

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1166/2000

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New Delhi, this the 22nd day of March, 2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

P.S. Ochani
S/o Shri Sachanand Ochani
Aged: 63 yrs (DOB: 28/9/37)
4/20A- Vikram Vihar
Lajpatnagar IV,
New Delhi-110024.

..... APPLICANT

(By Shri D.C. Vohra, Advocate)

VERSUS

1. Union of India
through the Secretary
Dept. of Revenue
Ministry of Finance
North Block,
New Delhi-110011.
2. Deptt. of Personnel and Training
Through its Secretary
North Block
Central Sectt.
New Delhi-110011.

..... RESPONDENTS

(By Shri V.P. Uppal, Advocate)

O R D E R (ORAL)

Shri Govindan S. Tampi, Member (A):

The reliefs sought by the applicant in this application are enumerated as below:

- (a) an order by this Hon'ble Tribunal quashing/ setting aside the impugned order dated 15.21.3.2000, read with letter dated 9.6.1997 (pp. 16, 108 & 111) being arbitrary, discriminatory and unconstitutional;
- (b) an order/direction by this Hon'ble Tribunal to the Respondent/Union of India/1 and Respondent/2-Cadre Controlling Authority to issue an order upgrading/giving proforma-in situ promotion to the applicant to the combined grades (A&B) of the

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CSSS/Principal Private Secretary in the scale of Rs.3000-4500 from the date his juniors were given this benefit as his reinstatement in service is with all the consequential benefits and the period of suspension since 5.7.1984 till 28.9.1995 has been treated as period spent on duty for all purposes;

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- (c) the cost of these proceedings be awarded in favour of the applicant and against the respondents who have afflicted this avoidable litigation, the mental agony and the expense on the applicant; and
- (d) any other or further order may be passed or any other or further relief may be granted to the Applicant by this Hon'ble Tribunal, as may be deemed fit and proper in the facts of the case.

2. Heard Dr. D.C. Vohra for the applicant and Shri V.P. Uppal, standing counsel for the respondents.

3. To state the facts in brief, the applicant who joined in Grade 'B' of the Central Secretariate Stenographers Service (CSSS) on 1.7.1976 and confirmed as such on 1.8.1980 was placed in the seniority list of Stenographers on 1.8.1982. He was promoted to Grade 'A' of the Service on 1.2.1984 w.e.f. 30.1.1984. While working in Grade 'A', on 5.7.1984 he was placed under suspension and proceedings were initiated against him. Though in the departmental inquiry he was found 'not guilty', taking the advice of the Central Vigilance Commission, he was compulsorily retired from service on 13.10.1986 by the Respondents, without recording the reasons for the disagreement with the findings of the Inquiry Officer. This order of compulsory retirement, having been challenged by him before this Tribunal, it was quashed and set aside on 16.3.1993, but with the liberty to the disciplinary authority to decide further

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course of action. He was continued under suspension and on 30.9.1993 he was served a Memorandum enclosing the copy of the Inquiry Report, advice of the Central Central Vigilance Commission with the direction to him to file his representation, if any. This was replied by him on 27.3.1993. On 21.1.1994 disciplinary authority forwarded a memorandum indicating his difference with the findings of the inquiry officer. This was replied by the applicant on 9.2.1994. His request in the meanwhile, for enhancement of the subsistence allowance was not heeded. After a few representations by him between June, 1994 and April, 1995, on 28.9.1995 i.e. two days before his date of superannuation on 30.9.1995, proceedings against him were disposed of with the following directions:-

"AND WHEREAS the President on reconsideration of the circumstances of the case has decided to reinstate Shri P.S. Ochani in service with all consequential benefits.

NOW THEREFORE, the President hereby :-

- i) sets aside the said order of suspension and reinstate Shri P.S. Ochani, stenographer Grade 'A' in service with effect from 28.9.1995 (A.N.).
- ii) directs that the entire period of suspension shall be treated as period spent on duty for all purposes."

4. By a further order dated 3.9.1995 it was indicated that the period of suspension from 5.7.1984 to 15.10.1986 shall also be treated as period spent on duty for all purposes. Therefore, according to the applicant he became entitled to all benefits including pay and allowances, up-gradation in the combined grade (A & B) of

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CSSS, with effect from the date, his juniors were so upgraded. However, he was only granted the benefit of increments in the pay scale of Rs.2000-3500/- and two stagnation increments in terms of the order dated 15.11.1995. This has cost him, his proforma/in situ promotion/upgradation in the scale of Rs.3000-4500/- on account of the deliberate effort by the respondents by denying him the benefit of joining the duties as PS/A & B Grades to which he has been promoted since 30.1.1984. Besides, his pensionary benefits were calculated at the pre-revised grade of Rs.775-1200/- and the revised grade of Rs.2000-3500/-. His representation against the denial of the pay scale of Rs. 3000-4500/-, which have been granted to his juniors, along with the up-gradation as PPS was rejected by the impugned order 15/21.3.2000. Hence this application.

5. In their counter, the respondents point out that the Selection Committee which met in terms of Rule 5 of CSSS(PS Grade) Rules, 1989 for consideration of the case of the applicant, who was duly reinstated in service w.e.f. 28.5.1995 with all consequential benefits, did not recommend his case for promotion for the years 1988 to 1994. As the DPC did not recommend his case for promotion as PS, he could not be granted the upgraded pay scale as well as the rank of PPS. Since he has not been promoted to the grade of PS, the question of giving him proforma promotion did not arise. In situ promotion cannot be made to the post of PS. Under the Recruitment Rules, promotion to the said post was by selection

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method, in which he was not found fit by the competent authority. The applicant, therefore, should have no reason for any grievance or cause of action, aver the respondents.

6. Dr. D.C. Vohra, the learned counsel for the applicant, states that the post of Stenographer Grade-A and Private Secretary have been synonymous for quite sometime and that the same is being loosely used in his case also on many an occasion including his order of suspension dated 5.7.1984, its revocation on 28.6.1993 etc. Even during his period of suspension he was being referred to as Private Secretary (under suspension). Irrespective of the fact that this was only a common parlance expression and the designation was that of a Stenographer Grade- B & A, (subsequently combined) it should be deemed that he had been a Private Secretary since his elevation to the grade of Stenographer Grade 'A'. Once the proceedings against him had been discharged with direction for the grant of all the consequential benefits he was correctly entitled to get the benefits of the re-designation as Private Secretary, followed by that of Principal Private Secretary, to which post his juniors had been elevated in the meantime. As the proceedings against him had ended with full discharge and exoneration, there was no reason why he should not have been given the re-designation as the Private Secretary/Principal Private Secretary along with full consequential benefits including arrears of pay and allowances from the date on which his juniors were so

promoted and granted monetary benefits. By not doing so, the respondents have discriminated against the applicant and this deserves to be set right, pleads Dr. Vohra.

7. Shri Uppal refers to the Central Secretariat & Stenographers Service (Private Secretary Grade) Rule, 1989 and states that in terms of rule 4 therein, the method of recruitment to the post of Private Secretary grade shall be by promotion through selection by a Selection Committee and as the said Selection Committee had not found the applicant fit for the said promotion. The applicant's request raised in this application cannot, therefore, be entertained in law, according to Shri Uppal.

8. We have carefully examined the issue on hand and perused the relevant records placed before us, including the Recruitment Rules. We observe that the post of Private Secretary in the various Ministries of the Union was created only following the Recruitment Rules, 1989 and not earlier though persons belonging to CSSS Grade 'A', were being loosely described as Private Secretary. This is what has happened in the case of the applicant who was also being referred to as Private Secretary in some of the correspondence, which have been brought on record. It also emerges that along with the notification of the Recruitment Rules the two Grades of stenographers 'A' and 'B' were combined and re-designated as Private Secretary. There is no doubt the applicant was not formally designated as Private Secretary before

his suspension in 1984 or thereafter. Fact, however, is that he has been promoted to the rank of Stenographer Grade 'A' which has become on re-designation, ~`Private Secretary'. The Recruitment Rules specifically provide for selection to the Grade of Private Secretary through a Selection Committee, but the same is more of a formal procedure as the combined grades of 'A' and 'B' have been replaced by the grade of Private Secretary. Even though at the time of creation of the post of Private Secretary, the applicant was under suspension and was facing the charge sheet, the proceedings have ultimately been set aside with all consequential benefits, as the order dated 28.5.1995 shows. The order goes on to state that the entire period of suspension shall be treated as period spent on duty for all purposes. A similar authorisation is given on 3.11.1995 as well. The effect of these orders would be as if the suspension had not been in existence and the applicant has been continuing on duty for all purposes throughout the said period. Revision of pay scale, or upgradation of posts relating to the erstwhile post of Stenographer, now re-designated as Private Secretary should, in the circumstances, accrue to the applicant as well in the normal circumstances. The impugned order has made a bald averment that the Select Committee did not recommend his case. But it is not clear from the said intimation that whether the applicant's case was considered keeping in mind the fact that his period of absence during suspension has been treated as having been spent on duty for all purposes. While we agree the re-designation of the post of Stenographer grade 'A' and 'B' to the post of Private

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Secretary was not automatic, we observe that the applicant has been by the President's order declared to have been holding the post of Stenographer all the while. In fact, he was functioning as Stenographer grade 'B' since 1976 and as of Stenographer grade 'A' since February, 1984 and hence he had become rightly eligible for being considered for redesignation and up-gradation as Private Secretary when the posts were formally created in the Recruitment Rules. It is possible that the Selection Committee would not have recommended his case for promotion/re-designation under the impression that during the relevant period he was under suspension. However, in view of the fact that he has been discharged in the proceedings initiated against him and his period of suspension has been treated as spent on duty for all purposes his case would merit re-examination for re-designation/upgradation as well as for placement in the scale of Rs. 3000-4500 with consequential pensionary benefits, from the day on which his juniors were given the benefits. Dr. Vohra has pleaded that the applicant should be given in situ/proforma promotion. However, we observe that it is a matter for the respondents to decide upon keeping in view the circumstances of the case and we would not like to substitute ourselves as the Departmental Promotion Committee. In the circumstances we feel that the interest of justice would be adequately met if we direct the respondents to consider placing the case of the applicant once again before the Selection Committee for proforma promotion from the date of which his juniors have been granted the benefit of promotion/up-gradation, keeping in mind the fact that his

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entire period of suspension has been declared by the President as having been spent on duty for all purposes and our above observations, ^{and} if found fit, to grant him all consequential benefits flowing therefrom. We order accordingly. We further direct that this exercise shall be completed within four months from the date of receipt of this order.

9. No order on costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

(ASHOK AGARWAL)
CHAIRMAN

(pkr)