniority. The reasons assigned by them in their application for condonation of delay are not at all justifiable, as such this OA is barred by limitation.

14

4. Apart from the preliminary objection of limitation another objection has been taken by the respondents relating to res-judicata. It is contended by the respondents that in OA-349/89, Shri Shrawan Kumar & Others v. Union of India & Others, decided on 21.12.94 the provisions of Rule 13 of AFHQ Rules and the 9th Schedule have already stood judicial scrutiny and is found to be intra vires. In this conspectus, it is stated that the applicants have not raised any new point in this OA as such the order of the Tribunal in OA-349/89 (supra) would stop the applicants from challenging the issue of seniority, as the issue had already settled.

5. We have gone through the orders of this Tribunal in OA-349/89 ((supra) and find that the applicants therein have also raised a similar grievance of counting their temporary service in Grade 'C' Stenographers for the purpose of reckoning seniority in that post. The Tribunal, after considering all the aspects, including the legality of the rules held the action of the respondents as justified and observed that the seniority has been rightly fixed as the seniority has to be computed from the date the incumbent is admitted to the select list on regular basis and not from the date of temporary appointment. We also find that the validity of Rule 13 of AFHQ Rules ibid has not been questioned in that OA. In the present case although the applicants have challenged Rule 13 of the rules ibid, yet in their relief clause they have not prayed for declaring the same as ultra vires. In the absence of any specific prayer in this regard the Tribunal would not suo moto set aside the rule 13 ibid. We are of the firmed view that in the absence of corresponding prayer to declare

rule 13 ibid as ultra vires the Tribunal is bound by the decision of the coordinate Bench in OA-349/89 and hold that as there is no prayer of the applicants in this OA to set aside the rules, although the OA would not be barred by the vice of res judicata but the matter was not conclusively decided between the same parties in OA-349/89, the same would not be applicable as res judicata in this OA. Nevertheless, in absence of any valid challenge to the rules the ratio laid down by the Tribunal in OA-349/89 would also be applicable to the case of the applicants in the present case.

6. The applicants contended that they are being promoted to the posts of Grade 'C' Stenographers on temporary basis and against the vacancies of direct recruitment/Limited Departmental Competitive Examination (LDCE) because of non-availability of candidates. According to them the Stenographers Grade 'C' are appointed from three sources viz. 50% by direct recruitment selected by the UPSC/SSC on the basis of the Stenographers Examination, 25% through LDCE and remaining 25% on seniority-cum-fitness basis. If the candidates are not available in the departmental promotion or LDCE to fill up their vacancies in the respective quotas, the deficiency can be made good by inter-converting the vacancies in these quota and in the event no candidates are available in both these categories the resort to direct recruitment is made. It is the grievance of the applicants that they have been assigned seniority and despite their representations nothing fruitful had come out. The objections raised by them have not at all been considered by the respondents. It is the grievance of the applicants that benefit of past

service rendered on temporary basis in Grade 'C' Stenographers has not been given to the applicants. It is further contended that there has been a complete break down of quota rota system as such the seniority is to be reckoned from the date of continuous officiation in the grade. The applicants further places reliance on DOPT OM dated 7.2.96 and 3.6.96 as a result the direct recruits who joined later than the applicants have been assigned seniority over the applicants, who had been holding the post for a long time. It is further contended that though initially the word 'temporary' was used but all the implications were for regular promotion. The applicants further contend that while promoting them temporarily the seniority-cum-fitness basis was followed as their seniors like P.S. Sodhi and Harvinder Singh had been excluded as their performance was not upto the mark. It is further contended that the respondents have not followed the requisite respective quotas by filling up the posts of Stenographers Grade 'C' resulting in prejudice to the applicants. The applicants further placed reliance on OM dated 7.2.86 ibid where rotation of quota for the purpose of determining seniority is limited to the extent of available direct recruits and promotees and according to the applicants the OM provides carryforward of the vacancies of additional direct recruits and placing them enbloc below the last promotees in the seniority list based on the vacancies of that year. It has been further contended that the rules are to be reviewed every five years, incorporating the changes with a view to bring them in conformity with the changed position, which has not been done in the present case. The applicants placed reliance on the ratio of S.B. Patwardhan v. Union of India, AIR

1977 SC 2051, Baleshwar Dass v. Union of India, AIR 1981 SC 41 to contend that even the officiating service has relevance to the seniority. The applicants further placed reliance to substantiate their claim on Narender Chadha v. Union of India, AIR 1986 SC 49 and M.S. Chauhan v. U.O.I., AIR 1977 SC 251 to contend that periodisation is needed to settle the promotee or direct recruitee and all deviation from year to year the rotational rule of seniority would not apply and in this conspectus it is further contended that as per the Constitution Bench Judgement in the case of The Direct Recruit Class II Engineering Officers Association v. State of Maharashtra, JT 1990 (2) SC 264 in the event of break in the quota rule the seniority is to be computed on the basis of continuous range of service.

7. The respondents in their reply apart from taking preliminary objections contended that the applicants have been appointed on temporary basis in the posts of Grade 'C' Stenographers due to delay in completion of pre-requisite formalities in the quota of LDCE and direct recruitment and this has been done to man the posts during the intervening period by appointing grade 'D' Stenographers to Grade 'C' temporarily. According to the respondents based on their seniority in the Grade 'D' Stenographers the applicants have been considered for promotion to the grade of Stenographers 'C' in their turn according to the 25% LDCE quota and accordingly they have been included in the panel for respective years and their seniority is rightly regulated under Rule 18 (5) of the Rules *ibid* with reference to the date of their promotion to Grade 'C' Stenographers and accordingly the seniority list

has been issued correctly figuring the names of the applicants at appropriate places. The respondents justified their claim in view of Rule 13 and 18 (5) read with 7th Schedule of the rules *ibid*. The appointment orders of the applicants had clearly mentioned that the appointment is purely temporary and would not confer any right to count this period for seniority in the higher grade. As already held by the Tribunal in OA-349/89 (*supra*) that the temporary service would not count towards seniority and the ratio of Maharashtra Engineerings' case (*supra*) would not apply till it is established that the quota rule is broken. According to the respondents the quota rule has not been broken as pleaded by the respondents. As regards the DOPT OM referred to by the applicants it is contended that the same is not mandatory and will not override the AFHQ Rules which are framed under Article 309 of the Constitution.

8. In the rejoinder the applicants mostly reiterated their claims made in the OA and contended that about 315 appointments have been made which indicate breaking of quota rule. According to them the quota rule has been broken 23 times and there has to be a deemed relaxation that the quota rule is deviated.

9. We have carefully considered the rival contentions of the parties and perused the material on record. The applicants have failed to establish that the quota rule had been broken down and also failed to show that their promotions were in fact named temporary but were actually regular promotion after following all the requisite criteria and were in accordance with the rules.

Rule 13 (3) of the rules lays down the ratio for promotion to Grade 'C' Stenographers Service and the applicants are falling under the promotional quota thereunder to the extent of 25%. The inter-se-seniority of Grade 'C' Stenographer is to be reckoned from the date they have been included in the select list. The respondents in their seniority list rightly accorded seniority to the applicants from the date of their being brought in the panel of select list for the purpose of promotion to the posts of Grade 'C' Stenographer. The applicants 1-3 were included in the panel for the year 1995 and applicant NO.4 for the year 1984-85 and applicant No.5 for the year 1989-90. Temporary service rendered by them in Grade 'C' Stenographers cannot be allowed to be included and this issue has already been exclusively dealt with by the Tribunal in OA-349/89 and we are in respectful agreement with the ratio laid down therein and hold that the respondents have correctly assigned seniority to the applicants in accordance with the rules.

10. As regards the challenge to the rules is concerned, we find that no prayer has been made by the applicants to set aside Rule 13 (2) ibid alongwith 7th Schedule declared as ultra vires and in the absence of any such prayer the challenge to this rule is not legal and the vires of this rule cannot be gone into by this Tribunal.

11. Having regard to the discussion made above, we are of the considered view that the applicants have been assigned seniority in accordance with the rules. The OA is bereft of merit and the same is dismissed, without any order as to costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)