CAT/1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(63)

O.A. No. 276/89 199

T.A. No.

DATE OF DECISION 24.3.98

Sh.S.K.Gupta, President, Armed Forces Headquarters Stenographer's Assn. and ~~another~~ ~~Sh.G.S.Sodhi President of AFHSAssn.~~ — Petitioner

— Advocate for the Petitioner(s)

Versus

Union of India through Secy. ~~M/O Defence &Ors.~~ — Respondent

Shri P.H.Ramchandani — Advocate for the Respondent

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member(J)

The Hon'ble Shri K.Muthukumar, Member(A)

1. To be referred to the Reporter or not? No

2. Whether it needs to be circulated to other Benches of the Tribunal? Yes

(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

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O.A. 276/89

New Delhi this the 24th day of March,1998.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

1. Shri S.K. Gupta,
President,
Armed Forces Headquarters Stenographers'
Association, 185-C, South Block,
New Delhi.

2. Shri Raghbir Singh,
General Secretary,
Armed Forces Headquarters Stenographers,
Association, 2 DRDO Complex,
Kashmir House,
Rajaji Marg,
New Delhi. ... Applicants.

By Shri G.S. Sodhi, President of the Armed Forces Headquarters Stenographers' Association.

Versus

1. Union of India through
Secretary, Ministry of Defence,
South Block, DHQ PO,
New Delhi.

2. The Secretary,
Ministry of Personnel, Pensions and
Public Grievances,
(Department of Personnel & Training)
North Block, New Delhi.

3. The Chief Administrative Officer &
Joint Secretary (Administration),
Ministry of Defence,
Room No. 222, C-II Hutments,
DHQ PO, New Delhi. ... Respondents.

By Advocate Shri P.H. Ramchandani, Sr. Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants have filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking a number of reliefs as set out in Para 8. The subject, in brief, against which their grievances are the non-amendment of the AFHQ Stenographers' Service Rules, 1968

(hereinafter referred to as 'the AFHQ Rules, 1968) for incorporation of the provisions relating to the combined seniority list for promotion to Civilian Staff Officers (CSO) Grade, updating the quota for Stenographers in the grade of CSO and introduction of Limited Departmental Competitive Examination (LDCE) in the grade of Assistant Civilian Staff Officer (ACSO).

2. The brief facts of the case are that the applicants are the President and General Secretary respectively of the Armed Forces Headquarters Stenographers' Association (hereinafter referred to as 'the Association') which represents the Stenographers in all grades, namely, Grades'A','B','C' and 'D'. They have stated that there are about 1330 stenographers working in all the three services and other attached offices. They have submitted that till 1941 there was no separate cadre of Stenographers in AFHQ. In 1947, the Central Secretariat Stenographers' Service (CSSS) was constituted in which the stenographers of AFHQ were also included under the Ministry of Home Affairs. However, in 1951, the AFHQ authorities decided not to participate in the Central Secretariat Reorganisation Scheme and they were excluded. According to the applicants, from the beginning itself the Government of India had intended that Stenographers in AFHQ should be treated at par with those serving in CSSS, including giving them promotional and other service benefits.

3. Shri Sodhi for the applicants has laid much stress on the explanatory Memorandum to the AFHQ Stenographers' Service Rules, 1970 (SRO 10). In this memo, it is stated that the AFHQ Stenographers' Service was

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constituted w.e.f. 1.3.1968 on the lines of the CSSS vide AFHQ Stenographers' Service Rules, 1968, which were formulated mutatis mutandis on the lines of the CSSS Rules, 1962. From 1.8.1969, the CSSS had been reorganised vide the CSSS Rules, 1969 which superseded the 1962 Rules. On the analogy of the CSSS Rules, 1969, and in pursuance of the orders of the Ministry of Defence letter dated 2.7.1970 retrospective effect was given to the AFHQ Stenographers' Service Rules, 1970 which superseded the AFHQ Rules of 1968.

4. The CSSS Rules, 1962, as amended in 1969 provided for preparation of a combined seniority roster of Section Officers and Stenographers Grade-I, for promotion to the post of Under Secretary, wthout any specific quota for any category. Their grievance is that no such provision was made in the AFHQ Rules. They have also submitted that in the CSSS Rules, 50% of the temporary vacancies in Section Officers' Grade are filled by promotion on non-selection basis and 50% on the basis of the results of the LDCE in which Stengraphers Grade 'C' were also eligible to appear along with the Assistants. Against this, in AFHQ, all temporary vacancies in ACSO grade were filled by promotion of Assistants on selection basis. By the AFHQ Rules, a provision was added to give every 25th vacancy to Stenopgraphers Grade-I for promotion to the grade of ACSO, which was changed to give every 25th vacancy to CSO Grade w.e.f. 12.6.1976. They have submitted that this change has been done unilaterly and arbitrarily. The main thrust of their arguments was that although the AFHQ Stenographers Service was based on the pattern of the CSSS on mutatis mutandis basis, regarding promotional avenues and service conditions much injustice has been done to them, e.g. not

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extending the provisions of combined seniority list of Stenographers Grade-I in ACSO for promotion to the grade of CSO and not introducing LDCE in the grade of ACSO, which post is equivalent to Section Officer. Hence this O.A.

5. Before dealing with the merits of the case, Shri G.S.Sodhi, who has been authorised by the Association to contest this case as a successor to the previous President, has raised certain preliminary objections. He has very vehemently submitted that neither Respondents 1 and 2 have filed the replies nor Shri P.H. Ramchandani, learned Counsel, has filed authorisation to represent them in accordance with the Civil Procedure Code, so he should not be heard. He submits that Shri Ramchandani, continues to argue the case at the behest of Respondent 3 only, who has not been authorised to represent other Respondents, and who is opposed to their interests. They have submitted that the affidavits filed by S/Shri J.S. Joshi, P. Anantha Krishnan and R. Natrajan, on behalf of the respondents are not in order as they have not been duly authorised in accordance with the provisions of the CPC; and these as well as the submissions of Shri P.H. Ramchandani, learned counsel on their behalf, should not be taken into consideration. He has also very vehemently stated that they have written several letters to inform Respondents 1 and 2 about these people misrepresenting them before the Tribunal, and petitions before the competent criminal court to take cognisance of their criminal actions of forgery, filing false affidavits, etc. However, even on specific queries, he has failed to produce any order from any Court to restrain us from hearing this case and accordingly we proceed to do so.

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6. This case was heard at great length. As Shri G.S. Sodhi was arguing in person he was shown much indulgence, although we found at times that his arguments were repetitive, and the cases relied upon (including those in the list filed on 4.3.1998, placed on record) were distinguishable on the facts as he chose to rely, for example, on a single sentence of the judgment taken out of context. We also notice that he had repeatedly filed a number of MAs emphasing that the respondents' replies and Shri Ramchandani's submissions should be ignored. MP 2385/91 filed by the applicants, after hearing both the parties, was disposed of by the Tribunal by order dated 19.9.1997. In this order, the Tribunal, inter alia, had come to the conclusion that the written statement which has been duly verified by Shri P. Anantha Krishnan, Deputy CAO, in the office of Respondent 3, is in order, and Shri Ramchandani has also been duly authorised and applicants' contentions to be contrary were rejected. Review Application against this order was also rejected on 6.11.1997. During hearing, it was mentioned that on appeal filed by the applicants, the Delhi High Court has declined to interfere with the order.

7. The respondents had also raised the plea of res judicata. Accordingly, in pursuance of the Tribunal's order dated 10.10.1997, the respondents filed MA 2589/97 to bring on record the earlier O.A. 158/89 filed by the applicants which was dismissed by order dated 10.3.1989. R.A. 40/89 was also rejected by order dated 1.6.1989. The applicants have drawn attention to their reply to MA 2589/97 in which they have submitted that Shri Ramchandani cannot

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plead in this case, exemplary costs should be granted to them, order inquiry under Section 340 Cr.P.C. as prayed for earlier by them in counter affidavit of 1.8.1997, to dispose of the O.A. and the M.Ps 501/96 and 1136/97 ex parte and that Shri Laroiya, SAO and O/O of the J.S. (Trg.) & CAO, Ministry of Defence, New Delhi who had filed the MA should be asked to file his authority.

8. In order to deal with the above contentions we have again heard the parties. Shri P.H. Ramchandani has submitted that under Section 23 of the Administrative Tribunals Act, 1985, the Central Government is empowered to authorise one or more legal practitioners or any of its officers to act as Presenting Officers, and every person so authorised by it may present its case with respect to any application before the Tribunal. He has submitted that having regard to the provisions of Section 23 of the Administrative Tribunals Act,1985, the provisions of CPC do not apply and the Tribunal is only to be guided by the provisions of the Act and Rules made thereunder to regulate its own procedure. He has submitted that under Section 23 of the Act read with Chapter XII, Rule 6(2) of the CAT (Rules of Practice), 1993, he is a legal practitioner having been duly authorised by the Central Government, he has filed his Memo of Appearance in the prescribed form and there is, therefore, no bar to his appearing in this case on behalf of the respondents. In this regard, he has again shown us the Memo of Appearance he has filed in the Tribunal together with the copy of the DOP&T O.M dated 13.7.1988 appointing him as an Advocate to present cases on behalf of the Central Government before various Benches of the Tribunal (copies placed on record). He has also submitted that before 1993, no Memo of

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appearance was being filed as it was not required under the CAT Rules, but he has regularly been appearing before the Tribunal from 1985, on behalf of the Central Government and no such objection whatsoever has been raised except in this case. Having regard to Tribunal's order dated 19.9.1997 and aforesaid provisions of the Tribunal's Act and Rules, we reiterate that Shri P.H. Ramchandani, learned Counsel, who is in the list of Advocates appointed by the DOP&T O.M. dated 13.7.1988 and has also filed his Memo of Appearance in the background of the Tribunal's order dated 21.1.1992, has been duly authorised by the respondents to present their case. The applicants' contentions to the contrary are baseless and hence rejected.

9. Shri Ramchandani, learned counsel, has submitted that the counter affidavit filed by Shri P. Anant Krishnan on 24.7.1989 has been referred in the affidavit of 14.2.1997 filed by Shri R. Natrajan, SAO. In this, it has been stated that the copy of the O.A and counter reply dated 27.4.1989 was submited on 7.2.1997 to the Additional Secretary (A) in the Ministry of Defence and the counter reply had been ratified and approved for adoption by Respondent No.1. It has also been stated that the same reply was submitted to JS (Trg) and CAO on 13.2.1997 and has been ratified on behalf of CAO and JS (Administration) - Respondent 3 and, therefore, the counter reply dated 24.7.1989 to this application stands adopted as reply on behalf of all the respondents. These facts have also been noticed in the order dated 19.9.1997. In the circumstances, we reiterate the findings in that order. The applicants on the other hand have contended that the affidavits being invalid they cannot be approved or ratified as there can be

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no ratification of illegal acts. This argument is stated only to be rejected as it is clear from the documents and order referred to above that the counter affidavits filed on behalf of the respondents have been verified and signed by the duly authorised officers and are in the knowledge of respondents 1 and 2 and there is no infirmity on this ground. Therefore, the preliminary objections taken by the applicants that we should proceed with the case totally ignoring the replies filed by the respondents and submissions of their counsel are rejected as baseless and devoid of merit. We may also mention that when the arguments had been heard on 20.2.1998 and the case was fixed for conclusion of arguments on 27.2.1998, the applicants have again submitted that they have filed another MA with written arguments to protest against the appearance of Shri Ramchandani. For the reasons given above this MA along with the other petitions raising the same issues are all rejected. The actions of the applicants repeatedly filing Miscellaneous Applications on the same issue is totally uncalled for and an abuse of the process of law and against the public interest.

10. Regarding the principle of res judicata, we may refer to the Constitutional Bench decision of the Supreme Court in **Daryao Vs. State of U.P** (AIR 1961 SC 1457 at 1462) wherein their Lordships have held:

> "....Now, the rule of res judicata as indicated in S. 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive res judicta may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of

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litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32.

leading Duchess of Kingston's case, 2 Smith Lead Cas. 13th Ed. pp. 644, 645. Said Sir William B. Hale "from the variety of cases relative to judgements being given in evidence in civil suits, these two deductions seem to follow as generally true. First, that the judgement of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question in another court; Secondly, that the judgement of a court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same parties, coming incidentally in question in another court for a different purpose." As has been observed by Halsbury, "the doctrine of res judicta is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation" Halsbury's Laws of Enland. 3rd Ed. Vol. 15 Paragraph 357. p. 185. Halsbury also adds that the doctrine applies equally in all courts, and it is immaterial in what court the former proceeding was taken, provided only that it was a court of competent jurisdiction, or what form the proceeding took, provided it was really for the same cause" (p.187. paragraph 362). "Res Judicata", it is observed in Corpus Juris, "is a rule of universal law pervading every well regulated system of jurisprudence and is put upon two grounds, embodied in various maxims of the common law; the one public policy and necessity which makes it to the interest of the State that there should be an end to litigation-interest republicae ut sit finis litium; the other, the hardship on the individual that he should be vexed twice for the same cause-nemo debet bis vexari pro eaden causa", the recognised basis of the rule of res judicata is different from that of technical estoppel. "Estoppel rests on equitable principles and res judicata rests on maxims which are taken from the Roman Law", Ibid p. 745. Therefore, the argument that res judicata is a technical rule and as such is irrelevant in dealing with petitions under Art. 32 cannot be accepted".

(11)....Therefore, if a judgement has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right provided or that the contravention is justified by the Constitution

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itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgements pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law of justice on which the Constitution lays so much empahsis. As Halsbury has observed "subject to appeal and to being amended or set aside a judgement is conclusive as between the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences".

(Emphasis added)

11. On the above question, Shri Sodhi has submitted that the finding and reliefs claimed in O.A.158/89 and in this case are different and hence the principle of res judicta will not apply. We are unable to agree with this contention. O.A. 158/89 was also filed by the same Association against the respondents and was represented by S/Shri S.K. Gupta and Raghubir Singh. It is noticed that Shri S.K. Gupta, then President and Shri Raghubir Singh, General secretary of the Association had originally filed the present application while O.A. 158/89 was still pending. In the earlier application, the Tribunal had noted that the applicants had filed the application under Section 19 of the Administrative Tribunals Act praying that the AFHQ Rules, 1968 and all other actions taken in pursuance thereof, including promotions made thereunder be quashed and set aside being arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution and that the Stenographers be appointed on 32 posts of Supdts. and ACSO's falling to their quota from due date with all consequential benefits. In the present application the applicants have prayed for a number of reliefs in paragraph 8, which includes reliefs which are similar to those prayed for in O.A. 158/89. In particular, it may be seen that

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clauses (a), (b) and (c) of paragraph 8 are similar, if not identical to the prayers in the earlier O.A. From the perusal of the reliefs prayed for in O.A. 158/89 and the present application, we are, therefore, satisfied that the prayers are similar and merely amplifying certain consequential reliefs in this O.A. does not make it a fresh cause of action. It cannot be stated that the additional reliefs prayed for in this application could not have been raised by the applicants in the previous O.A. In view of the clear enunciation of law in Daryao's case (supra) which is fully applicable to the facts of this case, we do not think that it is necessary to deal with the other cases referred to by the parties. Having regard to the O.A. 158/89, we are of the view that this application is barred by the principles of res judicata.

12. In O.A. 158/89, the Tribunal had come to the conclusion that the application was not maintainable having regard to the provisions of Section 21 of the Administrative Tribunals Act, 1985 and also that the Tribunal had no jurisdiction to entertain the application in respect of a cause of action which arose prior to 1.11.1982. We respectfully agree with these conclusions and are also of the view that both on the grounds of limitation and jurisdiction the reliefs claimed in this application from 1968 onwards, are not maintainable. At the time of hearing, there was a faint submission made by Shri Sodhi that they would be satisfied if the reliefs prayed for are modified to the extent that they be given the benefits from the date of filing the O.A but that again is barred by the principles of res judicata.

13. It is also relevant to note that in para 7 of the present application, the applicants have submitted incorrect and misleading facts for which also this application is liable to be dismissed. O.A. 158/89 was dismissed by order dated 10.3.1989 but even when that O.A. was pending, the same applicants have filed the present application on 7.2.1989. This clearly shows that the applicants have filed successive applications and at the same time they have tried to mislead the Tribunal by categorically stating that "they have not previously filed any application, writ or suit regarding the matter in respect of which this application has been made before any other authority or any other Bench of the Tribunal and nor any such application, writ petition or suit is pending before any of them" (Emphasis added). The applicants have not come with clean hands to this court and, therefore, they are not entitled to any relief. In **Welcome Hotel and Ors. Vs. State of Andhra Pradesh and Ors.** (1983(4)SCC P-575), the Supreme Court has held that suppression of a material fact by the petitioners who had obtained an ex parte stay order would disentitle the petitioners from obtaining any relief at the hands of the Court. That petition was finally dismissed with costs. (See also **V.K. Kathuria Vs. State of Haryana with connected cases** (1983(3) SCC 333) and the judgement of this Tribunal in **Mahabal Ram Vs. Union of India & Ors.** (1994(27)(ATC 20). Therefore, on this ground also, this application is liable to be dismissed with costs. Shri Sodhi has very vehemently argued that heavy costs may be imposed against the respondents and in their favour. However, we are of the view that having regard to the applicants' own actions as referred to above, it would be in the fitness of things to impose costs against them.

14. On merits the applicants have contended that the 1976 amendments have not been issued by the Government of India being the competent authority and these provisions are discriminatory and there are no provisions for promotions to ACSO. Shri Sodhi has also submitted that the LDCE which has been existing in the civil side from 1964 has not been provided in the Rules applicable to the applicants. He has, therefore, submitted that these rules are not fair and reasonable (**State of UP and Anr. Vs. Ram Gopal Shukla** (AIR 1981 SC 1041) and their legitimate claims against the Government should not be denied by technical pleas (**S.M. Bhati Vs. Union of India** (1989 (11) ATC 722). The respondents in their reply have stated that initially Stenographers were inducted against every 25th vacancy in the grade of ACSO. After the amendment of the AFHQ Civil Service Rules in 1976 a provision was made for induction of Stenographers against every 25th vacancy in the grade of CSO in lieu of the earlier provision of their induction in ACSO grade. They have stated that this amendment was necessitated on account of the reorganisation of the CSSS w.e.f. 1.8.1969. They have given the Selection Grade Stenographers the same pay scale as that of Section Officers. They have submitted that the selection grade officers were made eligible along with Section Officers for promotion as Under Secretaries in the Central Secretariat Service (CSS). In the reorganised cadre of AFHQ, all the then existing posts of Stenographers Grade-I were converted into posts of selection grade in the same pay scale as those of ACSOs of the AFHQ Civil service. They have, therefore, submitted that they had amended the AFHQ Rules in 1976 which has also been done in accordance with the request made by the Association in September, 1970 (Annexure R-1). They

have accordingly submitted that the amendments made in the AFHQ Rules notified in 1976 were neither arbitrary nor unilaterlly done as alleged by the applicants. Our attention has also been drawn to the letter from the Association dated 19.11.1985 in which, they have inter alia stated that the Association agrees to the filling up of vacancies of ACSO accruing to Stenographers during the period 12.6.1976 to 30.9.1984 as per the updated formula. In view of the fact that at the time when the AFHQ rules were amended in 1976 which have been agreed to by the Association at that time, we see no good ground to hold that the amendments are either arbitrary, discriminatory or illegal and against the interests of the applicants. Besides, by their own earlier action the Association is estopped from raising this plea at this stage. The submissions of the applicants to the contrary are accordingly rejected.

15. The further contention of the applicants that the relevant rules, including the amendment Rules have not been issued with the approval of the competent authority i.e. the Government of India is also without any basis as these have been notified in the Gazette and/or have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution. In **Malikarjuna Rao Vs. State of A.P & Ors.** (JT 1990 (Vol.III) SC), the Supreme Court has held:

> "...The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The courts cannot

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assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India".

In this case, it was held that the A.P. Administrative Tribunal in the judgement under appeal had transgressed its limits in issuing the impugned directions to the State Government and that judgement was set aside.

16. Another argument which was very vehemently argued by Shri Sodhi on behalf of the applicants was regarding the comments of a Committee set up by the Ministry of Defence on the grievance of the Association. He has stressed on certain portions of the note of the Under Secretay dated 17.9.1996 in which it has been stated that during the course of examination of Associations' application he had raised a query whether the office of CAO i.e. Respondent 3, had obtained the RRM's approval for the 1976 amendments. Based on this query, Shri Sodhi had very vehemently submitted that the 1976 amendment Rules had, in fact, not received the necessary approval of the Minister-in-Charge and, therefore, had not been notified by the competent authority. [redacted] However, subsequently the amendment Rules of 1976 have been notified in the Gazette by SRO 176 in exercise of the powers conferred under Article 309 of the Constitution. In the facts and circumstances, we see no infirmity or illegality in the same on this ground.

17. Apart from this, the challenge to the promotions made in accordance with these Rules at this stage by the applicants, which itself has also been done in furtherance of their own earlier request, cannot be entertained which will affect a large number of persons who

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have not been impleaded. The applicants had contended that the other affected parties would be willing to be governed by the decision in this case, as they were members of the Association. We find no merit in this argument as the affected paties have acquired vested rights and they are necessary parties. In the circumstances of the case, the objection raised by the respondents of non-joinder of necessary parties is justified and on this ground also this application is liable to be dismissed.

18. Based on the Explanatory Memo to AFHQ Rules, 1970, mentioned in Para 3 above, the applicants very strenuously argued that since whatever amendments in the conditions of service applicable to Stenographers in the civil side had to apply 'mutatis mutandis' to the Stenographers under the AFHQ Rules which have not been done, this is bad in law. In a recent judgement in **Mariyappa & Ors. Vs. State of Karnataka & Ors.** (JT 1998(1) SC 741), the Supreme Court has, dealing with the meaning of the word "mutatis mutandis" quoted with approval the earlier judgement of the Court in **M/s Ashok Service Centre Vs. State of Orissa** (1983 (2) SCC 82) wherein it was stated by Venkataramiah, J (as he then was) as under:

> "Earl Jowitt's The Dictionary of English Law (1959) defines 'mutatis mutandis as with necessary changes in points in detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices and the like....Extension of an earlier Act mutatis mutandis to a later Act, brings in the idea of adaptations, but so for only as it is necessary for the purpose, making an change without altering the essential nature of the things changed subject of course to express provisions made in the later Act".

It was further held:

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"If, therefore, the words 'mutatis mutandis' merely permit the application of the Central Act, 1894 (Land Acquisition Act, 1894) (as modified by Karnataka Act, 1961) (Karnataka Acquisition of Land for House Sites Act, 1972) with necessary changes and without altering the essential nature of the thing changed then the said principle is applicable to the Central Act, 1894 as it stood in 1972 with the amendments brought about by the Karnataka Act, 1961. Therefore, the contention for the appellant that subsequent changes made in the Central Act after 1972 also get into the Karnataka Act, 1972, cannot be accepted. That question again depends upon whether the Central Act, 1894 has been 'incorporated' into the Karnataka Act, 1972 or falls within the exceptions to the said principle or whether Section 5 is to be treated as a piece of 'referential legislation'."

(emphasis added)

19. Having regard to the meaning of the phrase 'mutatis mutandis' as explained lucidly by the Hon'ble Supreme Court in the aforesaid cases, the contentions of the applicants cannot be accepted. Their argument that subsequent changes made in the CSSS Rules after 1970, should have also been accordingly incorporated in the AFHQ Rules without any exception is unacceptable. The principle of 'mutatis mutandis' cannot be taken to mean that every detail must be the same in the Rules especially after the AFHQ Rules have been amended by the Rules of 1976, but only that generally they are the same with such alterations as are necessary, but subject to express provisions made in the AFHQ Rules. The fact that the AFHQ Rules have been amended in 1976 cannot be ignored while dealing with the claims of the applicants, as these are express provisions in the later statutory Rules. Therefore, the contention of the applicants that the AFHQ Rules must be amended 'mutatis mutandis' with the CSSS Rules has no merit and is rejected. However, it is open to the respondents to examine the claims

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of the Association for amendments in the AFHQ Rules, keeping in view the service conditions in other similar services of the Government in accordance with law.

20. In the result, for the reasons given above, this application fails and is accordingly dismissed. In the circusmtances of the case, the applicants shall pay cost of Rs.2000/- (two thousand only) in favour of the Respondents, who shall pay the same to the CAT Bar Association for Legal Aid purposes.

(K. Muthukumar)
Member(A)

(Smt. Lakshmi Swaminathan)
Member(J)

"SRD"