

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XERNAKULAM BENCH~~

PRINCIPAL BENCH

O. A. No.

T. A. No.

362/86

199

DATE OF DECISION

5/12/91

Chaman Lal \_\_\_\_\_ Applicant (s)

Shri C. Murlidhar \_\_\_\_\_ Advocate for the Applicant (s)

Versus

Secretary, Ministry of Finance and others \_\_\_\_\_ Respondent (s)

Shri M.L.Verma \_\_\_\_\_ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. J.P.SHARMA, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

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

In this application filed on 16.5.86 the applicant who has been working as Sr.P.A. in the Ministry of Finance has prayed that the date of his appointment in Grade B of Central Secretariat Stenographers Service (CSSS) be treated to be 24th December 1979 with arrears of pay and allowances. He has also claimed cost of the application and relief/compensation of Rs. 50,000. The brief facts of the case are as follows.

2. The applicant appeared in the Limited Departmental Competitive Examination for inclusion in the Select List of Grade B of the CSSS held by the UPSC in 1978. From amongst the successful candidates including the applicant the Department of Personnel and AR nominated 16 candidates including the applicant on 22.12.1979 for appointment as Grade B of the CSSS, to the Ministry of Finance. The applicant was 25th in the Select List of 61 candidates and 6th amongst the 16 candidates nominated to the Ministry of Finance.

The applicant's contention is that between 24.12.79 and 23.2.80 the Finance Cadre Authority appointed 10 candidates who were graded below him in the Select List. On 16.1.80 the Ministry of Finance asked the Ministry of Information and Broadcasting where the applicant was holding a permanent Grade C post, when the applicant would become available for posting to the Finance Cadre. The Ministry of I&B replied on 2.2.80 that the applicant was immediately available for appointment to Grade B of the CSSS in the Ministry of Finance. On this the Finance Ministry again wrote back to the Ministry of I & B on 13.2.1980 asking the latter not to relieve the applicant as there was no vacant Grade B post in the Ministry of Finance against which the applicant could be appointed. Finally, however, the Ministry of Finance sent the offer of appointment to the Ministry of I & B on 5.5.80 on which the applicant joined the Grade B post of the CSSS in the Ministry of Finance on 6.5.80. As a result of his late joining, his date of increment in Grade B has been postponed as compared to his juniors who could take over in Grade B post earlier. The applicant's grievance is that had the enquiry from the Ministry of Information and Broadcasting not been made which is in any case unusual, he would not have suffered in delayed promotion as compared to his juniors. He has alleged that the delay was deliberate and malafide with a view to continuing adhoc appointees in the Ministry of Finance who were working on an adhoc basis and who were to be displaced by the regularly selected candidates like the applicant. The applicant represented on 11.9.1980 praying that his date of increment may be advanced to 1st January 1981 but the same was rejected on the ground that the applicant was not physically in position on an early date. His further representation to the Secretary, Ministry of Finance challenging <sup>the ground</sup> that he was not physically in position, has not evoked any reply. His representations made in July and September 1981 were rejected on 23.5.83 without indicating any ground of rejection. According to the applicant on 16.12.83 in an Inter-ministerial meeting between the Ministry of Finance and the Department of Personnel

an assurance was given that the injustice will be redressed by stepping up his pay . On his appointment as Section Officer in the Department of Agriculture and Co-operation, a number of reminders were sent to the Department of Personnel through proper channel , but no reply was given. Even though his seniority in Grade B is not affected by his late joining, his prayer is that his promotion should be ante-dated with effect from 24th December, 1979 when his next junior Shri S.K.Sehgal was appointed to Grade B in the Ministry of Finance so that he does not suffer in pay and pension.

3. In the counter affidavit the respondents have taken the preliminary objection that the Union of India has not been impleaded as a respondent and that the application is delayed as his representation was rejected on 9th April 1981 and he was duly intimated. It has also been stated that when the Ministry of Information and Broadcasting was contacted on phone on 11.1.80, they were told that the petitioner was not physically available immediately for posting in the Ministry of Finance. After this, the next junior person belonging to the Ministry of Home Affairs was appointed on 14.1.1980. When the Ministry of Finance wrote to the Ministry of I&B for availability and vigilance clearance again in respect of the petitioner that Ministry intimated on 2.2.1980 that the petitioner was available for posting in the Ministry of Finance immediately. In the meantime the because vacancy position had changed in the Ministry of Finance due to winding up of the Expenditure Commission, certain Grade B Stenographers had reverted from the Commission. The Ministry of I & B were informed about this on 13.2.1980. It has also been stated that no person junior to the petitioner working in other Ministries or Departments was appointed after 2.2.1980. The petitioner was adjusted in the second vacancy available after 2.2.80, i.e, the date when his clearance formalities were completed. The first available vacancy was given to one Shri Negi on 19.4.1980 who was working in the Ministry of I & B <sup>and</sup> <sub>&</sub> who was senior to the petitioner. Some of the juniors could be accommodated earlier than the applicant

because they were already working in the Finance Cadre and the information about their vigilance clearance was immediately available. They have denied any assurance being given to the applicant about stepping up of his pay. Since the applicant had not actually worked in the post of Stenographer Grade 'B' before 6.5.80 he cannot be appointed to Grade 'B' from 24.12.79 with higher pay. They have stated that not only in case of Limited Departmental Examination but in case of direct recruits, dates of appointment are not in the same order as the order of merit because of the difference in time taken in verification of antecedents, medical fitness etc. The practice in such cases is not to allow the benefit of pay and allowances for the period an individual has not actually worked in the higher post. Since the formalities in case of the case were completed on 2.2.80 when there was no vacancy available, he had to be accommodated later when the vacancy materialised. His pension cannot be affected as the same is determined on the basis of the emoluments received during the period of ten months immediately before the retirement.

4. In the rejoinder on merits the applicant has averred that in the Ministry of Finance there was 17 vacancies in Grade 'B' against 16 candidates including the applicant nominated by the Department of Personnel on 22.2.79. The applicant has alleged that after 2.2.80 the Ministry of Finance appointed a junior officer Shri P.Swaminathan with effect from 23.2.1980. This, according to him, is discriminatory. Since there was 17 vacancies as against 16 candidates, the winding up of the Expenditure Commission should not have affected the applicant. It is not clear what happened to the vacancy earmarked to the applicant. He repeated his assertion that some person was being appointed on an ad hoc basis on the vacancy which was not given to him in his turn.

5. In a further affidavit the applicant has brought out the case of one Shri R.Chadha who was at Sl.No.56 in the merit list as against Sl.No. 25 of the applicant and 14th in the list of candidates nominated to the Ministry of Finance as against 6th for the applicant. In accordance with Annexure-VI order dated 8th February, 1980 Shri Chadha was promoted

to Grade 'B' of the CSSS with effect from 21st January ,1980 in the Ministry of Finance, Bureau of Public Enterprises .

6. As against this, the respondents in their affidavit have stated that Shri Chadha was allocated to the Bureau of Public Enterprises which is affiliated to the Finance Cadre. The allocation was to Grade 'B' by the O.M. dated 19.1.80. Shri Chadha joined the Ministry on 21.1.80 though the notification of his appointment was issued subsequently. It has further been clarified that when on telephonic checking up on 11.1.80 the Ministry of I & B indicated that the petitioner was not then physically available, a formal letter was issued on 16.1.80 asking for the probable date of joining by the petitioner. Shri Chadha was nominated to the B.P.E. after 16.1.80,i.e, on 19.1.80, there has been no discrimination.

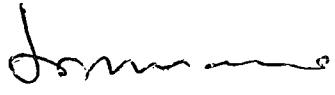
7. In his reply the applicant has stated that on his informal enquiry in the Ministry of I & B indicated that the Ministry of Finance had not enquired of his availability on 11.1.1980. The applicant has again mentioned the case of Shri Swaminathan who was junior to him amongst the candidates nominated to the Finance Cadre and was on earned leave from 16.2.1980 to 22.2.1980 and was placed at the disposal of the Settlement Commissioner under the Ministry of Finance for appointment to Grade 'B' post with effect from 23.2.1980. He has producd the Office Order of the Ministry of Finance dated 10th March, 1980 (Annexure-I) in support of his contention.

8. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have not denied that the applicant's rank was 25th in the Select List and 6th amongst the 16 candidates nominated to the Ministry of Finance in the order of merit. In the notification of the Press Information Bureau dated 13th November , 1979 (page 13 of the application) in the order of merit, the applicant has been listed both above Shri P.Swami-nathan and Shri R.Chadha. It has come out clearly that Shri Chadha had taken over in the Bureau of Public Enterprises with effect from

21.1.80 even though the notification was issued on 13th November, 1979. Since the formalities in respect of the applicant were completed only on 2.2.1981, he could not have been appointed to Grade 'B' post before that date and he can have no grievance if Shri Chadha took over on an earlier date because of his availability and earlier clearance. Even if the applicant had been relieved by the Ministry of I & B on 11.1.1980, he could not have been allowed to join before 2.2.80 when only his antecedents were cleared. However, it has come out clearly that Shri P.Swaminathan who was junior to him in the order of merit was given a vacancy by the Ministry of Finance on 23.2.1980 on his return from earned leave . This is evident from para 7 of the O.A.(page 6 of the paper-book) read with Annexure-1(page 134 of the paper-book) to the rejoinder dated 13.5.1988 filed by the applicant. Since by 23.2.80 when Shri Swaminathan was accommodated, the applicant had also been cleared in all respects for promotion to Grade 'B', there is no reason why the applicant should not have been accommodated against the vacancy available on 23.2.1980 given to his junior Shri P.Swaminathan. Accordingly , the applicant for the purpose of increment should be deemed to have been appointed to Grade 'B' with effect from 23.2.80. He cannot be given an earlier date on the basis of earlier promotion of persons ranking below him because they had been cleared for appointment and were available against the vacancies then in existence. In any case since the seniority amongst the promotees remains unaffected by the dates of their actual promotion and is governed only by the order of merit, the applicant will not suffer in any manner whatsoever so far as his seniority is concerned.

9. In the conspectus of facts and circumstances we allow the application to the extent of declaring and directing that the applicant should be treated as having been notionally promoted to Grade 'B' of

the CSSS with effect from 23.2.1980 for the purpose of drawing increments <sup>but</sup> without any arrears between 23.2.1980 and the date of his actual promotion to Grade 'B' on 6.5.1980. His increment in Grade 'B' would thus accrue on 1.2.1981 instead of 1.5.1981. There will be no order as to costs.

  
(J.P.SHARMA)  
MEMBER(J)

5/12/91

  
(S.P.MUKERJI)  
VICE CHAIRMAN

5.12.91

n.j.j