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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.2132/89

New Delhi this the 25th Day of November, 1994.

HON'BLE MR JUSTICE S.K. DHAON, VICE CHAIRMAN (J)
HON'BLE MR B.K. SINGH, MEMBER (A)

Shri B.L. Vaid,
S/o Late Shri A.N. Vaid,
Stenographer Grade 'D'
Department of Industrial Development
C.I. Desk, Udyog Bhavan,
NEW DELHI-11.

C/o Shri K.L. Bhatia, Advocate
J-825, Mandi Marg,
New Delhi

....Applicant

(By Advocate : Shri Ashish Kalia

VERSUS

Union of India, through

1. The Secretary,
Ministry of Industry ;
(Deptt of Industrial Development)
Udyog Bhavan,
NEW DELHI.

2. The Secretary,
Deptt. of Personnel & Training,
Nirvachan Bhavan,
NEW DELHI-110 001.Respondents

(By Advocate : Shri Madhav Panikar)

JUDGEMENT

Mr B.K. Singh, Member, (A)

The admitted facts of the case are that the applicant joined the Ministry of Industry in the Directorate General of Technical Development as Lower Division Clerk on 6.08.1956. He belonged to Central Secretariat Clerical Service right from the date of his initial appointment. He did not belong to the feeder grade for promotion to the post of Stenographer Grade 'D' of the Central Secretariat Stenographers Service. From the post

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of L.D.C. he was promoted as U.D.C. with effect from 19.5.1977 as his lien was in the Central Secretariat Clerical Service. He declined the promotion given to him in his Cadre. Meanwhile he appeared in the Limited Departmental Competitive Examination held for appointment to the post of Stenographer Grade 'D' in October, 1982.

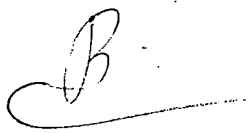
2. The appointments, confirmations, promotions etc of Stenographers working in the various Ministries/Departments of Central Secretariat Stenographers Service are regulated by the statutory rules i.e. Central Secretariat Stenographers Service Rules, 1969. The posts of L.D.Cs belong to the Central Secretariat Clerical Service (CSSS), and do not constitute a Feeder Grade for promotion to the post of Stenographer Grade 'D' of the Central Secretariat Stenographers Service, and as such there can be ^{no} promotion from the Central Secretariat Clerical Service to Central Secretariat Stenographers Service, as per rules of 1969. If one wants his advancement in his career prospects, the man belonging to the Central Secretariat Clerical Service can take up the Limited Departmental Competitive Examination for the post of Stenographer Grade 'D' of the Central Secretariat and if he qualifies and succeeds, he will be appointed as a member of that cadre. His length of service as L.D.C. will be material only for his promotion in Central Secretariat Clerical Service and has no relevance at all for Central Secretariat Stenographers Service, since there is no possibility of inter-change between the two cadres as per Rules of 1969. The applicant

declined his promotion as U.D.C. and on account of shortage of Stenographers in Industry Ministry, Commissioner (Handicrafts) in the Ministry of Industry, appointed him as Stenographer, purely on temporary and adhoc basis and since he had his lien in CSCS, he was promoted on 19.05.77, but he declined the promotion. It is admitted that he appeared in the Stenographer's Limited Departmental Competitive Examination held by the Staff Selection Commission in October, 1982 and qualified. He was accordingly nominated for appointment as Stenographer Grade 'D' on regular basis in the CSSS cadre of the Department of Power. These are the material averments for deciding the case in issue.

3. The applicant has sought the following reliefs :-

(i) That the impugned O.M.No.5/7/88-CS.II dated 22.5.89 issued by the Respondent No.2 and O.M.No.A-12025(12)82-E.II dated 5.6.89 issued by the Respondent No.1, may be set-aside and the applicant may be allowed to continue to work in the Ministry of Industry (Deptt. of Ind. Dev.) as Steno Grade 'D' on a regular basis.

(ii) That the applicant may be deemed to have been appointed as Stenographer Grade 'D' (Grade 'D' of CSSS) w.e.f. 12.8.1970 by virtue of his continuous length of service in the Grade.



- (iii) That the seniority of the applicant may be reckoned and fixed with reference to the date of his initial appointment as Steno Grade 'D' i.e. 12.8.70.
- (iv) That the applicant may be given promotion to the higher post of Steno Grade 'C' from the date his juniors were promoted in 1977.
- (v) Such other relief as this Hon'ble Tribunal may deem just, fit and proper in the circumstances of the case along with costs.

4. A notice was issued to the respondents who filed their reply contesting the application and grant of reliefs prayed for. We heard the learned counsel Shri Ashish Kalia for the applicant and Shri Madhav Panikar for the respondents and perused the record of the case. A perusal of the record clearly shows that the material averments are the same in the O.A. and in the counter reply. Firstly, the applicant was promoted as U.D.C. on 19.5.77 but he declined to accept the same in his feeder cadre, where he held his lien. When he was nominated to power department, the applicant was unwilling to go to another Cadre and he preferred to work as Stenographer grade 'D' on adhoc basis in the Directorate General of Technical Development. On a representation submitted by the applicant in September, 1986 for his regular appointment as Stenographer Grade 'D' in the CSSS cadre of the Ministry on the basis of the result of the Stenographers' Limited Depart-

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mental Competitive Examination held in October, 1982, in which he qualified, the matter was taken up with the department of Personnel and Training but his request was rejected since the same was not covered under the relevant rules. He again submitted his representation for his retention in the Ministry of Industry, and his last representation dated 9.6.89 was again considered carefully in consultation with the Department of personnel and Training and he was conveyed the decision on 16.10.89. The Orders were also issued relieving the applicant of his duties from the department with effect from 16.10.89. Aggrieved by this Order he filed this O.A. on 20.10.89. An interim order was passed on 13.2.90 by a Division Bench, directing therein as follows :-

"So long as the vacancy in the post of ad-hoc stenographer is available in the Department of Industrial Development and so long as his juniors are working in that post, we direct that he may be accommodated in one of those vacancies. In case there is no such vacancy, the applicant will have to work in his substantive post of LDC."

5. The question of seniority of a person is reckoned from the date he becomes a member of the service. The applicant is not a Member of the CSSS Grade 'D' so the question of fixing his seniority does not arise. He still continues to be a member of the Central Secretariat Clerical Service. The Hon'ble Supreme Court in the case of Ashok Gulati Vs B.S. Jain has observed "according to the accepted canons of service jurisprudence

seniority of a person appointed must be reckoned from the date he or she becomes the member of the service. The date from which seniority is to be reckoned may be laid down by rules or instructions :-

- (a) On the basis of the date of appointment.
- (b) On the basis of confirmation.
- (c) On the basis of regularisation of service.
- (d) On the basis of length i.e. or on any other reasonable basis.

It is well settled that an adhoc fortituous appointment on a temporary or adhoc basis cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold the post on a regular basis, as such temporary tenure hardly counts for seniority in any system of service jurisprudence" AIR 1987 S.C. 424. In Judgement Today 1992 (2) S.C.491 Union of India Vs S.K. Sharma, it was observed by the Hon'ble Supreme Court that seniority will be counted from the date of regular selection to a post in a cadre. Even in the case of the Direct Recruits Vs State of Maharashtra, J.T. 1990 (2) S.C.64, it was held it is only when a person is appointed to a post according to rules that his seniority has to be counted from the date of his appointment. If an appointment is de hors the rules whatever be the length of service will not count for purposes of seniority. The applicant was appointed to the post of CSSS Grade 'D' by an incompetent authority i.e. the department of Industrial Development was not competent to make such an

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appointment to the C.S.S.S. Grade 'D'. The competent Ministry is the Department of Personnel & Training, Ministry of Public Grievances and Pensions and the selection through direct recruitment for the purpose of appointment to CSSS Grade 'D' is made by Staff Selection Commission ^{& Limited Departmental Competitive Examination} is also conducted by them and it is an agency functioning under the department of Personnel and Training. The recommendations are submitted in case of both, direct recruits and all those qualifying in the Limited Departmental Competitive Examination to the Department of Personnel and Training who nominate Officers to the various Ministries/Departments. The applicant succeeded on the basis of Limited Departmental Competitive Examination in October, 1982 but he declined the nomination made to the Power Department, and as such his utilisation as Stenographer by the Department of Industrial Development is de hors the rules and he cannot derive any advantage of his continuous officiation in that post. His induction to Central Secretariat Stenographer Service will be effective from the date he joins as its member on the basis of the results of the regularly held Limited Departmental Competitive Examination for the same, and all those who have joined earlier than him, will rank senior to him and since they are not before us, we cannot unsettle the settled matter in a Cadre to which he does not belong.


6. Thus on merits the application fails and is dismissed as such leaving the parties to bear their own costs.

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7. While parting we would, however, like to observe that it will be ^a tragedy if he reverts to the grade of L.D.C. as is contained in the 2nd part of the interim order. As regards the first portion of the interim order, notwithstanding, the dismissal of application on merits the respondents may consider the question of his retention as stenographer in the Ministry/Department where he is working if a vacancy exists. at present/ The question of seniority may be determined as per extant rules by the Ministry/ Departments concerned.


(B.K. SINGH)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN (J)

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