

Central Administrative Tribunal
Principal Bench
New Delhi.

O.A. No. 928 of 1995

Decided on: 12.1.1999

Radha Krishan Gaur & Others...Applicants

(By Advocate Shri G.K. Aggarwal)

Versus

Union of India & Another...Respondents

(By Advocate Shri P.H. Ramchandani)

CORAM:

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not?
2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 928 of 1995

New Delhi this the 12th day of January, 1999

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Radha Krishan Gaur
Personal Assistant (PA)
A-5/198C, DDA Janta Flats
Paschim Vihar,
New Delhi-63.
2. Gurbachan Singh
105-C, Ashok Vihar-III,
Delhi-110 052.
3. K.L. Pajni, PA
I-40, Lajpat Nagar,
New Delhi-110 024.
4. K.S. Pathania, PA
II/94, Sadiq Nagar,
New Delhi-110 018.
5. Rajinder Singh, PA
D-90, Fateh Nagar,
New Delhi-110 018.
6. R.K. Sood, PA
99-MS/III Timarpur,
Delhi-110 054.
7. Vas Dev Sharma, PA
I-301, Sarojini Nagar,
New Delhi-110 023.

..Applicants

By Advocate Shri G.K. Aggarwal.

Versus

1. Union of India
through Defence Secretary,
South Block,
New Delhi.
2. The Chief Administrative Officer &
Joint Secretary (Admn.),
Ministry of Defence,
C-II hutments,
DHQ PO,
New Delhi-110 011.

..Respondents

By Advocate Shri P.H. Ramchandani.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

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Applicants were originally appointed as Lower

Division Clerks in the Armed Forces Headquarters prior to 1968 but were later inducted into the Armed Forces Headquarters Clerical Service (in short AFHQ Clerical Service) after the promulgation of the Armed Forces Headquarters Clerical Service Rules, 1968. Subsequently, with the constitution of Armed Forces Headquarters Stenographers Service (in short AFHQ Stenographers Service), the rules framed under Article 309 of the Constitution for regulating the recruitment to that service and the induction of departmental candidates in the initial constitution of the Grade-D of the service was notified on 22.12.70. It is stated that in terms of the aforesaid statutory rules, the applicants were inducted into the service as Stenographers Grade-D under the initial constitution clause provided in Rule 9(A) of the aforesaid rules.

2. It is stated that there was a dispute in regard to the seniority of LDCs who joined AFHQ Clerical Service till 29.2.68. The seniority of these LDCs was recast by the respondents as per the judgment of the Supreme Court in CA No.4133-34 of 1984 (D.P. Sharma and Others Vs. U.O.I.), Writ Petition No.493/90 and O.A. Nos.115/90, 978/90, 2251/90 and 2373/90. The revised seniority list as on 1.8.72 was circulated by the respondents letter dated 3.2.92. As a sequel to the above, the respondents also revised the seniority of Stenographers Grade-D as on 1.8.72 by their letter dated 18.1.1993, Annexure A-1. The seniority of the applicants in the Stenographers Grade-D was also revised accordingly. However, respondents by their order dated 18.8.93 cancelled the seniority list of Stenographers Grade-D as on 1.8.72 as circulated earlier by the order dated

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18.1.1993. Aggrieved by this cancellation, the applicants have approached this Tribunal in this application with a prayer for a direction to the respondents to restore their original order dated 18.1.1993 and grant all consequential promotions to the higher grades for Stenographers in the AFHQ Stenographers Service retrospectively with arrears of pay etc. and interest thereon together with cost.

3. The respondents have ~~also~~ raised a preliminary objection that the application is barred by time. They contend that the cause of action for the applicants if at all arose only on 24.9.93 when the representation was rejected and should have therefore normally filed an application within one year of rejection. Although the applicants were pursuing the matter through a Contempt Petition, this was also disposed of and the time consumed by the applicants in filing the OA is more than one year September, 1993 to March, 1993 and October, 1994 to April, 1995.

4. The main contention of the respondents in their counter-reply is that the revision of the seniority list of Stenographers Grade-D as a sequel to the revision of seniority list of Lower Division Clerks in pursuance of the judgment of the Apex Court in respect of LDCs, was found to be erroneous and, therefore, the aforesaid revision of seniority of Stenographers Grade-D as on 1.8.72 was cancelled by the impugned order. It is stated on behalf of the respondents that though the applicants initially joined the service in the AFHQ as Lower Division Clerks they opted for a different stream of service, i.e., AFHQ Stenographers Service w.e.f.

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1.8.72 thereby voluntarily severing all connections with their previous service. It is stated that as per Rule 9(A) of the Armed Forces Headquarters Stenographer Service Rules, 1970, the applicants exercised their option at the initial induction to the AFHQ Stenographers Service. By the proviso to the aforesaid rule, the option once exercised by them was treated as final and such of the optees like the applicants who had opted to join the AFHQ Stenographers Service are to be deemed to have severed their connection with AFHQ Clerical Service **considered** and will not be / eligible for any promotion in that service. The respondents, therefore, contend that their request for revision of seniority in the Stenographers Service on the basis of revision of seniority of LDCs would not be in accordance with the service rules and would also not be tenable in law. The respondents also refer to the judgment of the Tribunal in OA 115/90 which had clearly held that the redetermination of the dates of promotions are only in the AFHQ Clerical Service in respect of such of those LDCs who had opted to remain in that service and, therefore, the claim of the petitioners for redetermination of their seniority and promotion in the AFHQ Stenographers Service will not be valid. The respondents further contend that the relief claimed by the applicants will have a serious impact on the career prospects of large number of AFHQ Stenographers who have not been impleaded as necessary parties and, therefore, assert that this application is liable to be dismissed for non-joinder of necessary parties also.

5. The learned counsel for the applicants submitted that the issue involved is relatively simple in that the AFHQ

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Stenographers Service Rules clearly provide in Rule 18 of the aforesaid rules that inter-se seniority of Stenographers Grade-D appointed at the initial constitution of the service has to be fixed with reference to their seniority in the Lower Division Grade of the AFHQ Clerical Service. He, therefore, argued that the revision of seniority of the applicants as LDCs, would automatically result in the revision of their seniority as Stenographers Grade-D at the initial constitution itself. He sought to show that if the seniority of some of the applicants are revised consequent on the revision of their seniority as LDCs, they would be entitled to promotion to higher levels like Private Secretaries. The learned counsel for the respondents submitted that the respondents had misunderstood the effect of the judgment in D.P. Sharma's case (Supra) and extended the benefit of revision of seniority even in respect of Stenographers Grade-D by revising their seniority in the LDC Cadre. He also pointed out that under the Recruitment Rules, the applicants who have been inducted to the AFHQ Stenographers Service on the basis of their own option had already severed their connection with the previous service as LDCs and would have no claim for any revision of seniority in the cadre in Stenographers Service.

6. We have heard the learned counsel for the parties and have perused the record placed before us.

7. It is necessary to first dispose of the preliminary objection raised by the respondents in regard to limitation. The impugned order rejecting the representation, Annexure A-2 and drawing their attention to their letter of 18th August,

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1993 was issued on 24.9.93. It is stated that the applicants were pursuing the Contempt Petition in the OA 115/90, which was disposed of only in October, 1994. It is only thereafter this present application has been filed. As stated by the applicants, in disposing of the Contempt Petition, the Tribunal had observed that if the petitioners claimed that on the basis of redetermination of the seniority in the LDC cadre, they were entitled to same benefit in the Stenographers Cadre, they could make fresh application before appropriate forum. In view of this liberty given to the applicants, they have moved this present application in May, 1995. In view of this, we are of the considered view that this application is not barred by limitation and we, therefore, overrule the preliminary objection of the respondents in this regard.

8. The substantive question raised in this application is whether as a result of revision of seniority in the Lower Division Clerks Cadre the applicants are entitled to their seniority redetermined in the cadre of Stenographers Grade-D. The AFHQ Stenographers Service Rules, 1970 have to be read together harmoniously. Although for the purpose of induction into the service at that time, it was provided as follows in Rule 18:-

" Rule 18(4)(2) - The seniority of Stenographers Grade-D appointed at the initial constitution shall be regulated in the following manner:

"In the case of LDCs, Steno-typists referred to in clause (a) and (b) of sub-rule(1) of Rule 9A, their inter-se seniority shall be fixed with reference to their seniority in Lower Division Grade of the Armed Forces Headquarters Clerical Service."

9. The second proviso to Rule 9(A)(2) of the aforesaid rules provides as follows:-

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" Provided further that persons referred to in clause (a) and (b) of sub-rule (1) etc. shall be given an option to join the Armed Forces Headquarters Stenographers Service or to continue in the Armed Forces Headquarters Clerical Service. The option once exercised shall be treated as final. Such of them as opted to join the Armed Forces Headquarters Stenographers Service shall be deemed to have severed their connection with the Armed Forces Headquarters Clerical Service and cease to be eligible for any promotion in that service."

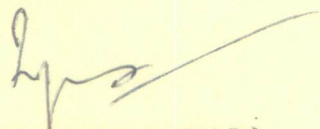
10. So at the time when the initial induction into the service was made, applicants were given their seniority with reference to their service in the Clerical Grade. The benefit of any revision of seniority as LDCs under the AFHQ Clerical Service would accrue only in the Cadre of LDCs since it is specifically provided that after induction of those optees to the Stenographers Service they would sever their connection with their previous service. It is, therefore, implicit that their seniority in the erstwhile service is not left open once their seniority is determined in the Stenographers Grade-D Service in terms of Rule 18 of the aforesaid provisions. There is no enabling provision in the Recruitment Rules to reopen their seniority consequent on any revision of seniority in the LDC Cadre for some reason or the other. Besides, the seniority in a cadre different viz. Stenographer Grade-D cannot be left undetermined and cannot be subject to vagaries in the determination of seniority of erstwhile LDC Cadre. This would have naturally a serious effect and impact on the seniority of several stenographers appointed to the service in terms of the statutory rules.

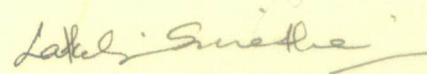
11. In the conspectus of the above discussion, we are not persuaded with the arguments of the learned counsel for the applicants that the revision of seniority in the LDC cadre

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should lead to automatic revision of seniority in the cadre of Stenographers Grade-D which are governed by different set of Recruitment Rules and which also provide for complete severance of their connection with the AFHQ Clerical Service consequent on the induction into the AFHQ Stenographers Service on the basis of their own option.

12. In the light of the foregoing, we are of the considered view that this application has no merit and is accordingly dismissed. No order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINTHAN)
MEMBER (J)

Rakesh