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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1008/86

DECIDED ON : October 12, 1992

Jagjit Singh

... Applicant

Vs.

Union of India & Another

... Respondents

CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri S. M. Rattan Paul, Proxy Counsel for Shri
G. D. Gupta, Counsel for the Applicant

Shri M. L. Verma, Counsel for the Respondents

J U D G M E N T

Hon'ble Shri P. C. Jain, Member (A) :

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved by the rejection of his request for regularisation of his appointment to the post of Stenographer Grade-III in the office of Directorate of Organisation and Management Services (Income Tax), New Delhi. He has prayed for quashing the memorandum dated 5.4.1984 (Annexure P-8) by which his representation for regularisation was rejected, and directing the respondents to treat him as regularly appointed from the day he started working on the post of Stenographer Grade-III and consequential benefits of seniority etc. He has prayed for quashing the orders of reversion from the post of Stenographer Grade-III. However, no such orders have been placed on file nor it has been shown that any such orders have been passed.

2. By an order passed by a Bench of this Tribunal on 20.11.1986, status quo as on that date was ordered to be maintained. We were informed that in pursuance of the above

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interim order the applicant has continued to work on the post of Stenographer Grade-III.

3. The respondents have contested the O.A. by filing a reply to which a rejoinder has also been filed by the applicant. We have perused the material on record and also heard the learned counsel for the parties. The applicant was appointed as a Lower Division Clerk in the office of the Director, Directorate of Organisation and Management Services (Income Tax) New Delhi. The Directorate of Organisation and Management Services (Group C and Group D) Recruitment Rules, 1977 (hereinafter to be referred as "the 1977 Rules") were notified under the proviso to Article 309 of the Constitution vide notification dated 21.1.1977. The post of Stenographer (Ordinary Grade), as per these rules, was to be filled up by selection and the educational and other qualifications prescribed were as below :-

- "(i) Matriculation or equivalent qualification;
- (ii) A speed of 100 words per minute in shorthand and 40 words per minute in typewriting provided that to the extent candidates possessing a speed of 100 words per minute in shorthand are not available, candidates possessing a speed of 80 words per minute in shorthand may be considered."

Method of recruitment prescribed was by a selection through a competitive test limited to serving Lower Division Clerks of the Directorate of Organisation and Management Services possessing the above qualifications, failing which by direct recruitment. The applicant appeared in the test held on 18.12.1982 but failed. There is no dispute between the parties on this. The applicant took the second test held on 11.1.1983, and according to him, he succeeded in the same, but the respondents have categorically stated in their reply that he failed in the second test also. The 1977 rules

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were amended by the Directorate of Organisation and Management Services (Group 'C' and Group 'D') Recruitment (Amendment) Rules, 1983 (for short "the 1983 Rules") issued under proviso to Article 309 of the Constitution. By this amendment three changes were brought in, in regard to the post of Stenographer (Ordinary Grade). Firstly, in regard to the age limit of 18-25 years in the 1977 Rules, it was provided in the 1983 Rules that the age limit was relaxable for Government servants upto 35 years in accordance with the instructions and orders issued by the Central Government. The second change was that the name of the post, e.g., Stenographer (Ordinary Grade) was changed to Stenographer Grade-III. The third change was that the method of recruitment prescribed by the 1983 Rules was "by direct recruitment." Even though the applicant is said to have failed in both the qualifying tests held before the Rules were amended in July, 1983, the applicant by office order dated 23.8.1983 No. 124 of 1983 (Annexure P-2) was promoted to officiate until further orders as Steno (OG) on a purely ad-hoc basis and it was stated that the ad-hoc promotion would not confer any right on him for regular promotion in the grade nor the services rendered on ad-hoc basis by him would be counted for the purpose of seniority in the grade or eligibility for promotion to the next higher grade. It was also stated that he was liable to be reverted to the grade of IDC at any time without assigning any reason thereof or in the event the Surplus Cell or the Staff Selection Commission making available a suitable candidate to the Directorate as per the recruitment rules, and that no claim for regularisation of his appointment shall be considered for any reason whatsoever. The applicant assumed the charge of post of Stenographer (Ordinary Grade) in pursuance of the

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above orders and when his various representations for regularisation were rejected, apprehending his reversion he filed this O.A.

4. The main contention of the applicant is that as the test was held in January, 1983, it has to be assumed that a post of Stenographer (OG) was available on that date and that post was required to be filled in accordance with the provisions of the 1977 Rules, as the 1983 Rules could not be applicable for filling up that post as the latter Rules came into effect after that date in July, 1983. His contention, therefore, is that as he has passed in the second test he was eligible for regular appointment on the post of Stenographer (OG) and it was only a mistake that his promotion to the aforesaid post was stated to be ad-hoc. The respondents in their reply have stated that the applicant was promoted on a purely ad-hoc basis as some litigation was going on in the Delhi High Court and the post could not be kept vacant for administrative reasons but in accordance with the orders issued ⁱⁿ for his ad-hoc promotion no right whatsoever has accrued to the applicant as he has failed in the test held in January, 1983. The contention of the applicant would have been correct if the applicant had passed in the limited departmental qualifying examination. Apart from making an averment that he had passed in the second test held in January, 1983, he has not been able to show that his contention in this respect is factually correct. The respondents have categorically denied that the applicant had passed even in the second test, and in his rejoinder the applicant has failed to effectively rebut the contention of the respondents on this point. As such, it is clear that the

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applicant cannot claim any benefit under the 1977 Rules as he had failed not once but twice in the test prescribed under those rules.

5. Another contention of the applicant is that the action of the respondents in not regularising his appointment as Stenographer (OG) is discriminatory and violative of Articles 14 and 16 of the Constitution inasmuch as in at least two cases of Shri Lal Chand Bahl and Kumari Sweeti Syal the department had regularised the appointments after coming into force of the amended Rules of 1983, but from a date prior to coming into force of these Rules. In support of this contention ^{a statement} as Annexure P-18 has been placed on record. According to this statement, Shri Lal Chand Bahl, Stenographer Grade-III was appointed as such on ad-hoc basis on 10.11.1981 and he was regularised on 3.12.1983 w.e.f. 16.6.1982. Kumari Sweeti Syal is shown in the above statement to have been appointed as Stenographer Grade-III on ad-hoc basis on 20.6.1984 and regularised on 12.9.1985 w.e.f. December, 1982. The respondents in their reply have controverted the above contention and have stated that the Central Board of Direct Taxes decided to regularise the services of Shri Lal Chand Bahl, Stenographer (OG) w.e.f. 16.6.1982, i.e., the date on which regular vacancy was available in the Directorate; that Shri Bahl was officiating as Stenographer (OG) w.e.f. 27.7.1981 in a leave vacancy and was allowed to continue on ad-hoc basis w.e.f. 10.11.1981 till further orders. It is also stated that he had passed the prescribed test on 19.8.1980 and was regularised on 16.6.1982 as a regular vacancy was available on that date. In respect of Kumari Sweeti Syal the respondents have stated that she was earlier working

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in the Economic Administration Reforms Commission (for short EARC) and she was appointed as Stenographer Grade-III as direct recruit in the Directorate on 20.6.1984. It is further stated that specific clearance was obtained from the Surplus Cell vide their letter dated 30.8.1985 as the EARC was wound up on 30.6.1984 and the staff working under them was declared surplus. It is further stated that her appointment was regularised on the basis of clearance received from the Government of India, Ministry of Personnel, Administrative Reforms, Public Grievances and Pension w.e.f. 4.9.1985. They have denied that seniority to Kumari Sweeti Syal was given from the date of her initial appointment in the EARC. The above contentions of the respondents have been denied by the applicant in his rejoinder. But we do not see any reason to disbelieve the reply of the respondents on this point. It is clear from the reply of the respondents that Shri Bahl was regularised against a regular vacancy w.e.f. 16.6.1982, i.e., prior to the 1983 Rules, when such a regular vacancy became available. Further, he is said to have passed the prescribed test on 19.8.1980. This fact has not been rebutted by the applicant by placing any material on record to the contrary. As the applicant had not passed the prescribed test before the amended rules came into effect, he cannot be said to be equally placed with Shri Bahl. Similarly, Kumari Sweeti is said to have been appointed as a direct recruit after 1983 Rules had come into effect and in which the method of recruitment prescribed was by direct recruitment, and as she is said to have been given seniority not from an earlier date of appointment in the EARC but from the date of her appointment in the DOMS, she is also not equally placed with

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the applicant. In this view of the matter, the applicant has not been able to substantiate his plea of discrimination.

6. Another contention raised by the applicant is that it has not been the case of the department that the applicant had not passed the test, and having been so, he would^{not} have been promoted in August, 1983. We have already referred to above that the respondents in their reply have stated that the applicant was promoted on a purely ad-hoc and temporary basis as some litigation was pending in the Delhi High Court and as administratively it was found essential to make ad-hoc arrangement. In view of this, it cannot be held that the applicant was promoted as he had passed the prescribed test.

7. Still another contention of the applicant is that in any case, if the applicant had not passed the test, evidently the requirement of passing the test had been relaxed and that is why he had been promoted in August, 1983, and non-passing of the test could not now be the ground for not taking the promotion of the applicant made in August, 1983 as regular. In view of the material placed on record and which has already been adverted to above as also in the absence of any order which might show that the applicant had been promoted on ad-hoc basis in August, 1983 in relaxation of the rules, it is not possible to accept this contention of the applicant. Moreover, Rule 6 of the 1977 Rules, which, according to the applicant are applicable to him, and which is on the subject of power to relax, cannot give any benefit even of deemed relaxation to the applicant inasmuch as under these rules the Central Government has the power to relax any of the provisions of these rules with respect to any class or category of persons,

by making an order and for reasons to be recorded in writing (emphasis supplied). The relaxation contemplated by the applicant in his own case cannot be said to be belonging to any class or category of persons. Further, as already stated, no order was passed by the Central Government after recording the reasons in writing for relaxing any of the provisions of these rules in the case of the applicant.

It is well settled that if in a certain matter rules notified under proviso to Article 309 of the Constitution exist and the vires of any such rule/rules has not been challenged, these have to be acted upon by the competent authority as also enforced in the process of judicial review. In the case of A. K. Bhatnagar & Ors. vs. Union of India — (1991) (1) SCC 544 a Full Bench of the Supreme Court in para 13 of the judgment observed as below :-

"13. On more than one occasions this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by the rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often Government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the Government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules. There shall be no order as to costs."

8. The last contention of the applicant is that even if the applicant had failed in the test, at the most the post filled up by the applicant in August, 1983 became liable to be re-filled according to the criteria which was existing prior to coming into force of the 1983 Rules and accordingly,

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the Government became liable to hold a fresh test and fill the post accordingly. This contention of the applicant would have some force if it is established that there was a regular vacancy on a long term basis which could not be filled up in accordance with the 1977 Rules prior to coming into effect of the 1983 Rules. We do not find any material on record to reach a definite conclusion on the availability of such a vacancy. If, however, such a vacancy was available prior to coming into effect of the 1983 Rules and which has not been filled in accordance with the rules, either under 1977 Rules of the 1983 Rules so far, the respondents should fill the same now in accordance with the provisions of 1977 Rules by holding a limited competitive test in which the applicant would also be entitled to sit. In this connection it is necessary to refer to the order dated 2.2.1984 passed by a Division Bench of the Delhi High Court in C.W. No. 2445/83, a copy of which has been placed on record by the respondents as Annexure-2 to their reply. It appears therefrom that the petitioner in that case was promoted in an ad-hoc capacity to the post of Stenographer (OG) in the DOMS and the respondents in their counter affidavit in that case had stated that the petitioners who were promoted in ad-hoc capacity will be continued at present and will be considered in accordance with the new Rules of 1983 for purpose of regular promotion by the DPC constituted for purposes of consideration of candidatures in accordance with the 1983 Rules. In view of the above, their lordships of the Delhi High Court held that nothing survived in the petition and the same was dismissed. As the 1983 Rules did not provide for any promotion to the post of Stenographer (OG), re-designated as Stenographer Grade-III, it is not

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clear as to how the respondents stated in the counter affidavit in that case that the case of the petitioners will be considered for regular promotion by the DPC. In the counter affidavit in this case, however, the respondents have made a reference to the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training O.M. No. 6/14/86-CS.II dated 12.11.1986 (copy appended to Annexure-I to the counter affidavit). The respondents in the case before us stated in their reply that the attention of the applicant was drawn to the aforesaid O.M. for regular appointment. With the above O.M., a revised scheme for holding a Supplementary Special Qualifying Examination for regularisation of services of ad-hoc employees working as IDCs/Telephone Operators/Hindi Typists etc./Stenographers Grade 'D' was circulated and this examination was to be conducted by the Staff Selection Commission on 8.3.1987. Thus, what the respondents probably want to say is that for purposes of consideration/regularisation of the applicant on the post of Stenographer (CG/Grade-III), he was afforded an opportunity to appear in the special qualifying examination and in case he succeeded therein to get regularised on that post. Nothing is available on record to show whether the applicant had availed of this opportunity or not, and if he availed of this opportunity, whether he qualified or not. However, in view of our holding as above that if a regular vacancy on long term basis was available for being filled up on a regular basis before the 1983 Rules came into effect and if such a vacancy has not already been filled up, the same should now be filled up in accordance with the provisions of the 1977 Rules, we are of the view that the

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orders passed by the Delhi High Court in CW No. 2445/83 are not of much help in this matter.

9. In the light of the foregoing discussions, the O.A. is disposed of in terms of the following directions :-

If a regular vacancy on a long term basis was available for being filled up on a regular basis before the 1983 Rules came into effect, ^{and it has not already been filled up} the same should now be filled up in accordance with the provisions of the 1977 Rules by holding a competitive test limited to LDCs of the Directorate of Organisation and Management Services possessing the qualifications specified in column 8 of the 1977 Rules within a period of three months from the date of receipt of a copy of this order. The applicant as also other LDCs who were eligible under the 1977 Rules and were working as LDCs prior to coming into effect of the 1983 Rules, will be eligible to sit in the aforesaid competitive test. Appointment of the applicant to the post of Stenographer Grade-III as above shall be regulated by the results of the above test. Till the results of the test are announced, the applicant shall be allowed to continue on the post as at present. If he does not succeed, he can be reverted.

10. On the facts and in the circumstances of the case, we leave the parties to bear their own costs.

(P.C. Jain)
(P. C. Jain)
Member (A)

(T.S. Oberoi)
(T. S. Oberoi)
Member (J)