

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. OA-1716/96
T.A. No.

9/5/1997

DATE OF DECISION

Smt. Meena Kapoor & Ors.

Petitioner

Advocate for the Petitioner(s)

Shri Sant Lal

Versus

Respondent

U.O.I. & Ors.

Sh. R. V. Sinha

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Jose P. Verghese, Vice-Chairman (J)

The Hon'ble Mr. S. P. Biswas, Member (A)

1. To be referred to the Reporter or not?

2. Whether it needs to be circulated to other Benches of the Tribunal?


(S. P. Biswas)

Member (A)

Cases referred :

1. P. P. C. Ravani Vs. UOI (1992)1 SLJ 397
2. N. S. K. Nayar & Ors. Vs. UOI (1992)1 ATC 393
3. N. K. Anand & Anr. Vs. UOI & Ors. (1991)16 ATC 340
4. V. T. Dharmalingam & Ors. Vs. UOI & Anr. (1991)18 ATC 691
5. A. K. Verma Vs. UOI Civil Appeal No. 4237/88 decided on 16.6.1989.
6. UOI & Ors. Vs. V. H. Shah (1997(1) SC SLJ 54

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1716/1996

New Delhi, this 9th day of May, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

1. Smt. Veena Kapoor
2. Shri Santidas Harplani
3. Shri Narain Dass Arora
All working as Steno Grade II
c/o Shri Sant Lal
C-21(B) New Multan Nagar, Delhi-56 .. Applicants

(Through Advocate Shri Sant Lal)

versus

Union of India, through

1. Secretary
Dept. of Posts, **Dak Bhavan**,
Ministry of Communications
New Delhi -110 001
2. The Chief Postmaster General, Delhi Circle
Meghdoot Bhawan, New Delhi .. Respondents

(Through Advocate Shri R.V. Sinha)

ORDER

Hon'ble Shri S.P. Biswas

The applicants, three of them, working as Stenographers Grade-II(SG-II for short) in the scale of Rs.1400-2600 are claiming regularisation in the said post with effect from 30.8.91. Applicants No.1 and 2 have been working as SG-II with effect from 9.11.89 and 17.6.80 on ad hoc basis, whereas applicant No.3 has been appointed as such with effect from 30.8.91. They are aggrieved by Annexures A1 & A2 orders dated 13.2.96 and 14.9.93 respectively. By the former, their representation claiming regularisation as SG-II with effect from 30.8.91 has been rejected and by later they have been regularised in the post with immediate effect only. Consequently, they have prayed for quashing both **the** orders and grant them relief by regularising them with effect from 30.8.91, if not earlier.

2. The applicants' case is based on the grounds mentioned hereunder:

- (i) The applicants should not be penalised for the administrative lapse of not holding DPC when the vacancies occurred and they became due for regular promotion in accordance with the recruitment rules;
- (ii) Applicants have challenged the order dated 13.2.96 which says that promotion will be made from the prospective date. It only indicates that the competent authority has not applied his mind to the facts of the case. The applicants stood promoted to SG-II though on ad hoc basis but they were to be regularised in that grade from the date of occurrence of vacancies.
- (iii) It is well settled in law that DPC should ordinarily be held once a year or atleast in the year in which vacancies occur which are to be filled by promotion. DPC is required to make year-wise selection if it does not meet in a particular year to which the vacancies relate. In the present case, the DPC met in 1993 to consider their cases for regularisation against vacancies which arose in 1991.
- (iv) The applicants allege discrimination by the respondents both within the department and outside. In the case of Smt. Shashi Makhija and Shri. M.S. Kataria, promotions were given in May, 1993, DPC took place subsequently in 1994 and retrospective effect was allowed.
- (v) Similarly in the cases of S/Shri Jagmohan Lal, H.S. Negi, R.K. Pahwa, P.C. Verma, S.L. Makkar and O.P. Mathur, they were given promotion with retrospective effect from 28.11.82 while DPC in their cases was held in February, 1988. Applicants have referred to similar relief having been granted to similarly placed officials in the department of **Health/GOI**.
- (vi) Applicants' case is very much stronger in the sense that they have been working on the higher post and also drawing higher salary right from the date they were promoted on ad hoc basis.

3. In support of his contention, the learned counsel for applicants cited the decisions of the Hon'ble Supreme Court in the cases of P.P.C. Ravani Vs. UOI (1992)1 STJ 397 and N.S.K. Nayar & Ors. Vs. UOI (1992)1 ATJ 393. In the former case, it was held that:

"each of the appellants will be treated as regularised in Group A of the Central Health Services from 1.1.73 or the date of their first initial appointment in the service, whichever was later."

4. The above order was given by the Apex Court by protecting the interest of the directly recruited doctors. In the case of the applicants there is no element of direct recruitment and hence there should be no problem in their regularisation with retrospective effect, argued the counsel for applicants. In the other case, denial of regularisation of promotion of Divisional Engineers on ad hoc basis with consequential benefits were pointed out to be arbitrary and violative of Article 16 of the Constitution. The Apex Court directed that the promotee officers who have worked in STS for a continuous period of five years and are holding the posts till the relevant date shall be deemed to be regular members of Group A service in STS.

5. The learned counsel for respondents argued that memo of upgradation of posts was received on 31.7.91 and was examined in details which took some time. It was due to administrative reasons/DPC could not be held in time. When the DPC met on 3.9.93, cases of the applicants were recommended for promotion to SG-II and accordingly their services were regularised vide letter

dated 14.9.93. Respondents claim that retrospective promotion is not covered under the existing rules and the applicants were informed accordingly.

6. We find that as per recruitment rules of 1981, the post of SG-II is not a selection post and is to be filled by promotion from Stenographers of Grade III having minimum of 5 years' regular service in that grade. Applicants are eligible for promotion to SG-II under these rules right from the date they were promoted even on ad hoc basis.

7. The question then is: whether regularisation in appointment in the facts and circumstances of the present case should take place from the date DPC was held i.e. 3.9.93 or the date when vacancies arose, i.e. 30.8.91 or the individual dates from which applicants started working on ad hoc basis in SG-II?

8. We have heard the arguments of learned counsel for both parties.

9. It is not in dispute that the applicants have been officiating on ad hoc basis without interruption from 7.11.89, 16.7.80 and 30.8.91 respectively, having been duly empanelled by the DPC later on in September, 1993. Admittedly, substantive vacancies also arose on 30.8.91. Even though they were included in the panel for the vacancies that arose in August, 1991, they were not given regular promotion with effect from the date when

vacancies materialised in 1991 but were given prospective regularisation with effect from September, 1993 when the DPC met. Justification for this has been indicated to flow from the Department of Personnel & Administrative Reforms OM dated 24.12.80 which required preparation of year-wise consolidated select list and promotion to be made effective with prospective dates where "for reasons beyond control the DPC could not be held in any year".

10. In the instant case, DPC could not be held in 1990, 1991 and 1992 because of 'administrative reasons'. The stand taken by the respondents appears to be unconvincing. The number of vacancies in 1991 was known and no valid reasons are forthcoming why DPC could not be held in 1991 or earlier. There was no litigation/stay order issued by any court. Accordingly, we hold that order of regularisation with prospective effect from September, 1993 cannot be invoked in this case to deprive the applicants' promotion with effect from 30.8.91 when vacancies occurred. This view of ours is in conformity with the decision of this Tribunal in the case of N.K. Anand & Anr. Vs. UOI & Ors. (1991) 16 ATC 340.

11. We also find similar view was taken in yet another case of this Tribunal in V.T.Dharmalingam & Ors. Vs. UOI & Anr. (1991) 18 ATC 691. That was the case where it was decided that any shortcomings in this regard need to be condoned since the applicants are in no way responsible for failure to hold the necessary

test/selection and the respondents were entirely and solely responsible for such a lapse. The Tribunal felt in this case, that in so far as the interview/test is concerned, it should be taken that the applicants would have passed such tests in 1985, 1986 and 1987 also. In this case, the respondents' reply was deafeningly silent as to the precise reasons why respondents could not conduct selection process according to the rules in three consecutive years. We find the same situation prevails in present original application on hand.

12. We also find that the Hon'ble Supreme Court in the case of A.K. Verma Vs. UOI, Civil Appeal No.4237/88 decided on 16.8.89 has made the following observation in the matter of regularisation:

"The appellant could not have been considered for regularisation unless the other substantive post of the Director(NT) was available. Mr. R.K.Kulkarni was promoted to officiate as Director (NT) from August 1, 1975 on ad hoc basis. He became Senior Enforcement Officer with effect from December 24, 1982. It was only on this day, the other substantive post of Director(NT) became available for which the appellant may make a legitimate claim.

There is no reason assigned why the appellant could not be considered for regularisation with effect from December 24, 1982. Indeed, in our opinion, he is entitled to be considered as on that date and not with effect from any earlier date."

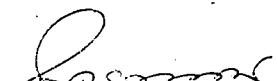
13. It would be appropriate to mention here that there are a number of cases; decided both at the level of Apex Court and the Tribunal, where retrospective regularisation have been denied. Each case has to be decided on its own individual merit. We also find that

depending upon the circumstances of the cases, liberties have been given to the Department to find out from what date substantive vacancies occurred in certain categories upon promotion of certain officers to the higher grade and consider whether the vacancies so occurring could be made available for the purpose of giving promotion to the employees with retrospective effect, i.e. date of occurrence of vacancies. The Hon'ble Supreme Court in a recent case of UOI & Ors. Vs. V.H. Shah 1997(1) SCSLJ 54 decided on 25.10.96 directed that the respondents were entitled to seek fresh consideration on the basis that selection should have been made for vacancies occurring in each year separately, number of vacancies falling in the quota prescribed for promotion shall be determined separately for each of the years between 1980 and 1986 and the Civil Services Officers who are senior in respect of others shall be adjusted against the vacancies so determined on year-wise basis. We find that in the instant case promotion to SG-II is to be made on the basis of seniority-cum-merit (not a selection post). The vacancies against which the applicants were appointed on ad hoc basis were adjusted against subsequent substantive vacancies falling in the promotion quota for which the applicants are admittedly eligible and have been found suitable. The promotion of the applicants with retrospective effect from the date when vacancies arose i.e. 30.8.91 are not to affect the other employees adversely. Therefore, ratio arrived at

in the aforementioned case decided by the Apex court would squarely apply in the facts and circumstances of the present case.

14. In the result, we allow the OA. The orders dated 13.2.96 and 14.9.93 are set aside. Respondents are directed to consider for regularisation of the applicants in SG-II from the date of occurrence of vacancies i.e. 30.8.91 in the light of decisions and reasons aforesaid. This shall be done within three months from the date of receipt of a copy of this order.

15. In the facts and circumstances of the case, there shall be no order as to costs.


(S.P. Biswas)

Member(A)


(Dr. Jose P. Verghese)

Vice-Chairman(J)

/gtv/