

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1706/2000
with
O.A.No.1658/2000

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 24th day of July, 2001

O.A.No.1706/2000:

Mrs. Anuradha Ganesh
aged about 31 years
w/o Shri V.Ganesh
R/o 65/38, New Rohtak road
New Delhi - 5. Applicant

(By Advocate: Shri Surinder Singh)

Vs.

Union of India through

1. Secretary
Department of Personnel & Training
Ministry of Personnel
New Delhi.
2. Chairman
UPSC
Dholpur House
New Delhi. Respondents

(By Advocate: Shri Rajinder Nischal)

with

O.A.No.1658/2000:

1. Amarjit Singh
s/o Shri Harbinder Singh
r/o B-2B-31, Janak Puri
New Delhi - 110 058.
2. Ravindran Nair
s/o Shri P.R.Nair
r/o C-60/1, 3rd Floor
Arjun Nagar
Safdarjung Enclave
New Delhi - 110 029.
3. Kamal Gandhi
s/o Shri L.K.Gandhi
r/o S-14, DDA MIG Flats
Prasad Nagar
New Delhi - 110 015.
4. Surinder Kumar Sharma
s/o Shri Rajinder Kumar Sharma
r/o 636, Block No.2
Baba Kharak Singh Marg
New Delhi - 110 001.

5. Sanjay Kumar
s/o Shri Kishan Chand
r/o 49/5, Ashok Nagar
New Delhi - 110 016. ... Applicants
(By Advocate: Shri Surinder Singh) Vs.
Union of India through

1. Secretary
Department of Personnel & Training
Ministry of Personnel
New Delhi.

2. Chairman
UPSC
Dholpur House
New Delhi. ... Respondents
(By Advocate: Shri Rajinder Nischal)

O R D E R

By Mr. Shanker Raju, Member (J):

As the issue involved in both the OAs is identical, we proceed to dispose of them by this common order.

2. We have heard the arguments of the learned counsel on either side and perused the material on record.

3. M.A.No.2060/2000 for joining together in OA is allowed.

4. Briefly, stated that the applicants in these OAs had been appointed as Stenographer Grade 'C' in the Central Secretariat Stenographers Service Cadre (in short CSSS cadre). The Limited Departmental Examination for Stenographers Gr. 'C' were held in the month of December, 1995. The applicants appeared in the same examination and qualified. Accordingly, they were granted approved service w.e.f. 1.7.1995 as per the amended Rules. The respondents have issued a notification for Section Officers/Stenographers (Grade

'B'/Grade I) Limited Departmental Examination, 2000 where the following eligibility criteria was laid down.

"a. Not less than 5 years approved and continuous service in the Assistant Grade of the Central Secretariat Service or in the Grade II/Grade C of the Central Secretariat Stenographers Service or in both as the case may be.

b. Provided that in the case of a candidate who had been appointed to the Grades mentioned in Column above on the result of a competitive examination, including a Limited Departmental Competitive Examination, such an Examination should have been held not less than 5 years before the crucial date and he should have rendered not less than 4 years approved and continuous service in that Grade."

5. The applicants under this criteria have not been found eligible to appear in the examination as the Limited Departmental Competitive Examination on the basis of which they had been appointed as Stenographer Gr. 'C' which has been held in December, 1995 and has not been held before five years of crucial date, i.e., 1st July, 2000. The applicant made representation for relaxation in the aforesaid criteria on the lines of order passed by the Department of Personnel & Training dated 20.4.2000 which pertains to Direct Recruit Assistants examination for the recruitment years 1988, 1989 and 1990, held belatedly by the Staff Selection Commission. But before any decision on their representation the applicants have assailed their grievance before the Court whereby they have prayed for provisional participation in the examination. The Court by its order dated 25.10.2000 on a purely provisional measure, directed the respondents to issue admission card to the applicants and to permit them to appear in the LDC Examination, 2000 and keep their results in sealed cover.

6. The learned counsel for the applicants has contended that they have meted out a differential treatment and have been arbitrarily discriminated in violation of Articles 14 and 16 of the Constitution of India as the DoPT vide their order dated 20.4.2000 has given one time relaxation by reckoning the approved service from 1st July of the year in which the examination was held to Direct Recruit Assistants belonging to recruitment years 1988, 1989 and 1990. In this conspectus, it is stated that DoPT vide OM dated 22.6.2000 has already agreed to amend the crucial date wherein it is mentioned that such an examination on the results of which these candidates have been appointed should have been held not less than five years before the crucial date, i.e., the date on which LDC Examination for Section Officer/Gr. 'B' Stenographer is held. But subsequently, the same was amended vide OM dated 7.8.2000. The grievance of the applicants is that their approved service is to be reckoned w.e.f. 1st July of the year of examination and it is none of the fault of the applicants that the examination which was to be usually held before 1st July of the year has been delayed to December, 1995 depriving the applicant of their legitimate right. The applicants have also contended that as the DoPT in consultation with UPSC has already agreed to the anomaly in continues service from the date of examination is varied on account of administrative reasons as such the incumbent should not be deprived of their civil right as to meet the anomaly the period is to be reckoned from 1st July of the year of the examination. As a welfare measure, the same has been

✓ -

proposed but later on not implemented and rather by issuing the subsequent OM the applicant has not been accorded the relaxation which has already been granted to similarly situated persons as such equals have been treated as unequally. (A)

7. Whereas strongly rebutting the contentions of the applicants the respondents in their reply took preliminary objection that the administrative ministries under whom the applicants have been working as Stenographer Gr. 'C' which maintained the service records of the applicants, having not been impleaded as respondents being the necessary party which has resulted in non-evaluation of their service particulars. As regards the relaxation is concerned, it is stated that the same cannot be claimed as a vested right and the policy decision of the Government cannot be interfered with unless the same is arbitrary or based on extraneous considerations. As regards the merits of the case, it has been contended that the eligibility criteria laid down in the rules for combined LDC Examination for the year 2000 notified on 8.7.2000 the applicants were not found eligible as the examination on the basis of which they had been appointed as Stenographer Gr. 'C' has been held in December, 1995 and as the same does not fall within five years before the crucial date of 1st July, 2000, the respondents have denied any discrimination. As by referring to order passed on 20.4.2000, it is stated that the applicants are neither equally nor identically placed with the incumbents therein as in their cases the relaxation was one time on the basis that examinations have been inordinately delayed for almost two years, but in the instant case the LDC

Examination, 1995 on which the applicants were appointed as Stenographer Gr. 'C' were held in the same year. Apart from it in the case of Direct Recruit Assistants approved service on account of operation of the rules has deprived them of their right as their actual service has not been reckoned. While rebutting their claims on length of approved service which is not the case of the applicants as their approved service has been rightly reckoned under the Rules. In this back ground it is stated that as the applicants are not similarly situated and equally placed, treating them unequally would not be an infringement of Articles 14 and 16 of the Constitution of India. It is also stated that the examination Rules for LDCE are identical as of LDC Examination for applicants as Section Officers and Stenographers Gr. 'B' are identical for the previous years but the applicants have not agitated the same earlier.

8. Regarding OM dated 22.6.2000 read with OM dated 7.8.2000, it is stated that the same have dealt with the question whether the question of crucial date of Assistant grade examination for the year 1994 onwards held in two phases, i.e., preliminary and main examination could be with reference to the preliminary examination or main examination but the applicants have no such grievance and as such there has not been an illegality to declare them as ineligible as they did not confirm to the eligibility criteria laid down under the rules. According to the respondents the eligibility condition of four years approved service is to be reckoned from 1st July, 2000 of the year of

examination is absolutely different from the other conditions and eligibility of holding of examination five years before the crucial date.

(b)

9. The applicants have filed their rejoinder reiterating the contentions taken in their OA. It is stated that delay in holding the examination in December, 1995, where as the same should have been held before 1st July, 1995 and this delay had been on account of an administrative lapse and for which the applicants should not have been made to suffer. The applicants have further stated that they have assailed the action of the respondents of modifying the DoPT letter of June, 2000 and seek the benefit which had been accorded to the earlier batches of 1988, 1989 and 1990.

10. We have carefully considered the rival contentions of the parties and perused the material on record. At the outset, we find that the applicants have not assailed or challenged the notification issued by DoPT of 7.8.2000 whereby the crucial date has been treated as 1st July of the year of the LDC Examination for Section Officers/Stenographers Gr. 'B' in absence of any challenge to the same and relief prayed to this regard there cannot be a valid challenge to the OM dated 7.8.2000 and as this has been done in the administrative exigencies. In absence of any challenge to it the same cannot be gone into by this Court.

11. The resort of the learned counsel of the applicants to claim benefit of OM dated 20.4.2000 where the approved service has been reckoned from 1st July of the year in which the examinations were held

to the incumbents of recruitment years of 1988, 1989 and 1990 and further resort to alleged hostile discrimination is not legally founded. In order to establish the discrimination the paramount consideration is that the equals have been treated unequally. What we find from the order of DoPT dated 20.4.2000 is that the same has been accorded to the incumbents of recruitment years of 1988, 1989 and 1990 is an one time relaxation that too on the ground that the Staff Selection Commission has inordinately delayed due to administrative reasons the examinations held in their case were beyond two years. In this conspectus the hardship highlighted and in consultation with UPSC the definition of 'approved service' has been relaxed. The applicants in the present case are appointed against vacancies of 1995 for which the examination was held in 1995 itself and as such it cannot be observed that on account of administrative lapses there was inordinate delay in holding the examinations. As such the relaxation which had been accorded to the batches of 1988, 1989 and 1990 cannot be extended to the applicants as they are not similarly circumstanced and equally placed with incumbents of these recruitment years. As such in our view, when the applicants are not at par with the incumbents of those recruitment years there cannot have any valid claim or vested right to be accorded the same benefit which was only a one time relaxation. In our considered view the applicants have failed to establish the case of hostile discrimination and as such the action of the respondents disallowing them to participate in the examination due to their ineligibility of not confirming to the eligibility

criteria laid down under the statutory rules would not amount to a discrimination under Articles 14 and 16 of the Constitution of India.

12. We also find that the order dated 20.4.2000 cannot have an universal application as it was issued in relation to group of officers in some specific circumstances. Even otherwise the relaxation cannot be claimed as a right and the policy decision of the Government based on ineligible criteria cannot be found fault with and more particularly when no challenge has been put to the same and the fact that relaxation was accorded to a group of direct recruit Assistants under the peculiar circumstances which are wanting in the present case. As regards the condition of eligibility of four years approved service to be reckoned from 1st July of the year of examination is absolutely different and is independent of other eligibility conditions, i.e., holding of competent examination on which the applicants were appointed as an Assistants or Stenographers 'Gr. 'C' should have been held five years service before the crucial date, i.e., 1.7.2000. As regards the resort to the letter issued by the DoPT dated 22.6.2000, the same would not have application to the case of the applicants and is not at all relevant. Therein the issue was regarding treatment of requisite period of five years referred to under the rules either from the date of preliminary or final examination and it has been decided that the date of examination for reckoning the relevant period is from the date of main examination. As such the OM dated 7.8.2000 has modified the crucial date for determining the eligibility which cannot be found fault with.

13. As regards the contention of the applicants that once the DoPT in consultation with UPSC has agreed that there is an anomaly in continues service from the date of examination and to mitigate the same the crucial date has been reckoned from 1st July of the year in which the examination were held will not be any held to the applicants as this was done in the peculiar circumstances keeping in view of the delay in holding the examination for certain recruitment years and is only a one time relaxation, the applicants cannot claim the same treatment as a vested right as there has not been any delay in their cases for holding the examination.

14. In this view of the matter and having regard to the reasons recorded and discussion made, we find no infirmity in the order where the applicants have failed to fulfil the eligibility criteria as laid down for the examination and as such the respondents' action of not permitting them to appear in the examination is perfectly legal and cannot be found fault with. In the result, we find no merit in the OA, the same is accordingly dismissed. The interim orders already passed on 25.10.2000 are vacated. The applicants participation in the examination as provisional measure would not confer them any legal right for further benefits. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

/rao/

(GOVINDAN S. TAMBI
MEMBER(A)