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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 927/ 1986. & O.A. 928/1986.
T.A. No.

DATE OF DECISION 2nd. Sept., 1987.

Mrs. Madhuri Kapoor **Petitioner / Applicants.**

Mrs. Veena Mehra.

Shri Subhash Vidyalkar **Advocate for the Petitioner(s)**

Versus

Union of India & Others **Respondent**

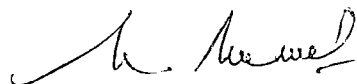
Shri M. L. Verma **Advocate for the Respondent(s)**

CORAM :

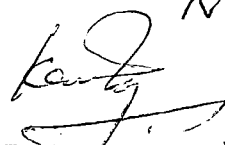
The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether to be circulated to other Benches? No



(KAUSHAL KUMAR)
MEMBER (A)
2.9.1987.



(K. MADHAVA REDDY)
CHAIRMAN.
2.9.1987.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

DATE OF DECISION: 2nd Sept., 1987.

(1) Regn. No. O.A. 927/1986.

Mrs. Madhuri Kapoor Applicant.

V/s.

Union of India &
Others Respondents.

(2) Regn. No. O.A. 928/1986.

Mrs. Veena Mehra Respondents.

For the applicants Shri Subhash Vidyalkar,
Advocate.

For the respondents Shri M.L. Verma,
Standing Counsel.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGMENT


In these two applications, the applicants who are Stenographers Grade 'D' in the Directorate General of Technical Development, Ministry of Industry, Government of India, New Delhi, have challenged the order dated the 24th October, 1986 terminating their services with effect from the 27th October, 1986 (FN) (Annexure 'C' to the applications). The operation of the said order was stayed by this Tribunal on 31st October, 1986. Since both the applications are based on similar facts and involve the same questions for adjudication, it is convenient to dispose them of through this common judgment.

2. The applicant in O.A. 927/1986 (Mrs. Madhuri Kapoor) was appointed as Stenographer Grade III on an ad-hoc basis with effect from 8.12.1971 in the Ministry of Industry, Government of India, while the applicant in O.A. 928/1986 (Mrs. Veena Mehra) was initially appointed as a Lower Division Clerk in the Ministry of Industry in September, 1971. She was subsequently



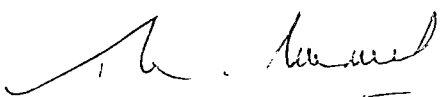
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appointed as Stenographer Grade III on 20.3.1972. Both the applicants were continued to work as Stenographer Grade III along with 46 other Stenographers and the tenure of their services was extended from time to time. Thus these applicants have been working continuously without any interruption as Stenographer Grade III for a period of nearly 14 to 15 years when their services were sought to be terminated. The posts of Stenographer against which the applicants were appointed were temporarily excluded from Grade III of the Central Secretariat Stenographers Service. At the time when the applicants were appointed, the rules for regular appointment envisaged that recruitment shall be made on the basis of competitive examinations held for the purpose by the Central Government. There was no Staff Selection Commission at that time. The Commission was established only in 1975. In April, 1975, the Government of India, Department of Personnel & Administrative Reforms introduced a scheme for regularisation of ad-hoc L.D.C.s through redeployment of such persons in suitable Class III posts in non-participating attached and subordinate offices under the various Ministries. This scheme was subsequently extended to ad-hoc Stenographers Grade III as well in September 1975. Although some efforts were made for redeployment of the applicants, the same did not materialise either because the applicants were on leave or they were not relieved. Thus the applicants could not get the benefit of redeployment scheme for regularisation, which was introduced in 1975 and continued on an ad-hoc basis. The case of the applicants is that it is no fault of theirs that they were not given the benefit of regularisation through redeployment in non-participating attached or subordinate offices and the termination of their services after such a long period is illegal and is hit by Article 311 (2) of the Constitution.



3. The case of the respondents is that the applicants have continued all along on an ad-hoc and temporary basis, that their services were extended from time to time, that efforts were made for redeploying them, but the same somehow did not fructify, that the redeployment scheme was a one-time exercise only, that the applicants did not either take or pass the special qualifying examination, which was held by the Staff Selection Commission in pursuance of the circulars issued in 1982, 1983 and 1985 and as such they have no legal right for absorption against regular posts.

4. The order dated 8th April, 1975 issued by the Government of India, Ministry of Industry & Civil Supplies (Department of Industrial Development) (Annexure 'A') purports to allow 48 Grade III Stenographers mentioned therein "to continue to officiate as Stenographers Gr. III on ad-hoc basis until further orders". The names of the applicants in O.A. 927/1986 and O.A. 928/1986 figure respectively at Sl. Nos. 2 and 4 in the said Order. Para 3 of the said order brings out that "In terms of para 6 of the CSSS Rules, 1969, 48 posts of Stenographers Gr. III (Gr. III of CSSS) against which the above named persons are appointed have been kept temporarily excluded from the cadre of Gr. III of CSSS". The Redeployment / absorption scheme of regularisation contained in the Office Memorandum No. 42014/1/75-Estt. (D), dated the 7th April, 1975 issued by the Department of Personnel and Administrative Reforms (Annexure 'B') which was subsequently extended to Stenographers Grade III vide Office Memorandum No. 42014/4/75-Estt. (D), dated the 5th September, 1975 clearly provides that "The process of redeployment through the CS-III Section would continue until the list of ad hoc employees is exhausted." The redeployment scheme was



further liberalised vide Office Memorandum No. 42014/1/75-Estt (D) Vol. III, dated the 27th March, 1976 & 29th June, 1978. Para 2(i) and (ii) of the said Office Memorandum reads as follows: -

"i. All retrenched temporary Central Government Employees who were recruited through the Employment Exchange and have put in at least three years regular continuous service before retrenchment should be eligible for re-deployment through a Special Cell.

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"ii. Until all such retrenched employees are so re-deployed no direct recruitment will be resorted to by the non-participating attached and subordinate offices of the Ministries / Departments to Group 'C' and Group 'D' posts filled through the Employment Exchange. Suitable instructions may accordingly be issued by the Ministries / Departments to their attached and subordinate offices."

5. Since the redeployment scheme of absorption clearly envisaged that the said scheme would be applicable till the last retrenched employee was suitably redeployed, we are unable to appreciate the arguments advanced by the learned counsel for the respondents that the scheme envisaged by the O.M. dated 8.4.75 and 5.9.1975 was a one-time exercise only. It would appear that efforts were made for absorbing the applicants in the Cabinet Secretariat and subsequently in the Monopolies and Restrictive Trade Practices Commission, but somehow the postings of the applicants in these non-participating attached / subordinate offices did not take place. It is not for this Tribunal to fix responsibility as to how the applicants could not be absorbed under the redeployment scheme when they were clearly covered by the same. The fact remains that they



have continued in service for a long period of 15 years and they cannot be deprived of the benefit of regularisation when a scheme for redeployment and absorption of ad-hoc Stenographers was brought out by the Government of India and there was a clear provision that the scheme would continue till the last person was redeployed.

It would be discriminatory and violative of Article 14 if all persons similarly placed were not extended the same treatment.

6. Rule 14 (1) of the Central Secretariat Stenographers Service Rules, 1969, as it stood at the time when the applicants were appointed i.e., before amendment, reads as follows: -

"Vacancies in Grade III of the Service shall be filled by direct recruitment on the basis of competitive examinations held for the purpose by the Central Government in the Department of Personnel in the Cabinet Secretariat limited to members of the Central Secretariat Clerical Service:

Provided that to the extent a sufficient number of qualified candidates are not available for appointment on the results of such competitive examinations, the vacancies may be filled, provisionally or on regular basis, in such manner as may be determined by the Central Government in the Department of Personnel in the Cabinet Secretariat."

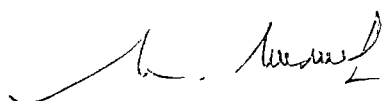
Thus, it would be seen from the above that there was no provision for recruitment of Stenographers Grade III through Staff Selection Commission at the time when the applicants were so appointed. In fact the Staff Selection Commission was not in existence at that time.



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The names of the applicants were admittedly sponsored by the Employment Exchange and they had to undergo a test conducted by the Ministry before their promotion / appointment as Stenographer Grade III. As such, their appointment as Stenographer cannot be considered as *de hors* the rules which were applicable at the time when the appointments of the applicants were made. Merely by calling the appointments as ad-hoc would not make the appointments as such, if they are covered by the rules. A Bench of this Tribunal has taken the above view vide its judgment delivered on 29th July, 1987 in O.A. No.54/1986 (Som Dutt Sharma v. Union of India and others). In the said case also the appointment letter incorporated a clause regarding the appointment being ad-hoc. Paras 10 and 11 of the judgment are reproduced below: -

"10. We have earlier found that the appointment of the applicant was made really under the Rules and in conformity with the Rules. If that is so, then the aforesaid clause imposed by the authority ex abundanti cautela or by ignorance, whichever be the position, has necessarily to be ignored and the appointment treated as valid under the Rules itself. A clause in an appointment order, which is violative of the law imposed by the appointing authority and accepted by the applicant cannot prevail over the law and has to be treated as non est or ignored. If clause No.1 had to be ignored then the fact that the applicant had appeared for the examination conducted by the SSC and being unsuccessful in that examination also has necessarily to be

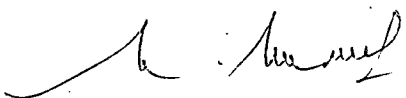


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ignored. We, therefore, ignore the aforesaid clause on which strong reliance is placed by Sri Ramchandani.

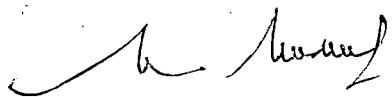
"11. While the above is the correct legal position on the nature of the appointment of the applicant and its validity, the authorities have proceeded on the assumption that the appointment itself was an invalid appointment and non-passing the examination conducted by the SSC entails the termination of the applicant. The termination of the applicant is only on these grounds and no other. Both these grounds on which the termination of the applicant are founded are wrong and illegal. On this view, the termination order is liable to be quashed, without examining all other questions urged by both sides."

7. The learned counsel for the respondents urged that the applicants had failed to take advantage of the regularisation scheme introduced by the Govt. of India, Ministry of Home Affairs, Department of Personnel & Administrative Reforms O.M. dated 7th August, 1982 and subsequent O.M. No. 6/60/84-CS-II, dated 28th February, 1985. In so far as the first O.M. is concerned, it does not cover the category of Stenographers Grade III. As regards the O.M. dated 28.2.1985, para 7 thereof did provide an opportunity for ad-hoc Stenographers to appear in the special examination which was to be conducted by the Staff Selection Commission "for regularisation of their appointments as Stenographers provided they were recruited through the employment exchange and were within the age-limit for competing at the Clerks' Grade Examination of the Staff Selection Commission on the date of their appointment and



have rendered at least one year's service as Stenographer as on 1.1.1985". On the face of it, it would appear that the scheme of regularisation through qualifying in the special examination conducted by the Staff Selection Commission referred to persons who were appointed on an ad-hoc basis after the Staff Selection Commission came into being and not those Stenographers who were appointed in 1972 i.e., 3 years before the Staff Selection Commission was formed. The case of the applicants is squarely covered by the redeployment / regularisation scheme which was introduced in September, 1975. The said scheme did not provide for any fresh examination for regularisation. It proceeded on the assumption that the persons working on an ad-hoc basis were duly qualified, but the necessity for regularisation arose since they were appointed against posts which were included in the cadre of an organised Service viz., CSSS, recruitment to which was made through a regular competitive examination. The redeployment scheme envisaged that the persons who were appointed in Ministries and Attached offices on an ad-hoc basis, who were otherwise qualified on the basis of local examinations conducted by the concerned Ministries should be redeployed in the non-participating attached and subordinate offices against posts which were not included in the CSSS.

8. It is unfortunate that out of a batch of 48 Stenographers, who were employed on an ad-hoc basis on various dates between 1971 and 1974, as would be evident from the order dated 8th April, 1975 (Annexure 'A' to the petition), the applicants are the only two persons who have not so far been regularised. Apart from any rights which the applicants have for regularisation under the redeployment scheme of 1975, or their appointments being considered as regular since they were not *dehors* the rules applicable at the time when such appointments were made, their long



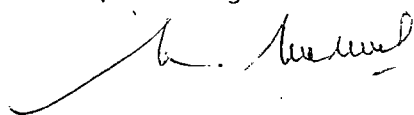
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continued and uninterrupted officiation in the posts for 14 to 15 years would by itself give them a right for regular employment as held by the Supreme Court in Narender Chadha & Others v. Union of India & Others (A.T.R. 1986 S.C. 49).

9. In Sadhan Kumar Bhattacharya v. Union of India & Others (A.T.R. 1987 (1) C.A.T. 228), the Calcutta Bench of this Tribunal made the following observations: -

".....we are of the view that if a man is allowed to work for a term of long nine years, it will be rather a great hardship for him if we sustain the said termination order because at this stage and at this stage he will not be allowed to any other employment whatsoever. Mr. Bag's contention is that the father manoeuvred to have his son employed, but if that is so, it should have been detected by the Railways long before. In any event if he worked for nine years without any stigma and to satisfaction of the authorities, it will be rather unfair for the Railways to terminate his service now and the Tribunal should not allow the Department to dismiss him at this stage....."

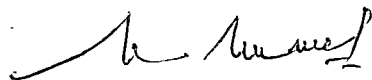
10. From the above discussion, it is clear that both the applicants are to be deemed as regular Stenographers Grade III (redesignated as Grade 'D' Stenographers). From the file No.A-12021(1)/77-E.II of the Department of Industrial Development produced at the time of hearing, it transpires that the orders in regard to regularisation of the last incumbent in the batch of 48 ad-hoc Stenographer (Annexure 'A') by way of redeployment were issued in the case of Shrimati Rameshwari Khatwani on 4th May, 1979. As such, both the applicants shall be deemed to have been regularised as Stenographer Grade III (redesignated as Stenographer Grade 'D') with effect




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from the same date viz., 4th May, 1979.

11. In the result, both the applications are allowed, with the direction that the applicants shall stand regularised as Stenographer Grade 'D' with effect from 4th May, 1979. However, it will be open to the respondents to continue the services of the applicants either in the offices where they are working at present or redeploy them in any non-participating attached or subordinate office. In the circumstances of the case, there shall be no order as to costs.



(KAUSHAL KUMAR)
MEMBER (A)
2.9.1987.



(K. MADHAVA REDDY)
CHAIRMAN.
2.9.1987.