

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.1421/1996

New Delhi this the 10th day of February, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI M. P. SINGH, MEMBER (A)

1. P.R.Balasubramaniam,  
Sr.P.A. (Ad hoc),  
Central Administrative Tribunal,  
Gulistan, Prescot Road,  
Fort, Mumbai-400001.
2. P.U.Madhavadas,  
Sr.P.A. (Ad hoc),  
Central Administrative Tribunal,  
Gulistan, Prescot Road,  
Fort, Mumbai-400001. .... Applicants

( None present )

-Versus-

1. Union of India through  
Chairman,  
Central Administrative Tribunal,  
Principal Bench,  
Faridkot House,  
CopernicusMarg,  
New Delhi-110001.
2. Registrar,  
Central Administrative Tribunal,  
Mumbai Bench, Gulistan Building,  
Prescot Road, Fort,  
Mumbai-400001.
3. Dy. Registrar (Estt.),  
Central Administrative Tribunal,  
Principal Bench,  
Faridkot House,  
Copernicus Marg,  
New Delhi-110001.
4. Kum. Margaret Borger,  
Court Master,  
Central Administrative Tribunal,  
Jabalpur Bench,  
Jabalpur.
5. Shri J. K. Roy Choudhary,  
Ad-hoc P.S. & Ad-hoc Sr.P.A.,  
Central Administrative Tribunal,  
Calcutta Bench,  
Calcutta. .... Respondents

( By Shri N. S. Mehta, Advocate )

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

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Applicants who are on the roll of this Tribunal as Court Masters have filed the present O.A. inter alia contending that they are entitled for promotion to the next higher grade of Senior Personnel Assistant (Sr.P.A.). They claim that they are eligible for the said promotion at the expiry of seven years' experience as Court Masters. They also impugn the seniority lists prepared in respect of Court Masters and Sr.P.As.

2. Applicant No.1 was initially serving in the office of the Company Law Board, Department of Company Affairs as a Junior Stenographer from 8.2.1982 till March, 1986 when he was taken up on deputation to this Tribunal at its Bombay Bench as a Court Master (Stenographer Grade 'C') in the scale of Rs.1400-2600 (subsequently revised to Rs.1640-2900). Applicant No.2 was initially serving in the Telecom Factory from 16.6.1989 till April, 1986 when he was taken up on deputation to the Tribunal at the Bombay Bench as a Court Master (Stenographer Grade 'C') in the aforesaid scale of pay.

3. By notification issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training dated 20.4.1989, in exercise of the powers conferred by sub-sections (1) and (2) of Section 13 of the Administrative Tribunals Act, 1985, rules were framed called as the Central Administrative

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Tribunal Stenographers Service (Group 'B' and 'C' Posts) Recruitment Rules, 1989. They were brought into force with effect from 20.4.1989. Rule 4 of the aforesaid Rules provides for methods of recruitment, age limit, qualifications etc. The same have been specified in columns 5 to 14 of the Schedule attached to the Rules. Rule 5 deals with absorption/regularisation of existing employees. The same provides as under :

"5. Absorption/regularisation of existing employees.

(1) Notwithstanding anything contained in the provisions of these rules, the persons holding the posts of Private Secretary, Senior Personal Assistant, Stenographer Grade 'C' and Stenographer Grade 'D' in the Central Administrative Tribunal on the date of commencement of the rules either on transfer or on deputation basis and who fulfil the qualifications and experience laid down in these rules and who are considered suitable by the Departmental Promotion Committee shall be eligible for absorption/regularisation in the respective grade subject to the condition that such persons exercise their option for the absorption and that their Parent Department do not have any objection to their being absorbed in the Tribunal.

(2) The seniority of officers mentioned in sub-rule (1) shall be determined with reference to the dates of their regular appointment to the posts concerned:

Provided that the seniority of officers recruited from the same source and in the posts held by them in the Parent Department shall not be disturbed.

(3) The suitability of persons for absorption may be considered by a Departmental Promotion Committee."

  
Rule 7 deals with the power of the Chairman to relax. The same provides as under :

"7. Power to Relax :-

Where the Chairman is of the opinion that it is necessary or expedient so to do, he may by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

Under column 11 of the Schedule the method of recruitment to the post of Sr.P.A. has been prescribed as by promotion or by transfer/transfer on deputation. As far as promotion is concerned, the period of eligibility is seven years' service as Stenographer Grade 'C' (Court Master). As far as applicant No.1 is concerned, he was brought on deputation to the Tribunal in March, 1986 whereas applicant No.2 was brought in April, 1986. It is the claim of applicants that they would become eligible for promotion at the expiry of seven years from March and April, 1986 respectively, i.e., from March and April, 1993. The stand taken by the Government and which stand is consistent with the view adopted by the Tribunal is that the applicants will be entitled to be considered for the said promotion not on the expiry of the period of seven years from the date of their absorption in the Tribunal but from the expiry of the said period from the date of coming into force of the aforesaid Rules.

4. Applicants have placed reliance on a decision of the Hyderabad Bench of the Tribunal in O.A. No.810/1994 dated 22.3.1995 in order to contend that their period of deputation in the Tribunal has to be taken into consideration for the purpose of their

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absorption in the Tribunal. Aforesaid decision of the Hyderabad Bench, we find, has been over-ruled by a Full Bench of this Tribunal in the case of S. Kailasam v. Registrar, Central Administrative Tribunal & Ors., O.A. No.1111/1995 decided on 8.1.1997 by observing as under :

"6. The counsel had assisted us in interpreting the provisions of the relevant Recruitment Rules. In OA No.810/94 of the Hyderabad Bench, noting that Rule 5 of the Recruitment Rules provided for absorption of those who were on deputation, on the date of commencement of the said Recruitment Rules, it was held that there is no provision for absorption of deputationists who came on deputation after the commencement of the Recruitment Rules. However, we find that this view was erroneously taken without adverting to the Rule 4 of the Central Administrative Tribunal Stenographers Service (Group 'B' & 'C' Posts) Recruitment Rules, 1989. The said Rule reads as follows :

"Rule 4: Methods of recruitment, age limit, qualifications etc. The method of recruitment to the said posts, age limit, qualifications and other matters relating thereto shall be as specified in column 5 to 14 of the Schedule aforesaid.

According to Column 11 of the Schedule, 50% of the vacancies are to be filled by direct recruitment and the remaining 50% by promotion failing which transfer/transfer on deputation. Those who are appointed by transfer on deputation, can definitely be considered for absorption and till such time they are absorbed, they would remain deputationists. Therefore, to hold that there is no provision in the recruitment rules which provides for absorption of deputationists may not be stating the correct position in accordance with the recruitment rules. We are of the view that the contrary view was taken in Suvarna's case probably because Rule 4 was not brought to the notice of the Bench."



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5. As far as the present case is concerned, the then Acting Chairman, Hon'ble Shri N. V. Krishnan, by a reasoned order passed on 29.11.1995 and in exercise of his power under Rule 7 has relaxed certain rules in order to absorb deputationists as a one-time-measure. The said order is found at Annexure R-7 to the counter. The same recites as under :

"It is being suggested in the note of the Acting Registrar dated 14.11.1995 that the Private Secretaries who have come on deputation may be absorbed on those posts by relaxation of the Recruitment Rules as a one time measure.

2. I had a doubt in the matter. The recruitment rules only provide for promotion, failing which transfer on deputation. The question is whether by exercising the power of relaxation under Rule 7, absorption can be permitted. My attention has been drawn to a similar instance where, in the case of appointment of Junior Accounts Officer where also the provisions of the Rules are similar, the then Hon'ble Chairman had relaxed the recruitment rules on 16.1.1995 to enable absorption (File No.PB/1/43/92/Estt.II). In a case separate note dated 9.6.1995 of the then Hon'ble Chairman, which is also placed on the file, he has stated that all deputationists who come to the Tribunal subsequent to the enforcement of the statutory rules, can be absorbed. That order was made in the context of the decision of the Hyderabad Bench in O.A. No.810/94, Smt. N. Suvarna Vs. PMG, AP Circle and others, a copy of the judgment is also on record.

3. I have seen that judgment. It states with reference to the CAT Stenographers Services (Group 'B' and 'C' Posts) Recruitment Rules, 1989 that the recruitment rules do not contain any provision to absorb a deputationist on a permanent basis. No specific ruling has been given, that in the circumstances of that case, the Chairman had no authority to relax the rules, though there is a reference to this aspect. With great respect, the Bench appears to have misinterpreted the Rules. The rules provide not only for transfer on deputation, but also on transfer in certain circumstances. Transfer really means permanent transfer of services from the

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parent department to the service of Tribunal, i.e. absorption. Therefore, that judgment does not have any persuasive value.

4. I have considered this matter from two angles. The recruitment method is by promotion, failing which transfer on deputation. Only Senior P.As & Stenographers Grade 'C' (Court Masters) are eligible for promotion subject to fulfilling certain eligibility conditions. It is absolutely necessary to first exhaust the alternative of promotion before taking persons on deputation. It is seen from the Acting Registrar's note dated 14.11.1995 that not a single Senior Personal Assistant or Court Master/Stenographer Grade 'C' is eligible for promotion. It is precisely for this reason that some Private Secretaries have been brought on deputation in the first instance. The deputation can continue as long as this condition continues to be satisfied. It is only when the Senior Personal Assistants/Stenographers Grade 'C' become eligible for promotion that repatriation has to be considered. But they have also to be repatriated after the maximum period of deputation is over. That creates a problem, because we are unable to get persons on deputation and in the Tribunal we have to depend heavily on Private Secretary for proper discharge of work by Members.

5. In this background, the proposal has to be considered. While the interests of the promotees cannot be ignored that cannot be at the cost of efficiency of the Tribunal work. Absorption of deputationists, if needed in the interest of the Tribunal, has to be considered and balanced with the interest of promotees.

6. As per statement A, there are 65 posts. The total number of deputationists are 23. The total number of promotees is 13. The cadre strength of SPAs and Stenographers Grade 'C' (Court Master) is 18 and 66 respectively. thus, if even all the 23 deputationists are absorbed, there would still be 42 posts for promotees, which as a percentage of the total strength of SPA & Stenographer Grade 'C' is about 50%. That is a reasonably high percentage of satisfaction and, therefore, there should be no objection to absorption.

7. The next question is whether relaxation is in order. There is already a precedent. The deputationists have come by way of regular method of recruitment which is provided for in the rule which is by transfer on deputation. They are all otherwise

Y.S.J.

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eligible. The Recruitment Rule fails to provide for transfer. If that provision had been there, it would have enabled absorption. In the special circumstances above, that provision is relaxed and the absorption of deputationists is permitted as a one time measure.

8. In the circumstances, absorption of persons who have been directly taken on deputation as Private Secretaries and who have completed two years of deputation as on date, may be considered, after they are adjudged fit for absorption by D.P.C. The DPC may consist of Shri S.R.Adige, Member and Mrs. Lakshmi Swaminathan and Acting Registrar."

6. Aforesaid order, in our judgment, is a well reasoned order. The same takes into account the fact that the deputationists have come to the Tribunal by way of regular method of recruitment which is provided for in the Rules, that is, by transfer on deputation. The deputationists are found to be otherwise eligible. However, the Recruitment Rules fail to provide for transfer. If that provision had been there, it would have enabled absorption. In the circumstances, having regard to the exigency of administration, all persons who had been directly taken on deputation as Private Secretaries and who had completed two years of deputation as on date of the passing of the order were considered fit for absorption as Private Secretaries. The order takes into account the fact that there are 65 posts; the total number of deputationists are 23; the total number of promotees is 13; the cadre strength of Sr.P.As. and Court Masters (Stenographers Grade 'C') is 18 and 66 respectively. Thus, even if all the 23 deputationists are absorbed, there would still be 42 posts available for promotees, which, as a

percentage of the total of Sr. P.As. and Court Masters is about 50% which is reasonably high percentage. Hence, the order has taken into account the claim of the candidates seeking promotion and it is pointed out that no injustice would be caused to the promotees.

7. In the circumstances, we have no hesitation to hold that the aforesaid order passed by the then Acting Chairman on 29.11.1995 is fully justified.

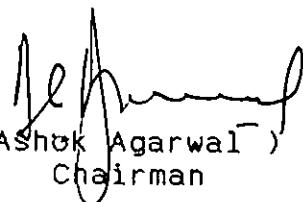
8. As far as the applicants are concerned, they, in terms of the aforesaid decision of the Full Bench, would not become entitled for promotion after seven years from the date of their absorption but will only be eligible from the expiry of seven years from the date of coming into force of the Rules. After they have so become eligible, they have by office order passed on 11.6.1998 been promoted from the post of Court Masters to the post of Sr. P.As. As far as the seniority is concerned, in the final seniority list published on 9.2.1995 in respect of Court Masters, applicants appear at sl. nos. 8 and 9 whereas respondent no.4 does not appear in the list as she is junior and hence she does not feature in the list. As far as respondent no.5 is concerned, she is at sl. no.11 and is, therefore, shown junior to the applicants.

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9. In view of the aforesaid reasons, we find that no legitimate grievance of the applicants can survive so as to interfere or to pass directions in respect of absorption, regularisation or promotions directed by the Tribunal.

10. Present O.A., in the circumstances, is dismissed. There shall, however, be no order as to costs.

  
( Ashok Agarwal )  
Chairman

  
( M. P. Singh )  
Member (A)

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