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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 2520/2000

New Delhi this 15th day of March 2001.

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

Mrs. M. Sitalakshmi,
W/o Sh. Mahaklingam,
Junior Stenographer,
Office of the Regional Director (North),
Government of India Tourist Office,
88 Janpath, New Delhi -110001.

.....Applicant.

(By: Shri M.K. Gupta, Advocate)

Versus

1. Union of India through its Secretary,
Department of Tourism,
Transport Bhawan, New Delhi.
2. The Director General (Tourism)
Department of Tourism,
Transport Bhawan, New Delhi.
3. The Regional Director (North),
Government of India Tourist Office,
88 Janpath, New Delhi

.....Respondents.

(By: Shri R.N. Singh, proxy counsel for
Shri R.V. Sinha, Advocate)

O R D E R (ORAL)

By: Shri Govindan S. Tampi, Member (A):

The main relief sought for by the applicant in this OA is to treat her as a regularly appointed Junior Stenographer w.e.f. 10.9.97, entitled to all the benefits flowing therefrom.

2. The applicant joined as a direct recruit LDC on 9.6.92 in the office of Regional Director (North), Government of India Tourist Office, New Delhi, Respondent No.3. In terms of Circular 28.5.96 issued by the respondents, all eligible LDCs in the Northern Region were invited to participate in the departmental test for

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filling up a clear vacancy of Jr. Stenographer, to be held on 6.11.1996. According to the relevant Recruitment Rules qualification for the post was shown as "Matriculation or equivalent with a minimum speed of 100/80 words per minute in English Shorthand and 40 words per minute in English Typing". Working knowledge of Hindi Shorthand /typing was indicated as desirable. On the basis of test conducted on 6.11.1996, the applicant was selected and by order dated 10.9.97 Annexure R-6 she was promoted as Junior Stenographer but purely on ad hoc basis along with another LDC who was promoted as UDC. The relevant vacancies caused in the grade of the LDC ^{by the above promotion, were} ~~was~~ also filled by promoting a Daftary and a Peon. The applicant's promotion and posting as Jr. Stenographer were challenged in OA No.2269/1997 by Govt. of India Tourist Office Staff Welfare Association & Ms. Nirmal Kanta, a Scheduled Caste applicant which was dismissed by the Tribunal on 26.5.1998 holding that no materials had been furnished by the Association or by the applicant No.2 to show that the post was meant for SC candidates. The Tribunal also observed that the Recruitment Rules also showed that this was not a case of promotion on the basis of seniority-cum-fitness but one ordered through competitive examination. CWP 2529/2000 filed against the above decision of the Tribunal has been dismissed by the Delhi High Court. The applicant has still continued to be on ad-hoc arrangement with technical breaks in between. Hence this application.

3. Heard the counsel for the applicant and the respondents. Shri M.K. Gupta, learned counsel for applicant indicates that as the applicant was recruited

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against the clear vacancy of Junior Stenographer and through a regular selection process which was conducted in pursuance of the Recruitment Rules, there is no reason why the applicant should have been continued only as on ad-hoc Jr. Stenographer and not regularised with the grant of benefits arriving therefrom. All the more was it necessary as her selection was upheld by the Tribunal and the Hon'ble Delhi High Court. The counsel also says that the applicant's case was clearly covered by the decision of the Hon'ble Supreme Court reported at 1993 (3) SCC 371 and at 2000 (1) SCC 637 (Ramesh Kumar Sharma Vs. Govt. of Rajasthan), in terms of which the appointees who were posted against clear and regular vacancies, though a selection process, in terms with the Recruitment Rules should on regularisation, get the benefit including the period of ad-hoc service. The applicant's case should therefore, succeed, is Shri Gupta's plea.

4. Shri R.N. Singh, learned proxy counsel for the respondents agrees that the applicant was initially selected through a test and appointed on 10.9.1997 as Jr. Stenographer, but the appointment was only on ad-hoc basis. He also fairly concedes that the said selection was challenged by the Staff Welfare Association and a Scheduled Caste candidate before the Tribunal but the challenge did not succeed. The fact, however remains that what was upheld was the ad-hoc selection and appointment. The same did not give any right to the applicant to claim regularisation from the date of her ad-hoc appointment. According to him, the present applicant had not challenged the ad-hoc nature of her

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application earlier and if at all she was aggrieved, she should have raised the issue before the Tribunal when the issue was before it in the earlier application. Not having done so, she cannot make an issue of it now. Further, the respondents had designated the vacancy which she was originally selected for as a vacancy meant for S.C. category, on the advice of Deptt. of Personnel and National Commission for Scheduled Castes/Scheduled Tribes. However, another vacancy has been created in the grade of Jr. Stenographer and the applicant has been regularised by the respondents w.e.f. 13.3.2001. She should therefore, have no complaint, is the argument by Shri. Singh.

5. According to Shri M.K. Gupta, the latest order dated 14.3.2001, conferring regular status on the applicant w.e.f. 13.3.2000, does not answer his plea as what he seeks is the regularisation of the applicant from 10.9.1997, when she was promoted against a clear vacancy, after a test but given the ad-hoc status.

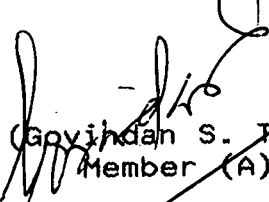
6. We have carefully considered the rival pleas canvassed by the learned counsel. It is not disputed that the applicant was selected for promotion to the post of Jr. Stenographer on the basis of a regularly conducted test, in accordance with the Recruitment Rules and against a clear vacancy, though the order termed the promotion as ad-hoc in nature. It is also not in dispute that the challenge against, the said order of promotion was negatived by the Tribunal, which decision has been endorsed by the Hon'ble Delhi High Court. The said selection has achieved finality that being the case, it

cannot be amended or modified on a subsequent date by the advice of either by the Deptt. of Personnel and Training or the National Commission for Scheduled Castes and Scheduled Tribes, neither of which has any powers of judicial review. Even if a post of Jr. Stenographer has to be given to a candidate from SC/ST candidate, it has to be against a vacancy created subsequently and not by converting the clear vacancy, which existed at the time of the selection and promotion of the applicant in September, 1997. The applicant's claim to that vacancy has been given the seal and stamp of Tribunal and the Hon'ble Delhi High Court in May, 1998 & May, 2000 respectively. Nothing much ^{twmm} ~~twmm~~ on the respondents plea that the present applicant had not raised any challenge in the OA filed earlier, as she was the respondent whose selection/promotion was challenged by some other applicant, which was repelled by the Tribunal, and the nature of the appointment was not a matter of issue in that OA. It is clearly a matter of record that the applicant was selected against a clear vacancy, through a proper selection process, in accordance with the relevant Recruitment Rules and, therefore, she is correctly entitled for getting the benefit of regularisation from the date of her ad-hoc appointment as laid down by the Hon'ble Supreme Court in the decisions cited by the applicant. Respondents' action by their proceedings dated 14.3.2001, giving her the benefit of regularisation w.e.f. 13.3.2001, does not meet with legal requirement and calls for modification.

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7. In the above view of the matter, the application succeeds and is accordingly allowed. The respondents are directed to accord promotion as Jr. Stenographer on regular basis to the applicant w.e.f. 10.9.1997, with consequential benefits flowing therefrom. This shall be done within two months from the receipt of this order.

No Costs.


(Govindan S. Tampi)
Member (A)


(Ashok Agarwal)
Chairman

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