

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 623/89  
~~T.A. No.~~

199

DATE OF DECISION 27/5/94

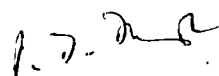
R.P. Sharma & Ors.	Petitioner
Shri. M.L. Chawla	Advocate for the Petitioner(s)
Versus	
U.O.I. & Ors.	Respondents
Shri. V.S.R. Krishna	Advocate for the Respondent(s)


### CORAM

The Hon'ble Mr. C.J. Roy, Member (J).

The Hon'ble Mr. P.T. Thiruvengadam, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
 (P.T. THIRUVENGADAM)  
 MEMBER (A)

  
 (C.J. ROY)  
 MEMBER (J)

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA.No.623 of 1989.

New Delhi, dated this the 27<sup>th</sup> of May, 1994

Shri C.J. ROY, Hon. Member(J)

Shri P.T. THIRUVENGADAM, Hon. Member(A)

1. Shri R.P. Sharma, aged 47 years,  
S/o Shri C.L. Sharma,  
GE (East) Delhi Cantt - 110 010.
2. Shri Phool Chand, aged 50 years,  
S/o Shri Umda Ram,  
CWE(Project) Delhi Cantt.110 010.
3. Shri K.L.Jain, aged 56 years,  
S/o Shri Rati Ram Jain,  
G.E.(P) No.3 Delhi Cantt. 110 010.
4. Shri Satish Chand, aged 44 years,  
S/o Shri Damodar Dass,  
G.E.(P) No.5, Delhi Cantt. 110 010. ...Applicants

By Advocate: Shri M.L. Chawla

versus

1. Union of India through  
Defence Secretary,  
South Block, New Delhi.
2. Engineer-in-Chief,  
E-in-C's Branch,  
AHQ New Delhi 110 001.
3. Shri N. Sachidanandam Nair, P.A.  
MES-260190 through  
Chief Engineer, Southern Command Pune.
4. Shri M.L. Sharma, P.A.  
MES 309057 through  
Chief Engineer, Northern Command,  
C/o 56 APO.
5. Shri Ramanand, P.A.  
MES 40 522, through  
Chief Engineer, Central Command,  
Lucknow.
6. Shri Narinder Nath Sharma, P.A.  
MES 409 750 through  
Chief Engineer, Northern Command,  
C/o 56 APO.
7. Shri Balkrishan Gera, P.A.  
MES 302833 through  
Chief Engineer, Delhi Zone,  
Delhi Cantt 110 010. ...Respondents

By Advocate: Shri V.S.R. Krishna

O R D E R  
(By Hon.Member(J) Shri C.J. ROY)

...2...

O R D E R

(By Hon. Member(J) Shri C.J. ROY)

Shri V.S.R. Krishna, who is the Additional Central Government Standing Counsel, was directed by the Court under Rule 11(4) of the Central Administrative Tribunal (Procedure Rules), 1985, to look into the matter and assist the Court, in the absence of the previous counsel, who is no more in the panel of the counsel for the respondents.

In the circumstances, we direct that the counsel for the respondents shall be paid for having appeared in the matter and assisted the Court, in accordance with the schedule.

2. The facts of the case are as follows:-

The Military Engineering Service (hereinafter called as MES) is an organisation charged with the task of carrying out all Engineering services for Defence Forces, such as construction of buildings, roads, electrical and mechanical works etc. for which, civilian staff such as Clerks, Stenographers and Superintendents etc. as well as Gazetted Officers are engaged. The Clerks have their own line of promotion such as UDC, Assistant Incharge, Superintendent Clerical and Stenographers have their own line of promotion such as P.A. etc. Thus these two distinct categories of staff have their own distinct lines of promotion. It is urged in the OA that a Stenographer, who has passed the UDC examination can choose to elect for promotion in the Clerical line, provided, he exercises an option to adopt the general (Clerical) line of promotion and gives up his own line of promotion as a P.A., whereas, a Clerk cannot become or choose the line of promotion of Stenographer. These recruitment rules are framed under Article 309 of the Constitution and have also undergone a couple of amendments. The rules are further

amplified and clarified by administrative instructions wherever there was necessity to do so. While the clerk need not have to exercise any option because they are not migrating to the other category of stenographers, a stenographer on the other hand has to exercise his option within a stipulated period of 6/3 months, that too after passing the UDC examination to choose and to change to the general line for purposes of promotion, and the option so exercised by the stenographers is final and irrevocable. Also, the option is to be exercised only once and that too either immediately after entering into service within three months or in the case of already serving stenographers within six months. It is also urged that those who have not chosen to exercise their options to the general line of promotion, giving up their own line of promotion to PA within that stipulated period, will have to remain as Stenographer and seek their promotion as P.A./Stenographer Grade-II and Grade-I.

3. The department also prepared panel of names for purposes of promotion on the basis of a cyclic system, which in turn is based on the pro-rate quota and fixed in the recruitment rules according to which, the first vacancy will be filled up by a Steno, who had opted general line and the next vacancies by UDCs thereby meaning 95% promotions from Office Superintendent Grade-II and 5% promotion from PAs who had opted for Clerical cadre.

4. The applicants are aggrieved that inspite of their legitimate claim, they are not considered for promotion and ineligible persons, who have not given their option, have been considered and their names have been shown in the list (Annexure A-1). They have claimed for removing the names of those persons who have been wrongfully and illegally added to the

panel dated 20.6.1988 and redraw the panel strictly in accordance with the Recruitment Rules, 1977.

5. The other points raised in this OA are not germane to the present issue.

6. We have seen the reply filed by the respondents, and the rejoinder filed by the applicants more or less asserting the same points as in the OA. It is also on record to show that the unofficial respondents are added after the court order and there was also an interim order. The names shown in the panel for promotion, were also made parties and notice was issued. We have also seen the recruitment rules of 1970, 1975, 1977 (Annexures-III, IV and V respectively). The contention of the learned counsel for the applicant is that the inclusion of the above five names (unofficial respondents) in the proposed panel for the promotion to the post of Office Superintendent Grade-I is contrary to the above framed and amended recruitment rules and therefore should be struck off from the list.

7. We have examined the case. The respondents have also taken a stand that these promotions are based on the recruitment rules framed under Article 309 of the Constitution of India and therefore, framing of the rules is in the public interest. Further the employment of the staff is governed by certain rules and regulations and service conditions as laid down by Statutory rules for each category/cadre of employees. There is no post of Assistant-in-Charge now in MES. Although clerks and stenographers have their own distinct lines of promotions at same levels some inter-change of cadres is permitted by Statutory rules subject to options being exercised by the incumbents concerned and the options being valid as per

4

Statutory rules prevailing at the time of exercising option. Stenographers Grade-III who wish to switch over to clerical cadre for further promotions should exercise an option to that effect within three months of their joining service. This is as per Statutory rules. After the option is exercised, the individual becomes eligible for promotion as Office Superintendent Grade-II and no examination is required to be passed. Stenographers Grade-III thus opting for clerical cadre are considered for promotion as Office Superintendent Grade-III in the ratio of 9:1 steno or 9 UDC as per separate seniority maintained for each category ie. against 10% posts. Similarly stenographer Grade-II (PAs) were also allowed against 5 % for promotion to Office Superintendent Grade-I, Stenographer-II were also required to exercise option for clerical cadre. However this privilege to Stenographer Grade-II (PA) was withdrawn through an amendment to Statutory recruitment rules wef. 29th September 1985. Thus only Stenos who exercised their option for switching over to clerical cadre till 20th March, 1985 only are eligible for consideration against 5% vacancies of Office Superintendent Grade-I in their order of separate seniority. This option was stopped from 29 March, 1985 due to improved promotional chances to Stenographers in their own cadre lines and to protect the clerical cadre interests. Even when both Steno Grade-III and Steno Grade-II are inducted into Clerical cadre as Office Superintendent Grade-II and Office Superintendent Grade-I, their chances of promotion were not abnormally in their favour as can be seen from the ratios. There is also a provision now in recruitment rules permitting LDCs to be promoted as Stenographers Grade-III after qualifying in a departmental

(16)

stenography examination. As such, it is incorrect to say that clerks cannot choose Stenographer line of promotion. Both clerks and Stenos belong to common nomenclature of ministerial staff doing clerical/secretarial duties. As such the interchange is functionally in order. Case has been taken up to protect the interest of both cadres while permitting the Stenographer through Statutory rules.

8. It is also argued by the respondents that the names of the unofficial respondents, who, the applicants claim, should be removed from the panel, have opted for promotion, before the cut-off dates. The applicant has failed to categorically ascertain or show us any material to the effect that these unofficial respondents have not exercised their options, whereas, an averment is made in the counter *on behalf* to show that those unofficial respondents have given their option, well within the time, and their names have been included in the panel of promotion. We cannot decide the matter on conjecture, especially, when the statement is made by the respondents across the bar. It is also pertinent to reproduce below the recruitment rules of the MES (Annexure-A):-

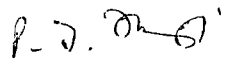
"Stenographers who have passed UDC examination should be asked to exercise an option for promotion in Clerical line or in their own line of PA. This option should be exercised within a period of 6 months, shall be final. Stenographers who would pass UDC examination in future should similarly be asked to exercise an option. Only those stenographers who opt for clerical line will be considered for promotion to the post of Assistant in Charge as per Recruitment Rules.

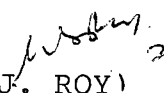
Existing PAs who have passed UDC examination but have not served as UDC/Asstt i/e for at least one year, or those of the existing PAs who should pass this examination in future, should be asked to exercise an option for promotion in the clerical line as mentioned in para 2 above. Such PAs will be considered for promotion to the post of Assistant in Charge against 10% quota reserved for Stenographers. For this purpose the seniority of PAs will count from the date of their appointment as Stenographers."

9. Annexure A-2 is 'All India Seniority list of PAs who have opted for clerical cadre and Annexure A-4 is the copy of rules and regulations (at running page-30 of the paper book) of different cadres, including that of P.A.s(Rs.425-700) who have opted for the clerical cadre and have 7 years regular service in the grade(5%).

10. Both the sides have argued on this recruitment rules and clarified their case. It is essential to note here that the applicants are not challenging the preparation of this panel and circulation. That apart, the option can be exercised only when one enters in the cadre. Therefore, we are not impressed by the argument advanced by the learned counsel for the applicant. The learned counsel for the applicant however, argues that the amendment copy has not been filed before the court. It may be recalled that when a senior officer had made a statement on oath that it is amended, we fail to understand the objection of the learned counsel for the applicant who makes a statement that the respondents should not be allowed to file the amended copy.

11. We do not find any merit in the case for our interference. In the circumstances, the OA is dismissed as devoid of merit. No costs.

  
(P.T. THIRUVENGADAM)  
MEMBER(A)

 27/5/94  
(C.J. ROY)  
MEMBER(J)