

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A.No. 1033/88

Date of Decision: 10-04-92

B.L.Gupta and others

.. Applicant(s)

Shri G.D.Gupta

.. Counsel for the applicants

Vs

Secretary, Railway Board and
others

.. Respondents

Shri PH Ramchandani and .. Counsel for respondent(s)
Shri Vijay Mehta. for respondents 4 to 80.

CORAM

Hon'ble Mr. S.P.Mukerji, Vice Chairman

Hon'ble Mr. T.S. Oberoi, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not? *Y*

JUDGMENT

(Delivered by Hon'ble S.P.Mukerji, Vice Chairman)

In this application dated 24.5.88 the applicant and 37 other Stenographers Grade 'C' of the Railway Board have prayed that they should be declared to be regular promotees as Stenographer Grade 'C' with effect from the dates of their joining duty in that grade and to direct the respondents to fix their seniority as Stenographer Grade 'C' on the basis of their original appointment as Stenographer Grade 'C'.

2. The brief facts of the case are as follows. The applicants are all confirmed Grade 'D' Stenographers but have been officiating continuously in the higher grade of Stenographer Grade 'C' for the periods ranging from

2 to 10 years. In accordance with the Recruitment Rules applicable to Grade 'C' Stenographers appointments to this grade are made 50 per cent by open competitive examination ^{by the} of U.P.S.C., 25 per cent by promotion of Grade 'D' Stenographers on the basis of seniority subject to rejection of the unfit with five years of approved service and 25 percent by promotion on merit on the results of Departmental Examination. The rules also provide for relaxation. According to the applicants, recruitment through departmental and open competitive examinations was not held regularly and vacancies falling for these quotas were filled up by adhoc promotion of Grade 'D' Stenographers to meet the exigencies of service. This resulted in that direct recruits as and when selected and appointed on a regular basis becoming senior to them because of their adhoc status. Their representations citing the rulings of the Supreme Court for the benefit of regular appointment and seniority did not bear any fruit. They have argued that ^{their} ~~they~~ ^{are} being maintained in an adhoc status without regularisation and assigning seniority to the direct recruits above them ^{was} ~~is~~ violative of Articles 14 and 16 of the Constitution. They are aggrieved by the reply to their representation at Annexure-II dated 17.8.87 stating that the judgments of the Supreme Court and the Central Administrative Tribunal in various cases giving benefit of adhoc service for seniority are applicable only to the departments to which the judgments relate and not to the Railway Board Secretariat Stenographers Service.

3. In the counter affidavit the respondents have stated that the Railway Board Secretariat Stenographers Service Rules came into effect in August, 1969 under which the aforesaid quota for appointment of Stenographer

Grade 'C' were fixed. In accordance with these rules the seniority is fixed in the order of one promotee on seniority basis, one promotee on departmental examination and two UPSC direct recruits. The Rules also provide that if any vacancy remains unfilled through recruitment under the aforesaid quota the same can be filled by temporary promotion of Stenographer Grade 'D' on the basis of seniority cum-suitability with five years of approved service in Grade 'D'. Such temporary promotions are to be terminated when persons included in the Select List in Group 'C' under the quota system become available. The applicants were promoted on an adhoc basis between November, 1978 and April, 1986 but did not make any representation. It was only in 1987 that they represented on the basis of the judgment delivered by the Supreme Court in Narinder Chadha's case and Janardhan's case. It was decided that these judgments were not applicable to the Stenographers of Railway Department Board unless the nodal department, of Personnel and Training issued instructions. They have stated that provisional Seniority List of officiating Stenographers Grade 'C' were issued in 1981, 1982 and 1986 but the applicants did not object until 1987. Now they cannot take up the seniority fixed so many years ago. The applicants ^{as} ~~had~~ adhoc temporary promotees do not acquire any claim to seniority in Grade 'C' till their turn comes through inclusion in the Select List in accordance with the statutory rules. The direct recruits ^{have been} ~~are~~ given seniority on the basis of their quota and rank senior to the promotees in accordance with the statutory rules.

4. In the rejoinder the applicants ^{have} ~~are~~ stated that the quota system having collapsed, the respondents should

have exercised the powers of relaxation and regularised the appointment of the applicants. In any case their seniority has to be determined on the basis of their continuous service as the quota, rota system has failed. As regards their not challenging the Seniority List earlier, they have argued that since their names were not included in the Seniority Lists and they were not circulated to them, the occasion for representing against the Seniority Lists did not arise. They have stated that when they were promoted on adhoc basis as Stenographer Grade 'C' they were fully eligible and they ~~are~~ ^{have been} working against regular vacancies though they were meant for direct recruits or departmental examinees. They have also brought to our notice the fact that during the pendency of the application the applicants amongst others have been included in the Select List for regular promotion as Stenographer Grade 'C' vide the order dated 26.6.89 at Annexure A.3 to the rejoinder. In that order they have been included in the Select List below all those who were appointed on regular basis upto 31.8.88. They have contended that simply because some of the applicants had not appeared in the departmental examination should not disqualify them from being included in the Select List from earlier dates. Their further contention is that in view of the rulings of the Supreme Court "the seniority rules or instructions in regard to determination of seniority are not relevant." Now that they have been regularised with effect from 1.9.88 their earlier service even though adhoc should be counted for seniority.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The relevant provisions about

appointment and seniority of Stenographer Grade 'C' as contained in the Railway Board Secretariate Stenographers Rules 1971 (Annexure-R.2) which are statutory in character can be summarised as follows.

6. Appointment to Grade 'C' of the Service is made from a Select List and the procedure for the preparation and the revision of such Select List for Grade 'C' of the Service is prescribed under the Fourth Schedule to the Rules, which reads as follows:-

"THE FOURTH SCHEDULE

Procedure for the preparation and revision of the Select List for Grade C of Railway Board Sectt. Stenographers Service.

"1. CONSTITUTION: Temporary officers of Grade 'C' of the service who have been appointed to the grade immediately before the appointed day or will be appointed on the results of a competitive examination held by the Commission before the appointed day shall form the Select List for that Grade on such date:

"2. MAINTENANCE: After the initial constitution of the Select List under paragraph 1, the Central Government in the Ministry of Railways may, having regard to the existing and anticipated vacancies in the Grade, add such number of persons to the Select List as it may think fit.

Provided that no such addition shall be made except from amongst the persons of the following categories:

a) (i) Persons selected in the order of their seniority (subject to rejection of the unfit) from amongst Grade D officers of the Service who have rendered not less than five years' approved service in the grade;

(ii) persons selected in the order of merit on the results of the departmental competitive examination held from time to time for this purpose by the Staff Selection Commission;

"b) Persons selected in the order of merit on the results of the competitive examination held from time to time for the purpose by the Commission.

Provided further that additions to the select list of persons falling within the categories specified in clause(a) and clause(b) shall be in the ratio of 2:2 that is to say, the persons falling within these categories shall be added to the Select List by taking alternatively one person each from amongst the categories specified in items (i) and (ii) respectively of clause(a) and 2 persons from amongst the category of persons specified in clause(b) and so on, in that order;

Provided further that if eligible persons specified in item(i) of clause(a) of the first proviso are not available for promotion, then addition to the Select List in respect of this category shall be made from amongst the persons specified in item(ii) of clause (a) of the first proviso;

Provided also that if persons specified in item (ii) of clause (a) of the first proviso are not available, the additions to the Select List in respect of this category shall be made entirely on the basis of competitive examination held by the Commission.

"3. SENIORITY: (1) Officers included in the Select List for the Grade constituted under paragraph 1 shall be senior to those included therein after such constitution.

(2) Officers included in the Select list under paragraph 2 shall rank inter-se in the order in which they are included in the Select List. Provided that the seniority of persons recruited through the competitive examination held by the Commission in whose cases offers of appointment are revived after being cancelled shall be determined by the Central Government in the Ministry of Railways in consultation with the Commission."

4. The applicants who are Grade D Stenographers were promoted to officiate as Stenographers Grade C purely on adhoc and temporary basis. The said promotions were made in exigencies of service and administrative requirements without conferring upon the applicants any right to be promoted to or retained in the Grade 'C' posts. The said promotions were made without being considered by any DPC. The said position is admitted to the applicants.

All the ^{conducting} respondents to the present petition have been recruited to Grade C of the service either on the results of the Limited Departmental Competitive Examination or on the results of the competitive examination held by the UPSC.

Recruitment to Grade C of the service is governed by Rule 12 of the Rules which is as follows:

"12. RECRUITMENT TO GRADE 'C' OF THE SERVICE-

(1) Substantive vacancies in Grade C of the Service shall be filled by the substantive appointments of persons included in the Select List for the Grade, such appointments being made in order of seniority in the Select List except when for reasons to be recorded in writing, a person is not considered fit for such appointment in his turn.

(2) Temporary vacancies in Grade of the service shall be filled by the appointment of persons included in the Select List for the Grade. Any vacancies remaining unfilled thereafter shall be filled first by the appointment for persons approved for ~~z~~inclusion in the Select List and thereafter by temporary promotion on the basis of seniority, subject to the rejection of the unfit, of officers of Grade D of the service who have rendered not less than five years' approved service in the Grade. Such promotions shall be terminated when persons included in the

Select List for Grade C become available to fill the vacancies.

(3) For the purpose of this rule, a Select List shall be prepared and may be revised from time to time. The procedure for preparing and revising the Select List shall be as set out in the Fourth Schedule."

Temporary appointments in the service is governed by Rule 14 which reads as follows:

"14. POWER TO MAKE TEMPORARY APPOINTMENTS AGAINST SUBSTANTIVE VACANCIES-- A substantive vacancy may be filled temporarily in accordance with the provisions governing appointments to temporary vacancies in the relevant Grade, until it is filled in accordance with the provisions governing permanent appointments."

Seniority of persons appointed to Grade of the service is dealt with by Rule 18 which reads as follows:

"18. SENIORITY- (1) The relative seniority of members of the Service appointed to any Grade before the appointed day shall be regulated by their relative seniority/ determined before that date:

Provided that, if the seniority of any such officer had not been specifically determined before that day it shall be as determined by the Central Government in the Ministry of Railways.

(2) All permanent officers included in the initial constitution of a Grade under Rule 6 shall rank senior to all persons substantively appointed to that Grade with effect from any date after the appointed day, and all temporary officers included in the initial constitution of a Grade under that rule shall rank senior to all temporary officers appointed to that grade after that date.

(3) The seniority inter-se of a permanent officer included in the initial constitution of a Grade shall be regulated in the order in which they are so appointed.

(4) The seniority inter-se of a temporary officer included in the initial constitution of a Grade shall be regulated in the order in which they are so appointed.

(5) Except as provided in sub-rule(6), the seniority of persons appointed to Grade A, Grade B, Grade C and Grade D of the service after the appointed day shall be determined in the following manner, namely:

I. Grade A & Grade B

(i) PERMANENT OFFICERS: The seniority inter-se of officers substantively appointed to the Grade after the appointed day shall be regulated by the order in which they are so appointed to the Grade.

(ii) TEMPORARY OFFICERS: The seniority inter-se of temporary officers appointed to the Grade after the appointed day shall be regulated by the order in which they are approved for long term~~s~~ appointment to the Grade.

II. Grade C. (i) PERMANENT OFFICERS: The Seniority inter-se of officers substantively appointed to the grade after the appointed day shall be regulated by the order in which they are so appointed to the Grade.

(ii) TEMPORARY OFFICERS: The seniority inter-se of temporary officers appointed to the Grade after the appointed day shall be regulated as follows, namely-

(a) persons included in the Select List for the Grade shall rank senior enbloc to those not included in the Select List;

(b) the seniority inter-se of persons included in the Select List shall be in the order in which their names are included in the Select List;

(c) the seniority inter-se of persons not included in the Select List shall be regulated by the order in which they are approved for long term~~s~~ appointment to the Grade.

(6) All officers substantively appointed to a Grade shall rank senior to those holding temporary or officiating appointments in that Grade."

The above will show that the statutory rules themselves contemplate not only substantive and regular appointment and promotion to Steno Grade 'C' but also how temporary vacancies can be filled up. For filling up both substantive vacancies as well as temporary vacancies a Select List has to be prepared in which those who are regularly approved for promotion are included in the order of quota fixed for direct recruits, departmental examinees and seniority candidates, in the ratio of 2:1:1. The rules also provide that in case the vacancy in a particular quota cannot be filled up because of non-availability of eligible candidates in that category, those vacancies can be filled up by addition to the Select List by taking candidates from the other category. Temporary vacancies which remain unfilled after exhausting those in the Select List can be filled up by those who are approved for inclusion in the Select List and thereafter by non-Select List officials on the basis of seniority subject to rejection of the unfit. The rules also provide how the relative seniority inter-se the substantive appointees and permanent officers and temporary promotees is to be determined. It provides that officers substantively appointed to a grade shall rank senior to those holding temporary or officiating appointment in that grade and persons included in the Select List shall rank senior en bloc to those not included in the Select List and within the Select List officers the seniority shall be determined by the order in which their names are included in the Select List. Both amongst permanent officers and temporary officers inter se seniority is also determined by the order in which they are appointed or approved for long term appointment.

7. When the application was filed the applicants had not yet been regularly promoted as Stenographer Gr.'C'. Even by the order dated 26.6.89 at Annexure.A.3 to the rejoinder they have not yet been regularly promoted to Grade 'C'. The preamble of this order reads as follows:

"The undermentioned Grade 'D' Stenographers of the Railway Board Secretariat Stenographers Service have been approved for inclusion in the Provisional Select List for promotion to Grade 'C' Rs.1400-2600 (RPS) of the Railway Board Secretariat Stenographers Service in the order in which their names appear in terms of para 2(1)(a)(i) of the 4th Schedule to the Railway Board Secretariat Stenographers Service Rules, 1971. This is on the basis of revised percentage as a one time exception in terms of relaxation given by the UPSC for the year 1988-89. They will rank junior to the persons already appointed on regular basis upto 31st August, 1988".

(emphasis added)

Thus it is clear that the applicants cannot invoke the rulings of the Hon'ble Supreme Court to say that continuous adhoc service followed by regular appointment has to count for seniority as their regular appointment has not yet materialised. It is true that the Supreme Court by a catena of decisions have been endorsing the principle of seniority to be based on length of continuous service. This dictum, however, has been made applicable only in the following circumstances:

- (a) Where there ~~are~~ no Seniority Rules;
- (b) Where the Seniority Rules are in existence but the same ~~had~~ become ~~infructuous~~ because of collapse of quota-rota rule; and
- (c) Where the Seniority Rules are in existence but the same have been challenged in favour of seniority based on length of continuous service.

8. In the instant case before us the applicants have not challenged the Railway Board Secretariat Stenographers Service Rules, 1971 at Annexure.R.2 which lay down how promotions to Grade III are to be made and how the seniority

is to be determined. Unless these rules are challenged the seniority of the direct recruits and promotees based on these rules cannot be effectively assailed. The ⁶ have not [?] applicants also ~~having~~ challenged the order dated ⁶ 26.6.89 at Annexure.A.3 to the rejoinder, by which their position in the Select List which would determine their seniority on their ultimate promotion to Stenographer Grade 'C' on a regular basis, by amendment of the original application. By this order they have been given notional regularisation with effect from 1st September, 1988. Unless this order is challenged their previous adhoc service cannot be considered to be regular for any purpose.

9. In the facts and circumstances the application as it stands today has no force and is dismissed without any order as to costs.

Abey 10.4.92

(T.S. OBEROI)
MEMBER (JUDICIAL)

S.P. Mukerji 10.4.92
(S.P. MUKERJI)
VICE CHAIRMAN

10-04-92

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