

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH:

O.A. NO.1504/88

New Delhi this the 3rd day of January, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri S.R. Adige, Member(A).

Smt. Renu Sehgal,
B-13, Liberal Coop. Group Housing Society,
Plot No.8, Near Inder Enclave,
Rohtak Road,
Delhi-41.

... Applicant.

By Advocates Shri R.K. Kamal and Shri K.L. Bhatia.

Versus

1. Union of India through
The Secretary,
Ministry of Information and Broadcasting,
Government of India, Shastri Bhawan,
New Delhi.

2. Registrar of News Papers for India,
(Ministry of Information & Broadcasting),
Government of India, Shastri Bhawan,
New Delhi.

3. The Secretary,
Ministry of Personnel, Administrative,
Training and Public Grievance,
Government of India,
New Delhi.

... Respondents.

By Advocate Mrs Raj Kumari Chopra.

The petitioner, Smt. Renu Sehgal, was appointed as Lower Division Clerk in the department of Registrar of Newspapers for India by order dated 2.1.1980 w.e.f. 17.12.1979 (Annexure A-2). She had while applying for the post of Lower Division Clerk given Central Secretariat Clerical Services as first preference. On the ground that the vacancy that became available earlier was in the office of Registrar of Newspapers for India, the petitioner was appointed in that department. She made a representation that her preference

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should be accepted and that she should be assigned to the Central Secretariat Clerical Services particularly having regard to the fact that in the vacancies that were notified afterwards persons who had lower ranking than the petitioner were assigned the Central Secretariat Clerical Services. She submitted reminders as there were no favourable response to her request. It appears that such requests were considered along with several other persons as well as per Annexure R-1 dated 8.7.1986. Willingness of several persons including the petitioner who were serving in the office of the Registrar of Newspapers for India was asked if they are willing to opt to come to the Central Secretariat Clerical Services subject to the condition that they are agreeable to take seniority below all those who were regularly selected and appointed to the Central Secretariat Clerical Services. The petitioner and other expressed their willingness in the following terms:

"With reference to your Memorandum No.A-11020/1/80-Admn. dated 8.7.1986, I offer my willingness for induction in the said cadre as per general rules".

The respondents treated the same as a consent, transferred the petitioner and others to the Central Secretariate Clerical services as is clear from Annexure A-1 dated 17.3.1988. The petitioner made a representation as per Annexure A-6 dated 8.6.1988 praying that the service rendered by her as Lower Division Clerk in the office of the Registrar of Newspapers for India should be taken into account for the purpose of assigning appropriate ranking to her in the seniority list of the Central Secretariat Clerical Services pertaining to the Lower Division Clerks. As there was no response, she presented her application on 11.8.1988 in which she has prayed for quashing of Annexure A-1 dated 17.3.1988 and to issue a writ of mandamus to reassign the applicant proper seniority on the basis of her date of appointment w.e.f. 17.12.1979 in the office of the Registrar of Newspapers for India and

for grant of consequential benefits of promotion, pay fixation etc. and for other consequential benefits.

2. The case of the petitioner in substance is that she was entitled to be assigned seniority having regard to her relative merit in the selection to the Central Secretariat Clerical Services in preference to those who had secured lower ranking than the petitioner. It is not disputed that persons who had secured lower ranking than the petitioner came to^{be} allocated to the Central Secretariat Clerical Services. The explanation offered by the respondent in this behalf is that as the vacancy in the office of the Registrar of Newspapers for India was notified earlier, having regard to the ranking obtained by her, she was offered that position. It is their case that when she was offered the post of Lower Division Clerk in the office of the Registrar of Newspapers for India, no vacancy of Lower Division Clerk in the Central Secretariat Clerical Services had been notified. As such, the vacancies that were notified later were allocated to those who had secured ranking lower than the petitioner. It is obvious that the petitioner feels that she has better prospects in the Central Secretariat Clerical Services than the office of the Registrar of Newspapers for India. She further claims that she is entitled to be allocated to the Central Secretariat Clerical Services and as that was not done, appropriate directions should be issued to grant seniority consequent upon her being accorded to the Central Secretariat Clerical Services in the year 1988 on the basis of the date on which she had joined as Lower Division Clerk in the department of the Registrar of Newspapers for India in the year 1979.

3. The stand taken by the respondents in the reply is that the post to which the petitioner was appointed is an ex-cadre post and she could come to the Central Secretariat Clerical Services only by way of transfer. Their case is

that as the petitioner sought voluntary transfer and the respondents were willing to accede to her request subject to the condition that she takes her ranking in the seniority below all those who have been regularly selected and appointed to the Central Secretariat Clerical Services as on the date on which she was transferred. This undoubtedly has the effect on the petitioner's losing the benefit of her past service/^{of}nearly eight years. That is the reason why she is agitating in this case for seniority benefits having regard to the services rendered by her in the department of Registrar of Newspapers for India from 1979. The respondents' case is that when the transfer is made not in public interest but on the request of the Govt. servant, the statutory provisions provide that such a person on his or her request being granted can take a place in the seniority list below all those who were in the department on the date on which he or she was transferred. It is only when the transfers are effected in public interest, the benefit of service rendered in the department before the transfer is effected is given. But when the transfer is effected/^{on}his or her request and it is not made in public interest, the benefit of prior service will not be available to such a person. That is precisely/^{what}has been done by the department.

4. The counsel for the petitioner, however, submitted that this is not a case of voluntary request for transfer nor is this a case of agreeing with the condition of the department that she is willing to accept the seniority below all those who were already selected and appointed before she was transferred.

✓ Reliance is placed on the terms consent given by the

petitioner. It was pointed out that there is no categorical statement made by the petitioner. It was further pointed out that the petitioner has stated that she is willing to accept the transfer in accordance with the general rules meaning thereby that she was not willing to forgo the benefit of service that she rendered in the office of the Registrar of Newspapers for India. In support of this contention, reliance is placed on an earlier judgement of the Principal Bench of the Tribunal in O.A. No. 1206/89 dated 10.4.92 between Sh. Sri Chand and Others Vs. Union of India & Anr.

5. Annexure A-1, the order of transfer, contains 16 names. The first seven pertains to Upper Division Clerks with which we are ^{not} concerned. The eighth name is of Shri Sri Chand, LDC and the sixteenth name is that of the petitioner Smt. Renu Sehgal. The applicants in O.A. 1206/89 are those who are at Serial Nos. 8 to 15 in Annexure A-1. It is only the petitioner who had not joined in that application amongst the Lower Division Clerks who stood transferred to the Central Secretariat Clerical Services. The person immediately above the petitioner in the said list, Annexure A-1, is at Serial No. 15, namely, Shri Deepak Pawar. He is described as a temporary Lower Division Clerk. Against both these names, there is no entry in the column regarding the date of substantive appointment meaning thereby they were not substantively appointed as on the date of the said order. We sent for the records of O.A. NO. 1206/89 to compare the response or the alleged consent given by Shri Deepak Pawar in response to the offer made by the respondents. The responses are in identical terms.

6. Learned counsel for the petitioner submitted that O.A. No.1206/89 was allowed in respect of Shri Sri Chand and six others below him and that in respect of Deepak Pawar, a general direction for consideration of his case was issued. For the sake of convenience, we shall extract the relevant portion of the judgement:

"In the conspectus of the aforesaid facts and in the above view of the matter, we direct that continuous service of the applicants in the grade of Clerk Grade II, equivalent to the pay scales of L.D.C. would count towards L.D. Grade of Clerk of C.S.C.S. from the dates they were regularly appointed as C.G. II in the office of R.N.I. Such dates would be the dates of substantive appointment of the first seven applicants indicated in the letter of 17th March, 1988, unless there were regular vacancies earlier and they were regularised earlier, in which case only the dates could be earlier than those referred to above. In the case of the eighth applicant, namely, Deepak Pawar, his continuous service can be counted only from the date he was regularised against a regular vacancy in the office of R.N.I. since the letter of 17.3.88 shows that he is still not holding a substantive vacancy and the requirements of S.S.C. as laid down in their letter of 18.3.88 have not been met in his case. No relief can be granted to the 8th applicant, namely, Deepak Pawar, if he has not been regularised against regular vacancy so far. These directions are given in this case in absence of any rule or order to the contrary in the C.S.C.S. rules relating to the inductions of the applicants and consistent with the principles laid down by the Courts - Delhi Water Supply and Disposal Committee Versus R.K. Kashyap (JT 1988 (4) S.C. 421); Direct Recruits Class II Engineering Officers Association Versus Union of India (JT 1990 (2) SC 264)."

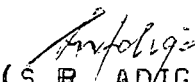
7. It is clear from this judgement that the consent or willingness of the type given by Shri Sri Chand and six others did not come in the way of the Tribunal in directing that the past service should be counted towards seniority in the Central Secretariat Clerical Services subject to the condition that such service would count only from the date of the substantive appointment on regular basis. Deepak Pawar was not given such a direction in his favour for the reason that he was not able to demonstrate that he was substantively appointed in the office of the Registrar of Newspapers for India. The position of the petitioner who is placed below Shri Deepak Pawar is identical. It is on the strength of this judgement of the Tribunal that it was urged that the type of consent or willingness that has been offered by the petitioner did not and could not come in the way of the Tribunal in directing the past service being counted for the purpose of seniority in the Central Secretariat Clerical Services in respect of the incumbents who were appointed substantively to the post of Lower Division Clerks. Such direction was expressly not granted in favour of Deepak Pawar for the reason that he was not able to demonstrate that he was substantively appointed as Lower Division Clerk in the same manner as Shri Sri Chand and six others were appointed. That some persons were appointed only on ad hoc basis and regularised later whereas others were directly selected make no difference. What is relevant is the ultimate decision to make regular appointment and the confirmation of substantive appointment of such persons. Looked at from that angle, there is no difference between the case of Deepak Pawar and Smt. Renu Sehgal. We say so for the reason that Deepak Pawar has been appointed on regular basis w.e.f. 23.10.1976 in the light of the directions issued by the Principal Bench of the Tribunal in O.A. No.1206/89. There is no such

direction in favour of the petitioner. Having regard to the fact that the petitioner's case is similar to that of Deepak Pawar, as Deepak Pawar was appointed on regular basis much earlier than the petitioner, namely, on 23.10.76, it is obvious that the petitioner has to find place in the seniority list below Shri Deepak Pawar. There is no reason why the petitioner's case should not be considered in the same manner as that of Shri Deepak Pawar. No orders appear to have been made in the case of the petitioner regarding assignment of appropriate ranking in the seniority list for the reason that there were no directions issued in her favour as in O.A. No. 1206/89. In our opinion, there is no justification for not granting the relief to the petitioner similar to the one granted to Shri Deepak Pawar.

8. Unfortunately, there is no information available as to whether the orders regarding substantive appointment of Deepak Pawar and the petitioner Smt. Renu Sehgal have been made and if so from what dates. All these are matters which are required to be examined. We are satisfied on the materials placed before us that the petitioner's case has not been properly examined for assigning appropriate seniority on the assumption that she could not have the benefit of earlier service. Hence, we consider it just and proper to issue an appropriate direction consistent with the directions issued by this Tribunal in O.A. No.1206/89. It is necessary to emphasise and make it clear that the alleged consent given by the petitioner as per Annexure R-II dated 14.7.1986 cannot and shall not come in the way of assigning appropriate seniority to the petitioner.

9. For the reasons stated above, this application is partly allowed. The respondents are directed to examine the case of the petitioner and to grant her relief similar to the one granted to Shri Deepak Pawar in regard

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to assignment of appropriate ranking in the seniority list of Lower Division Clerks in the Central Secretariat Clerical Services taking into consideration the date of her substantive appointment as has been directed by the Tribunal in respect of Shri Sri Chand and others in O.A. No.1206/89. The petitioner shall also be entitled to all consequential benefits flowing from assignment of appropriate ranking in the seniority list of Lower Division Clerks of Central Secretariat Clerical Services. Time for compliance so far assignment of seniority is concerned shall be four months from the date of receipt of a copy of this order. No costs.


(S.R. ADIGE)
MEMBER(A)

'SRD'
040194


(V.S. MALIMATH)
CHAIRMAN