

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. 1581/87

Date of Decision: 22.10.93

Smt. Satya Wati Sharma Applicant.

Versus

Union of India & others Respondents.

CORAM:

Hon'ble Mr. J. P. Sharma, Member (J),

Hon'ble Mr. S. R. Adige, Member (A)

For the applicant: Shri B. B. Raval, Counsel.

For the respondents: Shri S. R. Ramalingam,
departmental representative.

JUDGMENT

(By Hon'ble Mr. S. R. Adige, Member (A).)

In this application, Smt. Satyawati Sharma, Senior Translator, Armed Forces Head Quarters, Ministry of Defence, New Delhi, now working as Hindi Officer (on deputation), Photo Division, Ministry of Information and Broadcasting, New Delhi, has impugned the seniority list of Senior Translators dated 12.2.87 issued by the Armed Forces, Head Quarters, (Annexure-A1) Defence Ministry/and has prayed for counting her seniority as Senior Translator with effect from 29.2.80 that is the date from which she has been continuously officiating on the post of Senior Translator.

2. The applicant, who is a post-graduate in Hindi and possesses a certificate in Hindi Translation, joined the Government service on 1.8.70 and was appointed as a Junior Translator on 27.6.79. From the chronology of the relevant events dated 26.9.90 and supplied by the applicant herself, it would appear that on 12.7.79, the Defence Ministry placed a requisition on ^{the} Staff Selection Commission (SSC) for filling up the post of Senior Translators. The applicant appeared in the examination/ interview held by the Staff Selection Commission. Meanwhile, on

28.2.80, the Department appointed the applicant and 12 others as Senior Translator on adhoc basis after inviting applications within the department, holding a written test and interview pending the availability of the Staff Selection Commission nominees, to fill up the posts on regular basis. The applicant was placed first in the merit list. On 10.6.80, the applicant qualified in the examination/interview conducted by the Staff Selection Commission for the posts of Senior Translator, but the SSC nominated her to the All India Soil & Land Use Survey Organisation in Government of India. On 20.6.80, the Defence Department wrote to the Department of Personnel & Training requesting that the applicant's services be allowed to be retained in the Department where she was already working as Senior Translator and the applicant herself represented more than once that she be allowed to continue there, but this was not agreed to by the Staff Selection Commission. However, the applicant continued to work as Senior Translator in the AFHQ and ultimately on 24.9.82, she was promoted as Senior Translator on regular basis through a DPC and continued as such without any break. The applicant has averred that she filed several representations to the departmental authorities in support of her claim for counting her seniority w.e.f. 28.2.80, but the same was rejected, compelling her to approach this Tribunal.

3. It is important to note that neither in the chronology of relevant events dated 26.9.90, nor in the original application dated 8.10.87 did the applicant challenge the competence of the SSC to recommend the names for filling up the

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direct recruitment quota posts of Senior Translators on a regular basis , or for that matter, the correctness of the respondents' action in placing requisitions with the SSC for filling up these posts, or even the promotion quota posts through a DPC. In fact, in the copy of the recruitment rules filed with the O.A. dated 8.10.87 clear mention has been made that 75% of the 54 posts of Senior Translator are to be filled up by the direct recruitment through UPSC (since replaced by the SSC) and 25% posts through promotion through DPC, from amongst the junior Translators with atleast 3 years' experience. However, in the amended O.A. dated 5th March, 1991, which was allowed to be taken on record, the applicant has changed her stand, and claims that upto 1980-81, direct recruitment to posts of Senior Translators was made by AFHQ through a written test followed by interview conducted by the AFHQ after circulating the vacancies within their offices which was consistent with the recruitment rules published in 1971 and was also consistent with DPAR's ^{instructions} to the effect that preference should be given to the existing employees. A copy of recruitment rules purported to be in force at the relevant time has also been filed at Annexure-A4, according to which neither ^{was} consultation with the UPSC/SSC ~~was~~ necessary for direct recruitment, nor was a DPC necessary for promotion. In the amended O.A., it is claimed that all direct recruitments to Senior Translators grade were made by holding departmental test and interview, while promotions were made without any requirement as ^{to} a specified period of experience as Junior Translator. It is contended in the amended O.A. that the applicant's direct recruitment as Senior Translator was, therefore,

legal and within rules, and even if viewed as promotion, her appointment as Senior Translator w.e.f. 28.2.80 would be legal and under rules. To quote from paragraph 4.6 of the amended O.A. "she was eligible for promotion as well as for direct recruitment as STR on 28.2.80 when she was appointed as Senior Translator adhoc". In the amended O.A., it has further been averred that the applicant had applied for the post of Senior Translator only in the Northern Region in response to the SSC's advertisement dated 15.12.79 for filling up the posts of Senior Translators and had qualified in the Northern region for appointment, on the basis of performance in the SSC Examination and interview, and the Northern region included the office of the applicant but inspite of that she was allotted to All India Soil & Land Use Survey Organisation. The applicant has further averred that Smt. Kiran Arora (respondent No.3) and Smt. Shanta Rani(respondent no.4) were nominated through the same SSC's advertisement and were appointed on 6.2.82 and 13.5.82 respectively, but were given seniority under 1979 batch of direct recruits which was wrong , and the applicant was entitled to be considered senior to Smt.Kiran Arora and others who were appointed in pursuance of the SSC's advertisement of 1979.

4. The respondents in their counter affidavit challenged the unamended O.A. on the ground that the applicant's appointment as Senior Translator on 28.2.80(Para 4) was purely adhoc and she could not claim seniority from that date, apart from the grounds of mis-joinder and non-joinder of the parties. After the

applicant filed the amended O.A., the respondents filed a short reply opposing the amendment to which the applicant filed a rejoinder on 15.7.91. Thereafter, on 5.8.91, the applicant submitted a fresh amended O.A. arraying 24 respondents including Union of India through Defence Secretary (respondent No.1), CAO, AFHQ (respondent no.2) and the Secretary, SSC (respondent no.3). Smt. Kiran Arora and others were also impleaded as respondents. In this amended O.A., the applicant admitted that after passing the departmental examination held in 1980, she was appointed as Senior Translator on ^{28.2.80} on/ adhoc basis. (Annex.A9) Meanwhile, she passed the SSC examination for Senior Translator and was offered the post of Senior Translator vide letter dated 10.6.80 at Annexure -A14(this letter from the SSC to the Project Officer, All India Soil & Land Use Survey Organisation clearly recommends the applicant's name for appointment to that Organisation and not to the AFHQ). These adhoc appoints were extended from time to time and were last extended on 17.2.82 upto 31.7.82 (Annexure-A11). Soon after the applicant was regularised as a Sr. Translator through a regularly constituted DPC w.e.f. 25.9.82. The applicant has averred in the amended O.A. that Sr. Translators are appointed by two modes. The first mode is by promotion for which 25% posts are reserved and the incumbents (Jr. Translator) have to have a minimum of three years' service in the grade. The second mode is through direct recruitment for filling up 75% of the posts. The applicant has claimed that she was working as Sr. Translator since 1980 and her seniority has to be reckoned from that date. She avers that during the period 1980-82, no recruitment was held, though there existed several vacancies and

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as such the quota and rota system had broken down. Her adhoc appointment was merely camouflage and actually her appointment was to a regular post and thus she cannot be denied her seniority w.e.f. 28.2.80. In this connection, she has also filed a copy of the recruitment rules dated 4.6.71 for the posts of Senior Translator, which she claims were in force at the relevant time.

5. On 5.9.91, the respondents no.1 and 2 filed a counter affidavit opposing the amendments to the O.A. filed by the applicant. Thereafter, on 17.12.91, the respondents no.1, 2 and 19 filed another counter affidavit. In both the counter-affidavits, the stand taken by them are broadly the same. It is averred that the applicant was appointed as a Jr. Translator in AFHQ on 26.6.79. In accordance with the provisions of recruitment rules for the post of Sr. Translator in force in 1979, 25% of the vacancies were to be filled by promotion from amongst Jr. Translators and 75% by direct recruitment. 21 vacancies of Sr. Translators (12 unreserved, 6 SC and 3 ST) were notified to the SSC for filling up through direct recruitment and the SSC advertised these vacancies vide Advertisement No.11/79 on 18.12.79. As regards the promotion, a Jr. Translator with three years of regular service in the grade alone was eligible for consideration of promotion. The applicant did not possess this eligibility. Meanwhile as the work was suffering, the applicant along with some others were appointed as Sr. Translators on purely adhoc basis w.e.f. 28.2.80 subject to:

- i) the appointees were liable to be reverted without notice for administrative reasons.

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- ii) the appointees ^{have not} ~~had~~ not ^{have} ~~taken~~ any claim for appointment to the post of Sr. Translator on regular basis nor was the service to be reckoned for seniority.

The applicant accepted the above terms and conditions of adhoc appointment ^{and} continued to work in that capacity upto 24.9.82. She became eligible for promotion as Sr. Translator on regular basis w.e.f. 27.6.82 and on the DPC's recommendations was appointed to that grade w.e.f. 25.9.92 against a vacancy ^{falling} ~~existing~~ in the promotion quota. Thus, her seniority as Sr. Translator reckons from 25.9.82 and has been determined by ^{rotation} ~~rotation~~ of vacancies in accordance with the prescribed quota as provided in MHO's O.M. dated 22.12.59 (Annexure-RII). It has further been averred that the applicant applied for the post of Sr. Translator in response to Ad.No.11/79 issued by the SSC, which recommended 18 candidates(12 General and 6 SCs) against 21 vacancies intimated. No candidate belonging to S.Ts was recommended against the three remaining vacancies and the SSC decided to re-advertise these three vacancies. The applicant was not nominated for appointment as Sr. Translator to AFHQ because she could not secure high enough marks in the merit list, and instead she was nominated to the All India Soil and Land Use Survey Organisation consequent to receipt of requisition from that office. The applicant refused to accept that order of appointment and requested the SSC for change of her nomination to the AFHQ ^{on} ~~of~~ sympathetic consideration in view of her domestic circumstances (Annexure-AIII). Her request was considered by the

SSC but was not acceded to and she was informed accordingly on 18.9.80 (Annexure-RIV). ^{AM} ~~that~~ None lower in merit than her was appointed in AFHQ on the basis of SSC's Ad.No.11/79. The application has also been challenged on ground of being beyond the Tribunal's jurisdiction as the relief sought for is w.e.f. 28.2.80 i.e. more than three years prior to the inception of this Tribunal on 1.11.85.

6. Rejoinders have been filed to both counter affidavits, in which apart from challenging the competence and eligibility of the signatories to the counter affidavits to file the same, the competence of these signatories to file the counter affidavit on behalf of SSC(respondent No.19) has also been challenged. It is further contended that in accordance with MHA's letter dated 10.12.79 (Annexure-19 of the O.A.), the filling up of ex-cadre non-technical posts was to be done by eligible available departmental candidates only, failing which, ^{and only failing which} the vacancies were to be notified to the SSC. Hence, it is averred that the respondents had themselves conducted a departmental examination under the authority of this O.M. in which the applicant topped the list and was consequently appointed as Sr. Translator w.e.f. 28.2.80 and her seniority should, therefore, be reckoned from that date. It is further averred that it is only incidental that she also appeared and qualified through the SSC, though it was not a condition precedent for her being promoted to the post of Sr. Translator to which she was already promoted before appearing in the examination conducted by the SSC(^{AM} Page 8 of the rejoinder dated 13.1.92).

7. We have heard Shri B.B. Raval, learned counsel for the applicant at length. Shri Ramalingam, Departmental Representative appeared for the respondents and was heard. We have also perused the materials on record.

8. We note that the applicant has been changing her stand from time to time. At one place she claims to have been directly appointed as Sr. Translator w.e.f. 28.2.80 through the limited departmental competitive examination and interview, while at another place she claims that she was promoted to that post as a result of that examination.

In either case she claims for counting her seniority from that date and inter alia seeks to draw support from the ratio laid down by the Hon'ble Supreme Court in the case 'Direct Recruit Class II Engineering Officers' Association & others Vs. State of Maharashtra & others' (AIR 1990 SC 1607).

9. A reference to the recruitment rules in force at the relevant time makes it clear that three years service in the grade of Jr. Translator was required before a person could be promoted as a Sr. Translator against 25% promotion quota. As the applicant was appointed as Jr. Translator on 27.6.79, evidently she did not possess that eligibility on 28.2.80. Moreover, the departmental competitive examination was not limited to the Jr. Translator ^{alone} but included the others working in the department. Hence clearly her case was not one of promotion. In fact, nor for that matter was it a case of direct recruitment, because ~~the~~ direct recruitment by its nature ^{is} applies to an open competition in which all those who possess the requisite qualifications/eligibility can participate.

Direct recruitment cannot be restricted to the persons working in a particular department alone, in the manner that this limited departmental competitive examination was. Hence, her appointment as Senior Translator w.e.f. 28.2.80 was not through direct recruitment either. Shri Ramalingam, Departmental Representative had explained that this procedure of holding a departmental competitive examination followed by interview was adopted purely as an adhoc arrangement to fill the vacancies of Sr. Translator in the Public interest till such time as recommendations were received from the SSC, to which a requisition had already been sent, because it was expected that the SSC's nominations would take some time and meanwhile it was urgently necessary to fill up the vacancies. We have no hesitation in accepting this avement.

10. Shri Raval has emphatically asserted that no requisition to the SSC was necessary and has sought support from the recruitment rules of 1971 which he claims ^{AM} ~~they~~ were in force at the relevant time; DPAR's O.M. dated 10.12.79, and some extracts from the minutes of the departmental council of the DPAR held on 1.11.80 in which the official representative from AFHQ is stated to have said that though the DPAR's instructions of 10.12.79 had been received in December, 1979, a requisition had already gone to SSC, which was an administrative lapse and he was trying to find a mutually suitable solution. None of these documents relied upon by Shri Raval actually lend much support ^{to AM} ~~from~~ the applicant's case. The recruitment rules of 1971 merely state that the UPSC is not required to be consulted in making recruitment. This nowhere shuts out the jurisdiction of the SSC for filling up these posts. In so far as the O.M. dated 10.12.79 and the extracts dated 1.11.80 (Supra) are concerned, the ex-cadre

non-technical posts referred to in that O.M. are limited to those comparable to UDC's/Asstts/LDCs. Shri ^{Raman/ingam} ~~XXXX~~ averred that this O.M. has no application to Sr. Translators whose pay scale is higher. He also showed us certain notings from the relevant file of the department in which the DPAR has reportedly advised ^{Am} ~~to~~ the Defence Ministry that the said O.M. had no application in regard to Sr. Translators. In that background, the extracts dated 1.11.80 (Supra) also ^{Am} ~~clear~~ to have much relevance. Under the circumstances, we are inclined to take the view that the placement of requisition by the Defence Department with the SSC for filling up the direct recruitment quota posts of Sr. Translators was fully in accordance with rules, and no irregularity was committed. The limited departmental competitive examination held by AFHQ could not replace the nominations from the SSC and was resorted to as a purely stop-gap arrangement to fill up the vacancies in the public interest till those nominations were received. No doubt, in the meanwhile the applicant did participate in the open competitive examination held by the SSC for filling up the vacancies of Sr. Translators on the basis of requisition received from the various departments/ Organisations of the Government. The applicant was successful in that examination but did not secure high enough marks in the merit list to be recommended to the AFHQ. The SSC was by no means compelled to recommend her name to the AFHQ even if she had opted to serve only there, and was perfectly within its rights ^{Am} to recommend her name to any other Organisation depending on her position ⁱⁿ the merit

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list because paragraph 5 of the Ad.No.11/79 specifically stated that some vacancies in the posts of Sr. Translators or equivalent posts were likely to occur in the offices of the GOI and might be filled up from the qualified candidates of that selection. As the applicant was working in the AFHQ as Sr. Translator, she was no doubt anxious to be absorbed there, and kept pressing the SSC to nominate her to AFHQ instead of the All India Soil & Land Use Survey Organisation but the SSC were not able to accommodate that request. The applicant did not join the All India Soil & Land Use Survey Organisation but continued on adhoc basis as Sr. Translator in AFHQ till she was promoted in her own turn on 25.9.82 as Sr. Translator in the AFHQ on completing three years' service as Junior Translator. Thus, the question of anti-dating her seniority as Sr. Translator to 28.2.80, the date on which she was appointed on adhoc basis to that post, does not arise.

11. We may also refer here to the ratio laid down ^{by the Honble Supreme Court in} in the Direct Recruit Class II Engineering Officers' case (Supra) relied upon by Shri Raval in so far it applies to the ^{facts of} ~~posts~~ of this case. It is clear from the appointment order dated 28.2.80 itself that the applicant was appointed as a Sr. Translator on the basis of ^{a/an} limited departmental competitive ⁱ examination, followed by interview, which was purely on adhoc basis as a stop-gap arrangement, and the applicant could be reverted without notice and would give her no claim for appointment to that post on a regular basis. Under the circumstances, this adhoc appointment is squarely hit by the Corollary to Principle A elucidated in that case and hence the period of

officiation from 28.2.80 till 25.9.82 cannot count towards the applicant's seniority. It is well settled that Principle A, Corollary to Principle A and Principle B are mutually exclusive and if a person is covered by Principle A or is hit by its corollary, he cannot at the same time seek support from Principle B. Hence, the plea for counting the period of continuous officiation from 28.2.80 till the date of regular promotion i.e. 25.9.82 for the purpose of seniority also fails.

12. Before concluding we may touch upon M.P. Nos. 1301/92 and 2392/92 filed by the applicant. In M.P.No.1301/92, the applicant has levelled charges of harassment and perjury against the departmental representative Shri K.S.Dhingra, while in M.P.No. 2392/92 also similar charges have been levelled against Shri K.S.Dhingra and certain other functionaries in the Defence Ministry. If the applicant has any grievance against Shri Dhingra or the other functionaries in the Defence Ministry, it is open to her to work out her rights in accordance with law. As we find no merits in the O.A. itself, we do not propose to pass any orders separately on the two M.Ps beyond observing as stated above that if the applicant has any grievance against any functionaries in the Defence Ministry, it is open to her to work out her rights in accordance with law.

13. In the result, this O.A. as well as the two M.Ps are dismissed.

14. No costs.

S.R. Adige
(S.R.ADIGE)
MEMBER(A)

J.P. Sharma
(J.P.SHARMA)
MEMBER(J)