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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 1941/1998

New Delhi, this 22nd day of May 2001.

Hon'ble Smt. Lakshmi Swaminathan, VC (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri Harish Chander,
S/o Late Shri Ram Rattan Bakshi,
House No. BE-26, Hari Nagar
(Clock Tower) New Delhi

.....applicant

(By Shri D.R. Gupta, Advocate)

Versus

1. The Union of India through Secretary, Ministry of Personnel, PG & Pensions (Dept. of Personnel & Training) North Block, New Delhi.
2. The Additional Secretary, Deptt. of Admin. Reforms & Public Grievances, Sardar Patel Bhavan, Parliament Street, New Delhi.

.....Respondents.

(By Shri P.H. Ramchandani, Advocate)

O R D E R

By Shri Govindan S. Tampi, Member (A)

Shri Harish Chander, the applicant has impugned O.M. No. A-26020/3/97-AR (A) dated 11.9.98 rejecting his request for inclusion of his post in the CSCS cadre on the ground that there was no provision for such encadrement in the CSCS Rules.

2. Heard learned counsel for the applicant and the respondents and perused the relevant papers.

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3. The facts as brought in the application and urged during the hearing by Sh. D.R. Gupta, learned counsel for the applicant, are that the applicant joined the Deptt. of Administrative Reforms and Public Grievances in 1970 through Employment Exchange as Hindi Typist and has since been confirmed as a Hindi Typist. His services had been utilised in between both as Hindi Stenographer and Jr. Hindi Translator for nearly 15 years. He has had over 28 years of satisfactory service at the time of filing this O.A. The post of Hindi Typist is an isolated one and not encadred in CSCS with the result, even after rendering 28 years of service he had not been given even a single promotion except for upgradation of post of Hindi Typist to UDC level following the orders of Tribunal dated 7.12.1995 in O.A. 644/91 but without any change in the nature of his duties and responsibilities. Shri Gupta, learned counsel points out that earlier, the ad hoc LDCs in the office of Registrar of Newspapers under the Ministry of Information & Broadcasting who did not have adequate promotional avenues represented for their encadrement in the CSCS and same was agreed to. Similar relief was not granted to him inspite of his being also similar, though he had specifically requested for the same. Though the applicant had worked for some time as Jr. Hindi Translator, he was not regularised in that cadre. On the applicant's approaching the Tribunal in OA 644/1991, the Tribunal had directed the respondents to consider his case with a view to opening suitable promotional opportunities for him in the interest of morale, motivation and performance level, but nothing has happened. Instead, he was reverted as Hindi Typist ⁱⁿ UDC

level where he continues. Issue relating to this post being referred to them, Fifth Central Pay Commission (FCPC) in para 79:46 of their report recommended that the post of Hindi Typist be included in the cadre of CSCS.

4. Department of Admin. Reforms & Public Grievance, and Home Ministry were in favour of the above, but deferred the same in view of the pendency of OA 1254/96 filed by the applicant. The O.A. was disposed of with the direction to consider the claim of the applicant for encadrement of the post of Hindi Typist in CSCS but Department of Personnel & Training declined to do the needful. Thus in spite of the specific recommendation of the FCPC and the direction of the Tribunal nothing has been done and his request has been unjustly rejected by the respondents by the impugned order dated 11.9.98, stating that no provision existed for such an inclusion in CSCS Rules. This was unjust, as his case for encadrement was genuine and power of relaxation to facilitate the above was contained in Rule 24A of CSCS Rules. Keeping in view the above, the applicant's post would have either to be included in CSCS cadre or he should be given benefit of ACP Scheme, with appropriate rise in pay, *in view of his long service*, pleads Sh. Gupta, learned counsel.

5. In the reply filed by the respondents, and reiterated by Shri P.H. Ramchandani, learned Senior counsel, during the hearing, it is averred that the applicant had been advised more than once to take the Clerks Grade Examination of Staff Selection with age relaxation upto 35 years to come to the mainstream of the CSCS but he had chosen not to do so. He also could not be

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selected for the post of Junior Hindi Translator as there were others, senior to him. According to the respondents, the Tribunal had not, while disposing of the OA No. 644/91 directed the encadrement of the post in CSCS but had only directed the respondents to examine the case of the applicant, and to decide the issue, which they had done, but could only arrive at the decision communicated by the impugned order. Applicant was trying to re-agitate a matter which was settled long ago. Respondents, however state that they would have no objection to include the vacant post of Hindi Typist in CSCS, but without the incumbent. Respondents fairly concede that FCPC has recommended the inclusion of the post in CSCS, but the same related only to the post and not to the incumbent. The respondents also defended the action taken by the Govt. to encadre the ad hoc appointees of the Office of the Registrar of Newspapers, in CSCS, as according to them the posts were similar to those in CSCS with regard to qualification and duties, they did not have other avenues of promotion, they had long and unblemished service and Rule 24 A of CSCS permitted relaxation in the case of a class of employees if so warranted. Applicant was not similarly placed and his case could not, therefore, be similarly considered. The applicant had no case at all and the application deserved to be rejected pleads Sh. Ramchandani.

6. We have carefully considered the matter. The applicant has been functioning as a Hindi Typist for the last 28 years without any promotion. Inspite of working as Hindi Stenographer and Jr. Hindi Translator for some time he has been revereted to his substantive post as Hindi Typist. Hence his request for better treatment by

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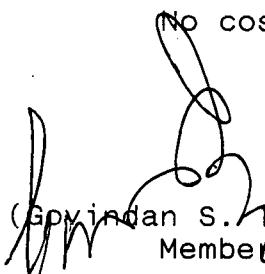
the Govt. by way of / to promotional avenues. FCPC who have examined his case had recommended the encadrement of his post in CSCS, so as to alleviate his difficulties but the same has been negatived by the respondents on the specious argument that CSCS Rules do not provide for it, while Rule 24A, permitting relaxation could very well have been utilised for the above. It cannot be the intention of the Govt. that a person who joins service should not get any promotion at all in his entire career and should retire from the very post in which he joined the service. Still, to improve the situation. Their reluctance is all the more clear when it is found that they have expressed their willingness to encadre the post but without the incumbent. This cannot be permitted. It is also interesting to note that the respondents who totally defend and justify the encadrement in CSCS, of the ad hoc LDCs/UDCs in the Office of the Registrar of Newspaper, are against the adoption of the same measure in the case of the applicant though he is also similarly circumstanced, more so when the encadrement of just one post with the incumbent would not prejudice anybody's interest. Respondents have not taken any concrete step to give effect to the Tribunal's order except to state that on consideration of the issue they are not able to do anything. This is a case where the Tribunal has to enter and do justice to the applicant. And we proceed to do so.

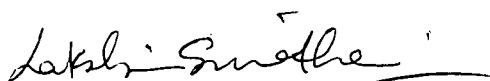
7. In view of the above the application succeeds and is accordingly allowed. The impugned order dated 11.9.98 is quashed and set aside and the respondents are directed to take action at the earliest, and in any event

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within two months from the date of receipt of this order to encadre the post of Hindi Typist in CSCS, taking recourse to Rule 24A of CSCS Rules, providing for relaxation. The applicant will have to be absorbed as UDC in the cadre but he will be permitted to reckon his seniority only from the date of final absorption. He would also be entitled for protection of pay and allowances, being drawn by him.

No costs.


(Govindan S. Nampi)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

Patwai/