

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 296/86.
T.A. No.

198

DATE OF DECISION 23-10-1987.

Shri M.S. Siddiqui

Petitioner

Shri R.K. Kamal

Advocate for the Petitioner(s)

Versus

Delhi Administration & Ors.

Respondents

Shri J.S. Bali

Smt. Anash Ahlawat

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

The Hon'ble Mr. Birbal Nath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? $\frac{Y}{N}$
2. To be referred to the Reporter or not ? $\frac{Y}{N}$
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all the Benches ?

22/10/87
(BIRBAL NATH)
MEMBER (A)

(J.D. JAIN)
VICE CHAIRMAN

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DATE OF DECISION: 23.10.1987

D.A. No. 296/86.

Shri M.S. Siddiqui ... Applicant

vs.

Delhi Administration ... Respondents.

CORAM:

Hon'ble. Mr. Justice J.D. Jain, Vice-Chairman

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant: Shri R.K. Kemal, counsel.

For the respondents: Shri J.S. Bali, counsel.

J U D G M E N T

(delivered by Hon'ble Mr. Birbal Nath).

Per his application No. 296/1986 filed under

Section 19 of the Administrative Tribunal Act, 1985, the

applicant Shri M.S. Siddiqui, Instructor Stenography,

Institute of Commercial Practice, under the Delhi

Administration, has prayed for the following reliefs:-

- (a) The rule as amended by the notification dated 20.1.1986 be struck down as unconstitutional and illegal.
- (ii) Respondent No. 3 be directed to consider the applicant for promotion in accordance with the unamended rules. (Annexure 'B')
- (iii) The applicant's services should be regularised

from the date of his initial appointment i.e. 7.9.1965 in the light of various judgments of the Supreme Court and High Court.

- ^{d.}
(iv) The applicant be treated or declared permanent for quasi-permanent or suitable directions in this behalf be issued.
- ^e
(v) The applicant be declared senior to respondents 5 to 9.
- ^f
(vi) The fixation of salary of the applicant be done with effect from 27.5.1970 and such other direction as may be considered fit and proper may also be issued.

2. Facts giving rise to the application are that the applicant was appointed in the scale of Rs. 210-10-290-15-320-E8-15-380 on 7.9.1965 on a purely temporary and ad-hoc basis. On 24th July, 1973, the applicant was appointed as Junior Lecturer (Stenography) in the Institute of Commercial Practice and continued to work there upto 4.10.1975. The said post was later on abolished. The applicant had been working in the scale of Rs. 210-350 as Instructor while the grade for Junior Lecturer was Rs. 350-650. The applicant, who is a B. Com. from Agra University, also claimed to possess Certificates for passing English Shorthand and Typewriting examination. The applicant has challenged that respondents 5 to 9, S/Shri S.K. Khanna, H.R. Ahuja, R.R. Khurana, A.D. Sati and R.C. Gupta, are being considered for promotion to the post of Junior Lecturer while the applicant, though being senior, has been ignored. He claimed seniority on the ground that having been appointed in September, 1965, he was senior to the respondents who were appointed, according to him, on later dates. The applicant has alleged hostile discrimination. He also challenged assignment of higher seniority to respondents

5 to 7 on the ground that he was appointed prior to all the three respondents. He also challenged the vires of the amendment carried out to the Rules regarding method of recruitment and qualifications necessary for appointment to various group 'C' teaching courses in the Institute of Commercial Practice under the Directorate of Training and Technical Education, Delhi Administration, in January, 1986.

Respondent No. 6, Shri H.R. Ahuja, in his counter maintained that the applicant was recruited purely on temporary and ad-hoc basis as Instructor (Stenography) and he was required to appear in Shorthand and Typewriting test. The applicant appeared in the test in the year 1971 but failed. Despite failure, the applicant was continued as Instructor on ad-hoc basis. Respondent No. 6 had appeared in the test held in 1971 as a direct candidate and had passed the same. Since the respondent No. 6 had passed the test, he was appointed on a regular basis on 21st January, 1972. From annexure R-4 and R-5 filed with the counter of respondents 1 to 4, it is clear that the applicant had failed in the Typing and Stenography test held on 21.7.1970 and 17th August, 1971 respectively, whereas Respondent No. 6 had passed in the test held on 17th August, 1971. The applicant had appeared as a candidate for direct recruitment for the post of Instructor (Stenography) again in 1973 and he was declared successful and regularly appointed to the said post on 21st November, 1973. Paragraph 4 of the appointment letter dated 7.9.1965 in respect of the applicant reads as under:- (Ann. R-8)

- "4. The services of Shri _____ are liable to be terminated without notice in case he failed to pass the typewriting test at the speed not less than 30 words per minute within a period of six months."

From the above, it is clear that the applicant's appointment was

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subject to passing test in typewriting and he was supposed to acquire a speed of 30 words per minute. In the counter affidavit filed on behalf of respondent No. 3, it has been averred vide para. 2 that the applicant could not pass the prescribed test till 1973 and when he did pass the test, he was regularised with effect from 21.11.1973. Vide para. 12 of the same counter, it has been averred that the applicant did not possess diploma/certificate from any recognised university regarding stenography though he had shorthand and typewriting as one of the subjects during his school and intermediate classes, and since he had never worked as a regular Instructor (Stenography), he could not be eligible for promotion to the post of Junior Lecturer (Stenography) on the basis of the recruitment Rules of 1968. It was further averred that he did not qualify in the test of shorthand and typewriting held on 21.7.1970 and 17.8.1971. It was also averred that Shri R.R. Khurana, Shri A.D. Sati and Shri R.C. Gupta were junior to the applicant since they were regularly appointed as Instructor with effect from 1.9.1975, 22.2.1978 and 4.10.1982 respectively. It is also to be noted that so far as the status of Shri S.K. Khanna, respondent No. 5 is concerned, the following affidavit was made on behalf of respondents 1 to 4 on 18.8.1987:

- "1. that the seniority list circulated vide letter No. 24(7)/78/TE/AD/6175 dated 7.4.1979 contains the seniority of respondents S/Shri S.K. Khanna, H.R. Ahuja, R.R. Khurana and the applicant Sh. M.S. Siddiqui.
2. that the date of entry into Government service shown in column 6 in respect of Sh.S.K. Khanna is 3.9.1959 and the date of appointment as regular manner in the post (grade) i.e. Instructor (I.C.P.) in column 5 is shown as 31.9.1967.
3. that Sh. Khanna joined as L.D.C. in this Directorate of Trg. T.E. Employment on 3.9.1959. He was appointed as Instructor (Stenography) on 1.10.1967 on adhoc and emergent basis.

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4. that Sh. S.K. Khanna passed the typewriting test held on 21.7.70 conducted by Sub Regional Employment Officer, Darya Ganj.
5. that accordingly name of Sh. Khanna was sponsored for the post of Instructor (Typewriting) to I.C.P. vide this Directorate letter No.F.4(6)/70/TE/AD/9697-98 dt. 10.3.1971, and he was offered the post of In-structor (typewriting) by Department of Commercial Practice & Pharmacy vide letter No.CBP-1(11)/70/39 dt. 10.3.1971 on regular basis.
6. that according to the seniority rules his appointment should have been regularised w.e.f. 10.3.1971 instead of 30.9.67 which was an apparent mistake."

It is clear from the above that the appointment of respondent No. 5 was regularised before the date on which the applicant was regularly appointed. Therefore, the applicant cannot question the seniority of respondent No. 5. Similarly, the passing of stenography test was a condition precedent and since the applicant had failed in the test whereas respondent No. 6, Shri H.R. Ahuja had passed, the applicant's challenge to the seniority of respondent No. 6 cannot be accepted. The learned counsel for the applicant argued that once the services of the applicant had been regularised on 21.11.1973, he should get the benefit of past services from 7.9.1965, though the original appointment was termed as 'ad-hoc' in view of the present situation of law laying that the officiation period will count towards seniority. In this connection, the learned counsel for the applicant relied upon the judgment delivered by this Tribunal in S.C. Jain Vs. Union of India & Ors.¹, wherein the question whether ad-hoc service should count for seniority or confirmation was examined. This judgment is based on the judgment of the Hon'ble High Court of Delhi in Kuldeep Chand Sharma and another vs. Delhi Administration and another². However, this judgment has

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1. A.T.R. 1986 (2) CAT/ 1986 A.T.C. 361.
2. 1978(2) SLR 379.

is to be distinguished. In this judgment of the Hon'ble High Court, it has been held that where persons are appointed on temporary, emergent and ad hoc basis in the absence of recruitment rules and ad hoc appointee is eventually selected for the post in regular selection, the regular appointment would relate back to the date of ad hoc appointment. In the instant case, the appointment of the applicant as ad hoc would have been relevant if he had fulfilled the eligibility criteria, i.e. passed the typewriting and shorthand examination prescribed for the post. The respondents were well within their rights to prescribe qualifications/ eligibility criteria for appointment to the post. In the case of Subhash Chand Vs. Delhi Electric Supply Undertaking¹, the Supreme Court speaking through Justice Krishna Iyer has held that qualifications for a particular post can be a rational criteria under Article 16. The following portion of para 7 of the judgment lays down the rationale in this regard:-

"It is well established law that qualifications for a particular post can be a rational differentia within the meaning of Art.16. It is equally clear that when a qualification has been prescribed for a post, that cannot be obliterated..."

So it was within the powers of the respondents to give the applicant a conditional appointment vide para 4 of the appointment letter prescribing that he is to pass the typewriting test at the speed of not less than 30 words per minute within a period of six months.

Shri J.S.Bali, the learned Counsel for respondents 1 to 4 argued that the case of the applicant is covered by the Judgment of the Hon'ble Supreme Court in B.Varadha Rao Vs. State of Karnatka and another². In this case, the appellant's claim to seniority was not accepted by the Hon'ble Supreme Court on the ground that seniority could not be claimed unless there was regular appointment. In this regard, he further relied on the case of Ashok Gulati and others Vs. B.S. Jain & others wherein it has been held that seniority cannot be

1. AIR 1971 SC 75

2. AIR 1987 SC 287

3. AIR 1987 SC 424

granted where service is rendered on an ad hoc or stop-gap arrangement only. Paragraph 23 of the judgment reads as under :-

"23. It would be repugnant to all accepted concepts of service jurisprudence if the claim of persons like respondents No.1 and 2 who were employed as Temporary Engineers on ad hoc basis de hors the rules for six months at a time were extended the benefit of their continuous officialisation as such ad hoc employees in reckoning their seniority vis-a-vis direct recruits in considering their eligibility under R.6(b) of the Class-I Rules for promotion to a higher grade or post of Executive Engineer "

However, the case of the applicant neither on law nor on factual merits is tenable. In the instant case, the applicant had failed in the prescribed test and the respondents would have been well within their rights if they had terminated the appointment of the applicant. However, if they continued his appointment on ad hoc basis, that ad hoc appointment without fulfilment of eligibility conditions cannot confer the right on the applicant to seek seniority from the date of ad hoc appointment. This Tribunal has held in the case of Ram Krishan Vs. Union of India that where a promotion is made regularly by a Departmental Promotion Committee, the ad hoc period will count towards seniority. If the applicant had been empanelled by a proper Selection Board after passing the prescribed tests and this appointment was termed as 'ad hoc', he would have been entitled to a seniority from the date of ad hoc appointment. Since the applicant had repeatedly failed in the tests prescribed for appointment to the post of Instructor Commerce (Stenographer), he cannot claim seniority from the date of his promotion on the basis of the judgments the learned Counsel for the applicant has sought to rely upon.

In view of the discussion of facts and law, we hold that the challenge to the seniority of respondents 5 and 6 fails and that the claim of the applicant for seniority from the date of his ad hoc appointment cannot be granted to him in view of the law as obtaining.

3. The next relief sought by the applicant is that the Recruitment Rules of 1986^{amended} be declared invalid. He has challenged the validity of the Rules on the ground that these Rules have lowered the educational qualifications for direct recruits and made the educational qualifications for promotion far more stringent. Column 7, which is meant for direct recruits and Column 11 concerning promotees as amended under Notification issued by the Delhi Administration on 22-1-1986, read as under:-

"Column 7:

- 1) B.A./B.Com. Second Division.
- 2) 2 Year's Diploma in Secretarial Practice from a recognised University or Institution or equivalent.
- 3) 3 Years' teaching experience in the field of English/Hindi Stenography in a recognised institute.

Column 11:

Promotion -

Instructors possessing M.A./M.Com. qualifications with 3 years' regular service in the grade."

On behalf of the respondents, it has been contended that the applicant has no locus standi to challenge this amendment to the Notification because when he joined the service, he was governed by the Rules of 1968 and he was not eligible for promotion to the post of Junior Lecturer under those rules.

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Since he was not eligible under those Rules, he cannot challenge the amendment of January, 1986. The learned Counsel for Respondent Nos. 1 to 4 argued that the power of Legislature cannot be limited and this power is plenary. In this connection, he relied upon the judgment delivered by the Hon'ble Supreme Court in K.Nagaraj and ors Vs.

State of Andhra Pradesh and another¹ wherein the age of retirement was reduced from 58 to 55 years to the disadvantage of State employees and it was held vide para 31 of the judgment that the power to legislate was plenary and there are no limitations on the State Legislature to pass laws within their sphere. It has also been held in the same judgment that a law or ordinance can be invalidated for contravention of the Constitutional limitations which exist upon the power of the State legislature to pass laws but the same could not be declared invalid for the reason of non-application of mind. Whereas an act of the executive is liable to be struck down on the ground of non-application of mind, same does not apply to the act of Legislature. It was argued that this Notification cannot be held to be arbitrary or suffering from non-application of mind on the ground that it favours the direct recruits and obstructs the chances of the promotion of promotees. It is for the Legislature to decide what qualifications should be prescribed for promotees. The applicant cannot also challenge the vires of the Notification of January, 1986 when he had acquired no right under the Notification of 1968 which held the field when he had joined the service.

1. A.I.R. 1985 SC 551.

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There is weight in the argument that the standards prescribed for the departmental candidates are more stringent than those for the direct recruits. This fact by itself cannot be the only ground to challenge the vires of the amended Rules. This anomaly was also noticed in the Services Department of the Delhi Administration when the proposal was examined. It was stated that there was an obvious anomaly inasmuch as the qualification expected from a promotee was M.A./M.Com., whereas the same is B.A./B.Com. second division from a direct recruit. The department had been finding it difficult to fill the vacancies and, therefore, they had suggested only B.A./B.Com. with second division for the direct recruits and it was stated that all the incumbents were possessing the educational qualification of M.A./M.Com. with proficiency in English/Hindi Stenography, with requisite teaching experience and the proposed amendment would not cause any hardship to the incumbents. The note recorded by the Secretary, Services on 5-11-1984 before it was submitted to the Chief Secretary and the Lieutenant Government, Delhi, reads as under :-

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"2. Proposal in this file relates to reduction in educational qualification from M.Com. 2nd Division to B.A./B.Com 2nd Division for direct recruits for the post of Junior Lecturer (Secretarial Practice) - pay scale Rs. 650-950 - in the Directorate of Technical Education. The suggestion of the Department has been necessitated because direct recruits with M.Com. qualification (alongwith other technical qualifications prescribed) are not available. In the revised RRs, while proposing reduction in qualification from M.Com. to B.A./B.Com, teaching experience is proposed to be raised from one to three years - refer portion 'A' pre-page. For instructors in the promotion quota, educational

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qualification is proposed to be fixed as M.A./M.Com. with three years regular service in the grade since, as has been ascertained, all the persons in the feeder service are possessing this qualification. Since the proposal of the Administrative Department appears justified, approval of CS/LG is solicited to the proposed change in R.3s so that a reference can be made to the UPSC."

However, the fact is that the applicant had come to acquire a right under the Recruitment Rules, 1978 filed as R-2 with the counter affidavit which provides 50% of the posts of Junior Lecturers will be filled by promotion and conditions for promotions were laid down as follows in column 11:-

"Instructors with three years standing in the appropriate subject."

Once the applicant had acquired a right as above, condition for his promotion as per amendment of 1986 could not be abrogated by imposing the qualification of M.A./M.Com. as per column 11. The law is well settled that a rule which confers right of actual promotion or a right to be considered for promotion is a rule prescribing condition of service and it cannot be altered to his disadvantage. Of course, mere chance of promotion will certainly not be a condition of service. In the instant case, the amended rule certainly affects adversely the right of the petitioner to be considered and as such it is violative of Article 16 of the Constitution. Amended Rule is also arbitrary as the educational qualification for promotion being higher than those for direct recruits in the feeder cadre (Service) would mean shutting off promotion avenues to direct recruits in the feeder cadre who join the same with the minimum qualifications as prescribed. Prescription of a higher educational qualifications for promotees than the one for the direct recruits in the feeder service is arbitrary and unreasonable as it stultifies the process of promotion itself. The result of this amendment, if continued, would be that the direct recruits who fulfil the prescribed qualification for entry into feeder service, will not become eligible for promotion as a higher educational qualification has been laid for the posts of Junior Lecturers. Having once permitted candidates

of lower qualifications to join as direct recruits,
the amendment of 1986 prescribing the higher educational
qualification for promotion not only lacks rationale
but suffers from the vice of capriciousness as it stunts
the promotion of direct recruits for no fault of their own.
As such, the amendment of 1986 to the extent it prescribes
educational qualifications as M.A./M.Com. for promotion purposes
is un-sustainable under law being violative of the rights of
the direct recruits in terms of Article 16 of the Constitution - right
of equality in employment which embraces the right of equality in
the matter of promotion - and is accordingly struck down.

4. In view of the foregoing discussion, respondents 1 to 4
are directed to consider the case of the applicant for promotion
to the post of Junior Lecturer as per his educational qualifications
as provided under the Recruitment Rules of 1978. In their counter,
the respondents have not opposed, which will mean that they have
conceded the same, the reliefs (d) and (f) claimed by the applicant,
i.e. declaring him as permanent as well as fixing his salary with
effect from 27.5.1970. The respondents are directed to implement the
aforesaid reliefs within a period of ^{few} ~~one~~ month.

5. The application is allowed to the extent as aforesaid only, with
no order as to costs.

23/10/87

(BIRBAL NATH)
Member (A)
23.10.1987.

J. D. Jain

(J.D. JAIN)
Vice-Chairman
23.10.1987.