

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1405/2000

New Delhi, this the 5th day of March, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

Smt. Sudesh Kusum
W/o Shri R.K.Sharma
working as Stenographer under
Sr. Divisional Electrical
Engineer (Sr.DEE)
Tughlakabad, Western Railway
New Delhi
Resident of : H 479, Srinivaspuri
New Delhi -110065

.....Applicant

(By Advocate Shri K.K.Patel)

V E R S U S

Union of India : Through

1. General Manager
Western Railway,
Church Gate, Mumbai.
2. Divisional Railway Manager
Western Railway
Kota
3. Senior Divisional
Electrical Engineer,
Traction Rolling Stock
Tughlakabad
New Delhi.

...Respondents

(By Advocate Shri P.S.Mahendru)

O R D E R (ORAL)

Smt. Lakshmi Swaminathan, Vice-Chairman (J)

In this application, the applicant has sought two directions to the respondents; (1) to upgrade her services in Group 'C' in view of Railway Board's Instructions, RBE No. 222/98 and order dated 28-10-98 from the due date; and (2) to consider her for the post of Stenographer in the grade of Rs. 4000-6000/- in the light of Railway Board's instructions RBE No. 273/98 dated 3-12-98.

2. This is the second round of litigation by

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the applicant, the earlier application being OA 2056/98 which was disposed of by Tribunal's order dated 31-5-2000 (Annexure 7). (a)

3. We have heard learned counsel for the parties and perused the documents on record.

4. Shri K.K.Patel, learned counsel for the applicant has submitted that the relief prayed for in Paragraph 8 (b) of the OA and referred to in para (1) above, has been granted to the applicant during the pendency of the OA. He, therefore, submits that the only remaining relief for consideration is the second relief, namely, for consideration of the applicant for the post of Stenographer in accordance with RBE No. 273/98. He has referred to the provisions in this Circular as given on pages 5-6 of the OA. According to him, as the applicant has now been regularised as a senior Khallasi in Group 'C' and she knows shorthand, and is continuing to work as Stenographer, she may be considered against the 25 % quota under General Selection category as provided in RBE No.273/98.

5. The above claim has been vehemently disputed by Shri P.S.Mahendru, learned counsel for the respondents. He has submitted that the applicant has been regularised as Fitter and cannot, therefore, be considered in the above category for selection to the post of Stenographer. He has submitted that in the first instance, the applicant's claim for upgradation to the post of Fitter in terms of RBE No. 222/98 has

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already been granted to her in Group 'C' and she cannot further claim for consideration as Stenographer under RBE No.273/98.

6. We have carefully considered the submissions made by the learned counsel for the parties and perused the pleadings on records.

7. The applicant has relied upon two circulars issued by the Railway Board, namely, RBE No.222/98 and RBE No.273/98 and the order dated 28-10-98. As mentioned above, in terms of RBE No.222/98, the applicant has already been considered and granted the relief of being placed in Group 'C' grade as Fitter. We note from the reply filed by the respondents that they have not denied the fact that she was earlier posted as Stenographer and is also continuing as such. Therefore, it is not denied that she knows shorthand. Shri P.S.Mahendru, learned counsel has submitted that she has been continued as Stenographer in view of Tribunal's interim order dated 27-7-2000. That order states that "pending further orders, applicant who has been working as ad-hoc Stenographer for the past six years should not be reverted to her substantive post of Sr.Khallas". This order, therefore, shows that the respondents have themselves appointed her on ad hoc basis as Stenographer much before the Tribunal's order dated 27-7-2000. We note from the reply filed by the respondents that there is no specific denial of the provisions of RBE No.273/98 as referred to by the applicant in pages 5-6 of the OA. These averments have been reiterated by the applicant in the

rejoinder. Shri K.K.Patel, learned counsel has submitted that the Railway Board has reviewed the situation and have decided that against the 25 % quota of vacancies in the category of Stenographers, it should be filled up by promotion by selection from serving Group 'C' employees knowing shorthand by general selection. According to the applicant, she has been performing the duties of Stenographer for the last ten years and, therefore, she is eligible for being considered by the respondents in terms of their own Circular No.273/98. This averment, as noted above, has not been specifically denied or even replied to by the respondents in their counter affidavit filed on 29-9-2000. In the circumstances of the case, we are unable to agree with the contentions of Shri P.S.Mahendru, learned counsel that as the applicant has opted for the post of Fitter and has been placed in that panel, she can no longer be considered for appointment as stenographer.

8. Shri P.S.Mahendru, learned counsel has very vehemently submitted that at the time when the applicant filed the OA, she had sought two reliefs, as mentioned above. During the pendency of the OA, the respondents have issued order dated 5-10-2000, which is placed on record. This is a promotion order showing a list of persons who have been screened and selected for promotion and posted as Sr. Khallasis/Fitters Grade III and the applicant's name is at serial No.23. He has, therefore, submitted that the applicant ought to have reflected these facts in the rejoinder submitted by her on 21-3-2001. Shri

K.K.Patel, learned counsel, on the other hand, has submitted that these facts have been stated in paragraph 1 of the rejoinder.

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9. Another contention of the learned counsel for the respondents is that the applicant having opted to be considered for selection and promotion to the post of Fitter Gr.II, she cannot be considered further for promotion or selection to the post of Stenographer, which is based on a different seniority list.

10. The respondents' stand that the applicant cannot be considered in the selection quota prescribed in RBE No. 273/98, based on the fact that she has opted and has been selected as a Fitter cannot be accepted. The relevant portion of the RBE circular 273/98 (Supplementary Circular No.12 to M.C.No.32) on the subject of filling up the vacancies in the categories of Stenographers reads as follows :-

2. The question of revision of recruitment/promotion percentages in the light of difficulty being faced by the Railways in filling up the promotion quota vacancies due to inadequate response from the categories of Typists and Clerks, has been under consideration of the Ministry of Railways for sometime. The matter was referred to the Federations also. After taking into account their views the Ministry of Railways have decided that the vacancies in the category of Stenographers in the scale of Rs.4000-6000/- (RSRP) may henceforth be filled as under :-

(i) 25 % by promotion by selection of shorthand knowing clerks.

(ii) 25 % by General Selection from serving Group 'C' employees knowing shorthand; and

(iii) 50 % plus shortfall, if any, against the promotion quotas at (i) and (ii) above, by direct recruitment through the agency of RRBs;

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The above circular has been issued in terms of paragraph 176 (i) of IREM (Vol.I) (1989 edition) read with the Ministry's letters dated 10-4-1997 and 3-12-1998.

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11. As noted above, the respondents have not referred specifically to the provisions of RBE circular No. 273/98 in their reply. As stated by them in their letter dated 5-10-2000, the applicant has been found suitable in the trade test and placed in the select panel as Fitter, which is admittedly a Group 'C' post, therefore, we see no reason, why the applicant cannot be further considered under the 25 % quota in the general selection from "serving Group 'C' employees knowing Shorthand" as provided in Paragraph 2 (ii) of the aforesaid Circular RBE 273/98.

12. Shri P.S.Mahendru, learned counsel has submitted that in pursuance of the Tribunal's order dated 31-5-2000 in OA 2056/98, the applicant was reverted to her substantive post of Sr. Khallasi vide order dated 11-7-2000 from the post of ad hoc Stenographer. He has, therefore, submitted that as she had been reverted prior to her filing the present OA on 26-7-2000 and she has concealed the facts regarding her reversion and has obtained the interim order dated 27-7-2000 wrongly. In reply to this, in the rejoinder, the applicant has denied any concealment of material facts. According to her, she has continued in the said post till "today" and the order of reversion had never been given effect to by the respondents. Shri K.K.Patel, learned counsel has further submitted at the Bar today that the applicant has in fact, been continued to be paid in the scale of

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Rs. 4000-6000/- as ad-hoc Stenographer. He has also referred to the letter dated 13-7-2000 issued by the respondents to the higher authorities that the applicant has been continued as an ad hoc Stenographer with them. A copy of this letter has been submitted by Shri K.K.Patel, learned counsel, which is placed on record. He has also submitted a copy of the same letter dated 13-7-2000 to the learned counsel for the respondents. It is also relevant to note that MA 2749/2000 filed by the respondents on 31-10-2000 for vacation of the interim order dated 27-7-2000 has been rejected by the Tribunal's order dated 8-11-2000. Therefore, in the facts and circumstances of the case, we find that the applicant has been allowed to continue as Stenographer on ad-hoc basis on the basis of the respondents' own orders, which have been subsequently continued by them, in spite of the intervening reversion order dated 11-7-2000, and thereafter continued by virtue of the Tribunal's interim order dated 27-7-2000. In the letter dated 13-7-2000, which is two days after the order of reversion of the applicant dated 11-7-2000, the respondents themselves have stated that most of the correspondence is being done in English only, and Shri Naresh Kumar, Hindi knowing Stenographer has been returned, to post him at another station. They have further stated that "in absence of English Stenographer, the work of this shed (office of the Sr. DEE/TRS/TKD) is not possible". Considering these relevant facts, the respondents do not appear to have given effect to their earlier order dated 11-7-2000 and we also note the submissions of Shri K.K.Patel, learned counsel, that the applicant has been continued

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to be paid as Stenographer in the scale of Rs.4000-6000/-, which post she held on ad-hoc basis at the relevant time. In the particular facts and circumstances, we are unable to agree with the vehement contentions of the learned counsel for the respondents that there has been any deliberate concealment of the material facts by the applicant at the relevant time when the interim order dated 27-7-2000 was issued.

13. In the result, following the discussions above, the OA is allowed and disposed of with the following directions :-

1. Respondents 2 & 3 are directed to further consider the applicant, under the 25 % quota for General Selection from serving group 'C' employees knowing Shorthand as provided in the Railway Board Circular - RBE No.273/98, as and when such a vacancy arises, in accordance with the relevant Rules and Instructions. No order as to costs.


(Govindan S. Tampi)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

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