

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD

(This the 5th Day of March, 2021)

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)
Hon'ble Mr. Tarun Shridhar, Member (Administrative)

Original Application No.330/1451/2017

1. Mohd. Rashid, aged about 29 years, S/o Shri Syed Waseem Ahmad, R/o 8-M/2-A, Harwara, Dhoomanganj, District – Allahabad – 211011.
2. Sunny Dev Sharma, aged about 25 years, S/o Shri Rakesh Kumar, R/o 282-B/75-A, Tilak Nagar, Allahpur, District – Allahabad – 211006.

..... Applicants

By Advocate: Shri Ashish Srivastava

Versus

1. Union of India through its Secretary, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training), New Delhi.
2. The Principal Registrar, Central Administrative Tribunal, Principal Bench, 61/35, Copernicus Marg, New Delhi.
3. The Registrar, Central Administrative Tribunal, Allahabad Bench, 35, Mahatma Gandhi Marg, Civil Lines, Allahabad.

..... Respondents

By Advocate: Shri Anil Kumar

O R D E R

Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

By means of the instant Original Application, the applicants have prayed for the following relief(s):-

“(i) to issue a writ, order or direction in the nature of mandamus directing the respondents to treat the appointment of the petitioners made pursuant to the Recruitment Notification dated 30.07.2013, published in the news papers ‘Times of India’ on 02.08.2013 on ‘adhoc basis’ and further, the respondents may be

directed to regularize the services of the petitioners in the above capacity as has been done in the case of the similarly situated persons i.e. about 90% staff working in the Allahabad Bench, who too were appointed on the basis of selection conducted by the respondents themselves as the Staff Selection Commission (S.S.C.) has always failed to nominate any candidate for appointment in the CAT., Allahabad Bench, alike in the case of the selection proceeding of the Stenographers Grade 'D' pursuant to which the petitioners have been appointed, within a period as may be fixed by this Hon'ble Tribunal.

- (ii) *to issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.*
- (iii) *to award the cost of petition in favour of the petitioners.”*

2. We have heard Shri Ashish Srivastava, learned counsel for the applicants and Shri Anil Kumar, learned counsel for the respondents and have carefully perused the record.

3. The brief facts, necessary for a just and proper adjudication of the case, are that certain vacancies of Stenographers Grade 'D' were lying vacant since long at Allahabad Bench of Central Administrative Tribunal (herein after referred to in short as CAT). The normal procedure for recruitment of Steno Grade 'D' in CAT is either through Staff Selection Commission or through Limited Departmental Examination from LDC of CAT. It appears that Staff Selection Commission and Regional Employment Exchange, both were called to nominate suitable candidates for such purpose by means of several letters sent by CAT but every time they failed to nominate any one. Due to acute shortage of the Stenographers and when Staff Selection Commission (S.S.C.) and the Regional

Employment Exchange, both failed to nominate any suitable candidates, the Principal Registrar, Central Administrative Tribunal, Principal Bench, (respondent No.2) vide a letter dated 11.11.2011 directed the Registrar, Allahabad Bench of CAT to make further efforts for procuring nominations from Regional Employment Exchange for the purpose of such selection and thereafter to appoint such stenographers/Court Masters on Ad hoc basis. (The copy of aforesaid letter dated 11.11.2011 has been annexed as Annexure A-2 to the O.A.). For a ready reference, it is quoted below:-

“No.PB/17/1/2008-Estt.I Dated:11.11.2011
To,

The Registrar,
Central Administrative Tribunal,
Allahabad Bench,
Allahabad.

Sub: Filling up the vacant posts of Private Secretary/Stenographer Grade 'C'/Court Master in CAT, Allahabad Bench – regarding.

Sir,

I am directed to refer to your letter No.22(1)/2003-Estt./Part/559 dated 18.10.2011 on the above mentioned subject and to request you to make efforts to fill up the vacant posts of Court Masters on deputation basis by issuing a vacancy circular locally. In the meanwhile permission of the Competent Authority is also accorded to appoint Stenographer Grade 'D' against the vacant posts of Court Masters purely on ad hoc basis by calling nominations from the local employment exchange and after conducting the skill test of eligible candidates so sponsored by the Local Exchange as per existing Recruitment Rules till the posts are filled up on regular basis or on deputation basis.

You are, therefore, requested to make efforts to fill up the vacant posts as suggested above and send the proposal for appointment with the recommendations of the Hon'ble HOD for obtaining approval of the Hon'ble Chairman.

Yours faithfully

(L.R. Sharda)
Deputy Registrar (E)"

4. It appears that pursuant to the aforesaid letter, the Regional Employment Exchange, Allahabad, was asked once again to sponsor the names of suitable candidates. The Regional Employment Exchange, Allahabad vide its letter dated 08.12.2011 again expressed its inability to sponsor the names of any suitable candidate by submitting that no such candidate, as required, are registered with it. A copy of the said letter dated 08.12.2011 is being annexed as Annexure A-3 to this O.A.

5. Hence, in view of the aforesaid circumstances, the respondent No. 2 vide its letter dated 06.12.2012 directed the respondent No.3 to obtain 'No Objection Certificate' from the Local Employment Exchange and to proceed to fill-up the vacant posts of Stenographers Grade 'D' on 'adhoc basis' from the candidates from the open market, till such posts are filled up on regular basis through Staff Selection Commission (S.S.C.). For a ready reference, the letter dated 06.12.2012 (A-5) is also reproduced below:-

Yours faithfully

(L.R. Sharda)
Deputy Registrar (Estt.)"

6. Accordingly, the respondent No.3 proceeded to initiate above selection through open market and notified the vacancies in the daily newspapers "Times of India" and "Amar Ujala" etc. dated 02.08.2013. The copy of the Recruitment Notification dated 30.07.2013, published in the daily news papers on 02.08.2013, is being annexed as Annexure A-6 to this OA., which is quoted below:-

“CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

35, M.G. Marg, Civil Lines, Allahabad 211001 Fax 0532 2400011.
No. 1(2)/2003-Estt. (Part)

Advertisement No.2

Last date of receipt of application:

15 days from the date of publication.

Applications are invited for five

Applications are invited for filling up 34 posts (01 and 01 SC) of Stenographer Grade 'D' purely on Ad-hoc basis in the establishment of Central Administrative Tribunal, Allahabad Bench, Allahabad having pay in Pay Bank -1 (5200-20200 + Grade Pay Rs. 2400/-)

Eligibility Qualifications:

(A) Matriculation of Equivalent from recognized Board.

(B) A speed of 80 w.p.m in English Shorthand and 30 w.p.m in typing in English.

Desirable: Degree from a recognized University.

Age: Candidates having age between 18 to 27 years on the last date of receipt of application.

Conditions: The posts of Stenographer Grade 'D' is to be filled up on Ad-hoc basis. The appointment on Ad-hoc basis can be terminated without giving any prior notice without assigning any reason.

How to apply: Typed application addressed to the Registrar, Central Administrative Tribunal, Allahabad Bench 35, M.G. Road, Civil Lines, Allahabad – 01 giving bio-data enclosing attested copies of mark sheets/certificates of educational & technical qualifications through Regd. Post/Speed post.

(Shakeel Ahmad)

No. 1(2)/2003-Estt./Part)

Deputy Registrar (A)

Dated: 30.07.2013”

7. A perusal of the notification quoted above, shows that certain eligibility conditions have been prescribed in it with the clear stipulation that there are vacant four posts at Allahabad Bench in

CAT, (three unreserved and one reserved) which are to be filled up purely on 'adhoc basis' in Pay Band-1 of Rs.5200-20200/- + Grade Pay Rs.2400/-. As regards the other conditions, it has been stipulated that the candidates must have a Matriculation Certificate or equivalent from a recognize Board and he/she must be having a typing speed of 90 words per minute in English Short hand and 30 words per minute in typing in English. A Degree from a recognized University was also desirable. Candidates of age group between 18 years to 27 years, on the last date of receipt of the applications, were considered eligible.

8. Both the applicants herein, fulfilled the eligibility criteria in all respects. They applied to contest the aforesaid selection, they were issued Admit Cards (Copies of both the Admit Cards dated 13.09.2013 issued to both the applicants are collectively enclosed as Annexure A-7 to this OA.) The examination for selection was scheduled on 28.09.2013. Both the applicants appeared in the examination and performed well. The merit list was prepared by the respondent No.3, wherein both the applicants stood at Sl. Nos. 3 and 2 respectively. The merit list, containing the names of total eleven candidates, was duly transmitted to the respondent No.2 by the respondent No.3 vide its letter dated 01.11.2013. (Copy of which is also annexed as Annexure A-9 to this OA.)

9. The grievance of the applicants is that even though, as per the recruitment notification, the vacancies were to be filled up on

‘adhoc basis’, the respondent No.2 issued offer of appointment to the applicants as Stenographer in the C.A.T., Allahabad Bench, in terms of ‘**engagement**’ on ‘**contract basis**’, on a consolidated amount of Rs.9000/- per month for a period of three months or till the posts are filled-up on regular basis, whichever is earlier. The applicants were directed to report for duty latest by 19.03.2014 along with their original testimonials. (Copies of appointment letters dated 06.03.2014 sent by respondent No.3 to both the applicants are collectively annexed as Annexure A-10 to this OA.)

10. As per the version of applicants, both of them being unemployed youths, having burden to maintain and look after their old aged parents including other family members, were not in a bargaining position and under these compelling circumstances, with a *bonafide* and legitimate expectations, that they will get regular appointment in due course of time, they joined their duties. The applicant No.1 joined his services with effect from 10.03.2014, whereas the applicant No.2 joined with effect from 13.03.2014. (A copy of the joining report of applicant No.1 dated 10.03.2014 is annexed as Annexure A-11 to this OA.)

11. The said appointment/contractual engagement of both the applicants continued and extended from time to time giving artificial technical breaks of two days. Their remuneration was also extended from Rs.9,000/- per month to Rs.15,000/- per month. A copy of the Office Order dated 23.05.2014 by which, first extension

and continuation of service was allowed as well as a copy of the Office order dated 07.09.2017, whereby their contractual appointments were lastly extended are annexed collectively as Annexure A-12 to this OA..

12. Both the applicants earlier on 22.09.2015, had moved representations before the Chairman, CAT, Principal Bench praying that since the majority of the staff including the Stenographers' cadre have been inducted initially from the open market on 'adhoc basis' and later on, they have been regularized and none of the staff in the Allahabad Bench, has been recruited through the Staff Selection Commission (S.S.C.) they should also be given the same treatment. Moreover, since, the terms of appointment notification/advertisement, were altered from 'adhoc' to that of 'contractual' at a later stage, after the selection process was over and the applicants had joined the post under a bonafide legitimate expectation that like other majority of staff, they shall also be regularized, their services may be regularized. A copy of the aforesaid representation dated 22.09.2015, preferred by the applicant No.1 is annexed as Annexure A-13 to this OA. Similar representation was also preferred by the applicant No.2.

13. The representations of both the applicants were rejected vide two separate letters of the same date i.e. 12.10.2015 by the respondent No.3, on the ground that as the mode of recruitment of Steno group 'D' in C.A.T., being either through S.S.C. (Staff

Selection Commission) or L.D.E. (Limited Departmental Examination) from L.D.C. of C.A.T. and that S.S.C. shall be approached to nominate suitable candidates for the vacant posts, their request cannot be acceded to. A copy of the aforesaid impugned letter dated 12.10.2015 is annexed as Annexure A-14 to this OA.

14. With the aforesaid factual background, the applicants have approached this Tribunal by means of instant OA with prayer that the OA may be allowed and the reliefs claimed by them may be granted.

15. The respondents have filed counter affidavit, in which the OA has been opposed mainly on the following grounds:-

That the applicants were well informed before their engagement that their appointment shall be on contract basis and their continuation shall be subject to the requirement.

The applicants knowing very well, the terms and conditions have accepted their engagement on contract basis and continued to work as such, extending their services on contract basis for 89 days in a spell. It is contended that having accepted the terms of engagement at the initial stage of their appointment, they are now estopped from raising such issue at this stage, after having accepted the terms of engagement. It is contended that after working for a long period on such post on contract basis, they have no right to

seek regular appointment as no such assurance/promise was made to them. Further, the applicant No.1 has resigned from the post and his appointment has been discontinued, due to which, he shall have no further claim.

16. On the aforesaid grounds, it is pleaded by the respondents' counsel that the OA be dismissed.

17. In the rejoinder affidavit, applicants have reiterated the version and the averments made in the OA.

18. Shri Ashish Srivastava, the learned counsel for the applicants has vehemently argued that both the applicants were duly selected on merits, through a competitive examination after inviting applications from the open market, thus satisfying the requirement of Articles 14 and 16 of the Constitution of India. The open advertisement was made as per the available vacancies. The examination was held and on the basis of marks obtained by candidates who were found eligible, the final merit list was prepared. Therefore, by no stretch of imagination, the appointment made in furtherance of the aforesaid selection can be termed or considered as back door entry.

19. It is further contended that before initiating the present selection, the respondents had already tried their best to procure the eligible candidates, through S.S.C. and also through the

Regional/Local Employment exchange but both the recruiting agencies failed to nominate any suitable candidate. Moreover, the majority of the group 'C' and 'D' staff in the C.A.T., Allahabad Bench, has been selected from the open market competitive examination and not through the S.S.C. as the applicant in reply to their query under Right to Information Act 2005 have come to know. In view of the above, the action of the respondent is wholly arbitrary and unjust.

20. In reply, learned counsel for the respondents Shri Anil Kumar has contended that although it is true that when the Notification dated 30.07.2013 was published, till that time SSC had not provided the names of any candidate for selection of Stenographer Grade 'D'. Therefore as per the directions of respondent No.2 acting, on behalf of Hon'ble Chairman, CAT, the notification was issued for filling up the vacant posts on ad hoc basis, from the candidates from open market, till appointment on regular basis through Staff Selection Commission are made. Later on, the Staff Selection Commission started the selection process and nominated 28 candidates from the examination held in the year 2015 for the post of Stenographer Grade 'D'. It is contended that in view of the changed circumstances, the applicants cannot be appointed on regular basis in violation of the provisions of Recruitment Rules of DoP&T.

21. It is lastly contended by learned counsel for the respondents that the applicants have accepted their contractual engagement without any protest. Moreover, the representation dated 22.09.2015 moved by the applicants for regular appointment was rejected and communicated to them far back, vide order dated 12.10.2015 (Annexure A-14). However, the same has not been challenged by the applicants, thus the relief claimed in the OA are not only barred by law of estoppels but also barred by the law of limitation.

22. We have given our thoughtful consideration to the rival submissions advanced by learned counsel for the parties.

23. The legal position is well settled by repeated pronouncements of Hon'ble Supreme Court and of various Hon'ble High Courts in a catena of judgments that "**the Rules of the games cannot be changed after the game is over or even in the midst of the game**". In other words, the terms and conditions of selection and appointment contemplated in the recruitment notifications cannot be altered in the mid of the selection process or after completion of the recruitment. Neither the eligibility criteria nor the nature of the appointment or vacancies advertised can undergo any change after the publication of the recruitment notification, whereas in the present case, nature of the vacancies even though advertised as 'adhoc' has been altered wholly in an arbitrary manner from 'adhoc' to 'contractual', after the selection process was over and the merit list was finalized. This was done by the respondents at the stage of

issuance of the appointment letter. Therefore, the action of the respondents cannot be considered as fair, just and proper. The applicants ought to have been appointed on 'adhoc basis' in the pay band as published in the notification and not on Contract basis on a fixed remuneration. Therefore, we are of the view that a serious prejudice has been caused to them. Moreover, the applicants have also been discriminated due to the reason that admittedly, the majority of the staff at CAT, Allahabad Bench, has been appointed by holding a selection in the same manner as done in the case of the applicants and not through Staff Selection Commission, which is clearly evident from a perusal of Annexure No.15 i.e. the information supplied to the applicants under Right to Information Act, 2005.

24. When some of the employees could have been appointed on 'adhoc basis', as published in their recruitment notifications, and their services could have been regularized also, the applicants should also be given the same treatment.

25. In **Bishnu Biswas and others Vs. Union of India and others (2014) 5 SCC page 774**, an advertisement was published calling applications for appointment to the post of Group 'D' staff. The recruitment rules only provided for a written examination having 50 maximum marks. After holding written examination, notice was issued, calling the successful candidates for interview. Although, such interviews was not part of the recruitment process,

a select list was published, which was challenged in the Tribunal. The Tribunal returned the finding that the manner in which marks have been awarded in the interview to the candidates indicated lack of transparency. The High Court upheld the reasoning of the Tribunal. The Hon'ble Supreme Court in para 19 and 20 held as follows:-

“19. In the instant case, **the rules of the game had been changed after conducting the written test and admittedly not at the stage of initiation of the selection process.** The marks allocated for the oral interview had been the same as for written test i.e. 50% for each. The manner in which marks have been awarded in the interview to the candidates indicated lack of transparency. The candidate who secured 47 marks out of 50 in the written test had been given only 20 marks in the interview while large number of candidates got equal marks in the interview as in the written examination. Candidate who secured 34 marks in the written examination was given 45 marks in the interview. Similarly, another candidate who secured 36 marks in the written examination was awarded 45 marks in the interview. The fact that today the so called selected candidates are not in employment, is also a relevant factor to decide the case finally. If the whole selection is scrapped most of the candidates would be ineligible at least in respect of age as the advertisement was issued more than six years ago.

20. Thus, in the facts of this case the direction of the High Court to continue with the selection process from the point it stood vitiated does not require interference. In view of the above, the appeals are devoid of merit and are accordingly dismissed. No costs.”

26. Likewise, in **Tej Prakash Pathak and others Vs. Rajashthan High Court and others 2013 (4) SCC page 540**, it has been held by Hon'ble Apex Court that the criteria for selection cannot be changed during the course of the selection arbitrarily.

27. Further, in the case of **Salam Samarjeet Singh Vs. High Court of Manipur at Imphal**, decided on 7th October, 2016, Hon'ble Apex Court has held **that rules of the game cannot be changed in midst of the selection process, otherwise it will vitiate the selection**. During the selection process, the selection criteria cannot be changed by adding an additional eligibility conditions.

28. In **Ramesh Kumar Vs. High Court of Delhi and another decided on 1.2.2010**, the Hon'ble Apex Court held that **a selection has to be made as per existing rules. After the selection process has been initiated, the selection criteria cannot be changed in the midst of selection process**. Once the selection process starts, it is not permissible for the competent authority to change the selection criteria.

29. In the case of **K. Manjusree Vs. State of Andhra Pradesh, Appeal Civil No. 1313/2008, decided on 15.2.2008 by three Judges Constitution Bench , (2008) 3 SCC page 512**, Hon'ble Supreme Court, on finding that the introduction of requirement of minimum marks for interview, after the entire selection process consisting of written examination and interview was completed, held that **it will amount to changing the rules of game after the game was played and therefore, impermissible**.

30. In view of the aforesaid legal position reiterated by the Hon'ble Supreme Court in above cited judgments, we have no hesitation to hold that in the present case, the rules of game have been changed after game is over by the respondents. When in the notification, the nature of appointment was to be on 'adhoc basis', it should not have been changed to a 'contractual engagement' after completion of the examination and even after declaration of merit list. The State being a welfare State, should act in a fair manner with its citizen and not arbitrarily as in the present case. Therefore, the arguments raised by the learned counsel for the respondents that as the mode of appointment is through SSC, the applicants cannot be appointed on adhoc basis, cannot be sustained.

31. In so far as the 2nd contention raised by the learned counsel for respondents is concerned that the applicants having accepted their contractual appointment, are now estopped from challenging it on the principle of bar of estoppel and acquiescence, it is not sustainable. As per law laid down by the Hon'ble Supreme Court in **Raj Kumar and others Vs. Shakti Raj and others, (1997) 9 SCC page 527**, wherein it has been held that when glaring illegalities have been committed in the procedure of examination, the principle of estoppel by conduct acquiescence has no application, the principle of estoppel and acquiescence is not applicable.

32. In view of the above, the O.A. deserves to be allowed and **is allowed.**

33. As it is undisputed fact that applicant No.1, namely, Mohd. Rashid has resigned far back, no further action can be taken in respect of him. Accordingly, Respondent No. 2 is directed to treat the applicant No.2, Sunny Dev Sharma as appointed on adhoc basis since the date of his initial appointment and to give all consequential benefits to him as per rules.

34. In the circumstances of the case, there shall be no order as to costs.

(Tarun Shridhar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

Sushil