

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1500 of 1995

New Delhi, this the 15th day of November, 1999

(12)

HON'BLE MR.R.K.AHOOJA, MEMBER(ADMNV)
HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Shri M.M.Khanna S/o late Shri
Ram Murti Khanna,
Stenographer Grade II of HQ DG BSF, New Delhi
presently on deputation with
National Security Guard,
B-Block, CGO Complex, Lodi Road,
New Delhi-110003

....Applicant

(By Advocate: Shri S.C.Luthra)

Versus

1.Union of India,through
The Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001

2.The Director General~
Border Security Force
Block-10,CGO Complex,
Lodi Road, New Delhi-110003

3.Shri M.C.Pant,
Steno Gde-II,
Pay & Accounts Division, Pushp Bhawan,
Madangir, New Delhi

4.Shri S.K.Choudhary
Steno Gde-II
C/o Financial Adviser, HQ DG BSF
Block-10,CGO Complex, Lodi Road
New Delhi-110003

....Respondents

(By Advocate: Shri K.R.Sachdeva)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

By this OA, the applicant has challenged two letters issued by the respondents vide Annexures A-1 and A-2. By Annexure A-1, the respondents 3&4 had been placed senior to the applicant despite the fact that since 1980, the applicant had been shown senior to both these respondents. After Annexure A-1 was issued, the applicant appears to have made a representation and by Annexure A-2, his representation had been rejected. So

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the applicant has challenged both the annexures A-1 and A-2.

2. Brief facts as alleged, are that the applicant was working with respondents 1&2 as Stenographer Grade-III. There were certain vacancies available for Stenographers Grade-II, so a Limited Departmental Examination was held to fill up those vacancies. A circular vide Annexure A-3 was issued for conducting the Limited Departmental Examination. It is also pleaded by the applicant that there were no recruitment rules regarding promotion for Stenographers Gr.III to the posts of Stenographer Gr.II. In pursuance of the said circular, a limited departmental examination was conducted and the persons who qualified the examination, were promoted as Stenographer Grd.II. The whole controversy has arisen because of the circular (Annexure A-3) which is reproduced as under:-

"C I R C U L A R

In continuation of this FHQ Circulars of even number dated the 2nd April 1980 and 24th June 1980, it is hereby notified that an examination for appointment as Steno Grade II will be held at 10 A.M. on Sunday the 21st September, 1980 in Nirvachan Sadan. As stated earlier, the Test will be constituted of the following:-

i) Paper in General English and General Knowledge of one hour's duration each.

ii) Stenography at a speed of 120 w.p.m. for 7 minutes.

iii) Stenography at a speed of 100 w.p.m. for 10 minutes.

While the Test in General English and General Knowledge is only qualifying, the Speed Test in Shorthand is competitive;

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and candidates qualifying at the speed of 120 w.p.m. will be placed enbloc higher to those qualifying at 100 w.p.m. "

3. The case of the applicant is that as per the circular, this limited departmental examination was a competitive examination and any candidate who qualified at the speed of 120 w.p.m. was to be placed enbloc senior to those candidates who qualified at the speed of 100 w.p.m. Out of six candidates who appeared in the examination, Shri P.K.G.Nair was the only candidate who could qualify at the speed of 120 w.p.m. and therefore, he was placed senior to all other candidates. For the remaining candidates, the case of the applicant is that since it was a competitive examination and the applicant had qualified the test of Stenography at the speed of 100 w.p.m. with lesser mistakes, he was kept at serial number 6 and the others who qualified with more mistakes, were kept at serials below the applicant as per the number of mistakes committed by them in the test.

4. At this stage, it would be pertinent to mention that in pursuance of the circular, the test was held at the speed of 120 w.p.m. on 21.9.80. The test at the speed of 100 w.p.m. was held on 31.10.80, in which Shri S.K.Chaudhary, who is respondent no.4 here, could not appear. He was given another chance and for that, test was conducted on 31.1.81. Thereafter on 22.5.82, a seniority list was issued vide Annexure A-6 in which the applicant was shown junior to respondents 3&4. The applicant then made a representation by Annexure A-7. Though no reply was given but it appears that the mistake had been rectified as per the seniority list issued in

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1985. Thereafter another seniority list was issued on 11.10.90 which is Annexure A-8, in which again the applicant has been shown senior to respondents 3&4.

5. It appears that thereafter one post of Senior Personal Assistant fell vacant and respondent no.4 made a representation on the basis of which, respondent no.2 had unsettled the settled position since 1985, in contravention of all rules and the applicant had been brought below respondents 3&4. It is stated that the respondents could not unsettle the position which was existing since 1985. A representation was also made by the applicant which was rejected by Annexure A-2.

6. In the grounds to challenge the impugned orders Annexure A-1 and Annexure A-2, the applicant alleged that as per the circular, the previous inter-se seniority was not to be maintained and the seniority in the Grade II was to be again fixed as per the performance of the candidates in the Stenography test at the speed of 100 w.p.m. and the candidates with lesser mistakes were to rank at the top and so on. So it is prayed that the impugned orders Annexure A-1 and Annexure A-2 be quashed and set aside and the seniority of the applicant be restored.

7. Official respondents have filed their counter affidavit. Other respondents did not come forward to contest the OA. The main plea of the respondents is that as per the circular in question, the competition was only upto the stage that candidates who will qualify the Stenography test at the speed of 120 w.p.m., will be

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✓ placed enbloc senior to all other candidates who will qualify at the speed of 100 w.p.m. and those who will qualify the test at the speed of 100 w.p.m., will be promoted as Stenographers Grade II but their inter-se-seniority was to be maintained as per their position as they were Stenographer Grade III. Learned counsel for the respondents also stated that there is no estoppel etc. because the mistake which has been detected has now been rectified and the said mistake could not be perpetuated after it had been detected.

8. We have heard the learned counsel for the parties and gone through the records.

9. The main controversy which has arisen about the assigning of seniority is because of the circular which has been reproduced above and has been annexed as Annexure A-3. It appears that while assigning the seniority to the applicant earlier, the department had assigned seniority to him on the basis of mistakes committed by the candidates in their shorthand test. The applicant's counsel submitted that the seniority assigned earlier was justified since the circular clearly stated that the shorthand test was a competitive one. Learned counsel for the applicant also relied upon a judgement reported in A.T.R. 1989(1) C.A.T. 397, Smt. Pushpa Bhide vs UOI and others, wherein the Jabalpur Bench of the C.A.T. observed as under:-

"(W)e hold that the respondents are estopped after several years from correcting what they claim to be mistake committed by the respondents themselves and withdrawing the benefits given in the past to the applicant retrospectively at the expense of the applicant. We have

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also taken a similar view in the case of Y.K.Verma vs. Union of India and others (T.A. 318 of 1986 decided on 20.1.87, reported in (1987) 4 A.T.C. 157)."

10. In reply to this, learned counsel for the respondents relied upon a judgement reported in ATR 1990 (2) C.A.T. 403, D.Satyaprakash & ors. vs. Union of India & ors. wherein it has been held that "the plea of promissory estoppel would not arise where an error committed is sought to be rectified."

11. The position as admitted by the respondents clearly show that they had earlier fixed the seniority of the applicant by applying the principle of qualifying the stenography test with lesser mistakes and the persons who qualified the test with more mistakes were placed junior to him. Admittedly, there are no rules with regard to fixation of seniority in this department. The respondents now want to divide the candidates into two groups i.e. those who qualified the test at the speed of 120 w.p.m. and those who qualified at the speed of 100 w.p.m. The respondents now want to maintain the inter-se-seniority of the candidates in these groups. The circular in pursuance of which this examination was held, did not clearly show as to how the seniority was to be maintained amongst the candidates who qualified the test. However, it is certain that the respondents had issued three seniority lists earlier, one in the year 1982 in which the applicant was shown junior to respondents 3&4 but on his representation, though no order was passed but the position was rectified. Another seniority list was issued in the year 1985 and on the

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basis of the same, the third seniority list was issued on 11.10.90 (Annexure A-8) wherein the applicant was shown senior to respondents 3&4.

12. So we hold that the respondents are now estopped after several years from correcting what they claim to be a mistake made by themselves in fixing the seniority of the candidates who qualified the stenography test and the case is fully covered by the judgement of the Jabalpur Bench of C.A.T. in the case of Pushpa Bhide, referred to above. As far as the case relied upon by the respondents is concerned, that was a case regarding fixation of seniority between direct recruits and in that service there was a quota reserved for graduate clerks and when the seniority was not assigned properly, then on representation of some of the dissatisfied employees, the seniority list was corrected. But here in this case, seniority list had been issued thrice. So now after about 10 years, we find that the respondents are estopped to change the seniority list.

13. In view of the above opinion, we allow this OA and quash Annexures A-1 and A-2 and restore the previous seniority lists issued in 1985 and 1990. No order as to costs.

Kuldeep
(KULDIP SINGH)
MEMBER(JUDL)

R.K. Ahuja
(R.K. AHOOJA)
MEMBER(ADMNV)

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