

6.

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI.

O.A. NO. 1586 OF 1988

DATE OF DECISION: 8-8-1991.

Shri T.Kurian Joseph.

.. Applicant.

v.

Union of India and others.

.. Respondents.

CORAM:

Hon'ble Mr.G.Sreedharan Nair, .. Vice-Chairman.
Hon'ble Mr. S.Gurusankaran .. Member(A)

Shri K.N.R.Pillai, Counsel for the applicant.

Shri P.P.Khurana, Counsel for the respondents 1 and 2.

Shri V.P.Gupta, Counsel for the Respondents 3 to 9.

S.GURUSANKARAN, MEMBER (A):

JUDGMENT

The issues raised in this application lie in a narrow compass. The applicant was appointed as a Lower Division Clerk ('LDC') in the office of the Development Commissioner for Handlooms with effect from 15-9-1976 (Annexure-AI) on ad hoc basis from the open market. There were no Recruitment Rules in existence at that time and the same was issued only on 25-5-1981 (Annexure-AII). In the meanwhile, the applicant was selected for the post of Stenographer Grade-III and posted on purely ad hoc basis w.e.f. 7-10-1977 (Annexure-AVI). After the introduction of the Recruitment Rules and in pursuance of the same the services of the applicant and other similarly situated LDCs, who had been recruited from the open market and appointed on ad hoc basis, were regularised as LDCs from the date of their original appointment by order dated 17-3-1983 (Annexure-A-IIA). In September, 1985, a promotional seniority list of LDCs was published and finding that his name has been placed below many direct recruits,

J L

the applicant 7
who joined later than him, made a representation to give him correct seniority from the date of his initial appointment. This was not agreed to and the seniority list of LDCs was finalised and issued in November, 1985 vide order dated 5-3-1986 (Annexure-A-VII), The applicant was regularised as Stenographer Grade-III w.e.f. 3-3-1986 with a probation period of 2 years. He made further representations regarding his regularisation as Steno Grade-III and he was given a final reply in consultation with the Department of Personnel on 10-8-1988 (Annexure-A-XI) stating that his request for granting regularisation as Steno Grade-III with retrospective effect ^{cannot be agreed to} Aggrieved by this, he has filed this application.

applicant 8
2. The main contention of the ~~employee~~ as brought out by his counsel during the arguments is that the Recruitment Rules themselves vide Rule 4(1) (Annexure-AII) have provided for treating the employees, who were holding the posts prior to the introduction of the Rules as being deemed to have been appointed under these Rules. Accordingly, the applicant's appointment as LDC w.e.f. 15-9-1976 was treated as regular by order dated 17-3-1983 and he was also given quasi-permanent status w.e.f. 15-9-1979. Even though the applicant had earlier requested for regularisation as Steno Grade-III from the date of his appointment on ad hoc basis as such on 7-10-1977, the counsel for the applicant during the arguments contended that *the applicant* should have been regularised atleast from 15-9-1979, against departmental quota, as he had completed 3 years service as LDC on that date, he had been appointed as Steno Grade-III after due selection before the Recruitment Rules came into force and he fulfilled the necessary conditions laid down in the Recruitment Rules. He also argued that the application is not time barred since the applicant's request for regularising him as Steno Grade-III with retrospective effect was finally turned down on 10-8-1988 only and he has filed this application in August, 1988 itself.

3. The counsel for the private respondents argued that the application is time barred since ~~his~~ ^{the} request of ~~the~~ ^{the} applicant for giving him correct seniority in LDC grade was turned down in 1985 itself. He further pointed out that ~~his~~ ^{the} subsequent representations made in 1988 were regarding his regularisation in Steno Grade-III only and hence ^{the} ~~can~~ ^{applicant} not now agitate for correcting the LDC seniority list. Since the further promotions have been made on the basis of the seniority list in LDC grade, the counsel for the private respondents submitted that the same also cannot be now questioned. The counsel for the ~~State~~ ^{Official} respondents fairly admitted that the applicant has ^{a right to} claimed to be regularised as Steno Grade-III from 15-9-1979, the date on which he had completed 3 years regular service.

4. We have heard all the parties and perused the records. As contended by the applicant, in accordance with Rule 4(1) of the Recruitment Rules, all appointments made prior to the introduction of the Recruitment Rules shall be deemed to have been made under these Rules. The regular service of such officer in the respective grades prior to such commencement shall be taken into account for the purpose of qualifying service. Since as per these Rules, the applicant has been treated as having been appointed regularly as LDC ^{w.e.f. 15-9-1976}, and he was also appointed on ad hoc basis after due selection, as Steno Grade-III prior to introduction of the Rules, the applicant must be deemed to have been appointed as Steno Grade-III w.e.f. 15-9-1979 on two years ^{ie after 3 years regular service w.h.d.c} probation. Regarding revision of seniority list of LDCs we have to agree with the stand taken by the private respondents that the applicant has not agitated the same further and his present request for the same is time barred.

5. In view of the above discussion, the application is partly allowed and we direct the respondents 1 and 2 -

- (i) to treat the services of the applicant as appointed to Steno Grade-III w.e.f. 15-9-1979 on two years' probation.

(ii) to revise the seniority list of Stenos Grade-III accordingly according the applicant the position due to him in that grade.

(iii) to grant the applicant further ~~provisions~~ ^{provisions} to higher grades of Steno Grade-II/Investigator, provided he is found suitable by the review Departmental Promotion Committee on the basis of his revised seniority, from the date his junior was promoted; and

(iv) to fix his pay in the higher grade on promotion ~~on~~ ^{on} pro-forma basis and pay him arrears only from the date of any promotions made after the issue of the interim orders dated 26-8-1988.

6. The above directions shall be complied within a period of 3 months from the date of receipt of copy of this order.

Member
8/8/1991

MEMBER (A)

Chairman
8.8.1991

VICE-CHAIRMAN