

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH: NEW DELHI.

New Delhi, the 21st December, 1993.

C.A.No.267/87

Shri H.V.Ashoka Kumar
s/o Late Shri HKV Iyer,
C-4-E/223, Pocket 11,
Janakpuri, New Delhi.110058.
(By Shri B.B.Raval, Advocate)

.. Applicant.

Vs.

1. Union of India,
through the Cabinet Secretary,
Govt. of India,
Rashtrapati Bhavan,
New Delhi-110001.

2. The Secretary,
Research & Analysis Wing,
Cabinet Secretariat,
Govt. of India,
Room No.3-B, South Block,
New Delhi-110001.

3. Shri R.C.Mazumdar,
Personal Assistant,
Research & Analysis Wing,
Cabinet Secretariat,
Room No.8-B, South Block,
New Delhi-110011.

C/o Respondent No.2. .. Respondents.
(By Shri P.P.Khurana, Advocate)

CORAM: Hon'ble Shri N.V.Krishnan, Vice Chairman(A)
Hon'ble Shri B.S.Hegde, Member (J).

ORDER
(delivered by Hon'ble Shri NV Krishnan, Vice-Chairman(A),

The applicant was selected as a stenographer in the Research & Analysis Wing (RAW) under the second respondent after passing the examination conducted for the purpose in September, 1975 and he joined the organisation on 11-3-1976. Subsequently, he qualified in the Limited Departmental Competitive Examination for promotion as Personal Assistant (PA) in 1980 and he was appointed as such w.e.f. 15-9-1980.

2. R.C.Mazumdar who, during the course of proceedings, was allowed to be impleaded as the 3rd respondent by the order dated 25-9-92 at the instance of the applicant, joined the same organisation as a steno-typist/stenographer on an ad hoc basis but qualified in the same stenographers'

examination as the applicant in September, 1975 and was placed below the applicant in the merit list. It is alleged that the 3rd respondent who was thus junior to the applicant as stenographer was, however, promoted as PA but on an ad hoc basis in July, 1976.

3. It is stated in the U.A. that this fact came to the notice of the applicant when a draft seniority list of stenographers was published vide An.A dated 18-9-85. The applicant is shown at Sl.No.42 in the list of stenographers grade III with the remarks that he is PA from 15-9-80. The 3rd respondent is shown below the applicant at Sl.No.43 and is shown to be working as PA from 15-7-76.

4. Aggrieved by the earlier promotion granted to his junior, the applicant submitted a representation on 1-10-85 (An.B) praying that he be promoted on notional basis from the date of promotion of his junior Majumdar i.e. from 16-1-76 with all attendant benefits, including fixation of pay at the stage of Rs.560/- which Majumdar was drawing then. A reminder to this representation was sent on 7-2-86 (An.D). He was then informed by the An.E letter dated 17-2-86 that his case for refixation of pay would be taken up only after the case of the 3rd respondent regarding his seniority and promotion was finalised.

5. That was done by the Memo dated 20-5-86 (An.F) - Paras 1 to 4 of this Memo read as follows:-

"Final seniority list of stenographers Gr.III showing the position as on 30-10-84 is forwarded herewith.

2) Seniority has been assigned from the date of passing the ISTM/All India Departmental Stenography Test in consultation with Cabinet Secretariat and Ministry of Law. Accordingly a draft seniority list was circulated vide our Memo No.32/E-4/79(4) dated 18-9-85. The representations received from the Stenographers/PAs requesting for giving them seniority from the date of joining as Steno Typists/ Stenographer Gr.III have been considered by the concerned authorities but their contentions have not been accepted.

3) S/Shri P.C.Chakraborty (Sl.No.32), P.K.Sarker (Sl.No.38) and R.C.Majumdar (Sl.No.43) stenographers Gr.III were promoted as Stenographer Gr.II (PAs) in 1976 before the finalisation of seniority of Stenographers Gr.III. Their promotion, therefore,

could only be treated as ad hoc. Their promotion as PAs will be regularized by the DPC only when their turn comes according to their normal seniority. Therefore, there is no question of grant of any NBR benefits to those who are senior to the above mentioned three Stenographers. Their representations received in this regard thus stand disposed of with the approval of the competent authority.

4) The names of those officials who were initially appointed as Stenographers/Steno-typists, but subsequently appointed as Stenographer Gr.II (Now PA) and have been confirmed as PAs, have not been included in the list."

Thus the representation of the applicant also stood disposed of by this Memorandum.

6. Aggrieved by the An.F Memorandum, the applicant made a representation on 4-6-86 to the second respondent (An.G) pointing out that if it was an ad hoc promotion given to Majumdar, it should have been on the basis of seniority. He, therefore, again repeated his request relying on FR 22-C. This was returned to his office in original stating that the representation has been disposed of by the An.F Memorandum.

7. The applicant, therefore, represented to the Cabinet Secretary on 14-11-86 (An.H) setting out all the above facts and requested that either he should be given the same pay as Majumdar or Majumdar's pay should be brought down to that of his pay. This request has been turned down by the An.I letter dated 30-1-1987. The operative portion of the letter reads as follows:-

"The points raised by Shri H.V.Ashoka Kumar have already been examined in details. The ad hoc promotion of Shri R.C.Majumdar was based on the seniority list existing in 1976 which was based on the length of service. Shri Ashoka Kumar had not put in the requisite length of service as required. As such there is no claim of H.V.Ashoka Kumar for seniority/ pay on the basis of ad hoc promotion. We have already intimated him the same vide para-3 of our Memo. of even number dated 20-5-86. He may please again be informed accordingly."

8. This application is filed contending that the respondents 1 & 2 (Department for short) have violated all the rules regarding ad hoc promotion in appointing the 3rd respondent as PA from July, 1976 and that they have denied similar benefit to the applicant. He has, therefore, sought certain reliefs, which as allowed to be amended on 31-3-87, are as follows:-

- a) To strike down as illegal and arbitrary the continued ad hoc promotion of Shri R.C.Majumdar, for as long as ten years,
- b) To restore parity of the applicant with Shri R.C.Majumdar (applicant's junior) in the matter of promotion.
- c) To direct respondents to pay to the applicant all pay and allowances on par with Shri R.C.Majumdar from the date of its accrual, alongwith arrears up-to-date with interest.
- d) To direct fixing of individual responsibility of the officer(s) ordering prohibition of further representation and violating Fundamental Right of the applicant under Articles-14 & 19 of the Constitution of India.
- e) To award cost of this application.

9. Third respondent, R.C.Majumdar who was impleaded at a late stage in answer to the objection of the Deptt., though served, neither filed a reply nor was present when the case was finally heard.

10. In the reply of the Department it is contended that the 3rd respondent was appointed to the temporary post of stenotypist w.e.f. 28-4-1971 at Calcutta by the order dated 19-5-71 (An.R-1) on the terms and conditions laid down in the offer dated 30-4-71. The offer of appointment dated 30-4-71 (An.R-2) stipulated that the 3rd respondent should qualify in stenography test at a speed of 80 words per minute from the Secretariat Training School, New Delhi within one year of his appointment. This period was extended from time to time. Finally, he qualified in the stenography test only on 24-9-75 alongwith the applicant and admittedly, the 3rd respondent was junior to the applicant, their respective places being 23 and 21.

11. It is stated that the 3rd respondent alongwith two others, was promoted as PA on a regular basis on the basis of a Departmental Promotion Committee which met on 22-5-76. A copy of the office order 749 M/76 granting this promotion was produced for our perusal at the time of final hearing and is kept on record. It is endorsed by No.19/E.4/76/(2) dated 5-7-76. It reads as follows:-

"The following persons holding the posts of stenographers Gr.III in the scale of Rs.330-10-380-EB-500-15-560 are promoted to the posts of stenographers Gr.II in the scale of Rs.425-15-500-EB-15-560-20-700-EB-25-800 from the date they take over their new appointments. They will be on probation for a period of three years from the date of appointment. Other conditions are as enumerated in the Annexure to this order.

The mentioned officers are posted to

the places as shown against each with immediate effect:-

<u>Sl.No.</u>	<u>Name</u>	<u>Present place of posting</u>	<u>Now posted to</u>
1.	R.S.Soni	S.B.Ganganagar	S.B.Bombay
2.	Mrs.Uma Chopra	H.Qrs.(EIII)	Pol.Div.
3.	Jagdish Chander	H.Qrs.(Spl.Sectt)	S.S.P.
4.	G.P.Kalra	H.Qrs.(Eco.Div)	ECO Div.
5.	V.K.Rao	H.Qrs.(PU-C)	PU-C
6.	P.C.Chakraborty	SB Darjeeling	SB Imphal
7.	P.K.Sarkar	SB Calcutta	SB Calcutta
8.	R.C.Majumdar	SB Calcutta	SB Calcutta
9.	Avtar Krishan	H.Qrs.(DTL Set-up)	DTL Set-up.

sd/-
Director(E)."

It is also stated that the stenotypists were redesignated as stenographer grade III by the An.R3 letter- which does not bear any date-. It is further stated in the An.R3 circular that after such conversion from 1-1-73, the stenotypists in position in the Cabinet Secretariat (RAO) H.Qrs. as well as out-stations were redesignated as stenographer grade III and that their pay would be fixed in the scale of Rs.130-280 under FR 23 depending upon the option exercised by them. Considering the fact that the 3rd respondent had put in the required five years' service as stenotypist/stenographer grade III as on 22-5-76, he became eligible for consideration to be promoted as stenographer grade II (PA). It is pointed out that the seniority list of stenographer grade III was prepared at that time on the basis of the date of appointment as stenotypist/stenographer grade III. As the 3rd respondent had been appointed as stenotypist on 28-4-71, his seniority was reckoned from this date. He was, therefore, found eligible for promotion having the necessary years of service as on 22-5-76 when the DPC met and promoted as P.A. As against this, the applicant was not considered by the DPC on that date because he had rendered a service only of around two months. Therefore, the question of 3rd respondent

superseding the applicant did not arise.

12. A draft seniority list of stenographers Gr.III showing the position on 31-3-79 was circulated on 20-4-79 (An.R4) inviting objections. The names of those who had been appointed as Grade II stenographers (PA) were omitted from this list. Accordingly, the name of the 3rd respondent did not figure in this list, while the applicant's name figured at Sl.No.40.

13. In regard to the seniority of stenotypists who qualified to become stenographer grade III, a decision was taken in O.M. dated 3-6-85 (An-R5) in the case of Ramesan in a clarification issued to the Deputy Director (E) of the Cabinet Secretariat. That O.M. is reproduced below:-

"Subject: Seniority of stenographers.

With reference to your letter No.32/E-4/79(4)-7354 dated 19-5-82 on the above subject, I am directed to say that this matter has been examined in consultation with the Deptt. of Personnel and the Ministry of Law.

2. Persons who were appointed as Stenotypists in the pay scale of Rs.110-180 plus Rs.20/- Special Pay, on the basis of tests held by the Departments, were required to pass a test in English Stenography conducted by the Institute of Secretarial Training & Management at 80 w.p.m. If they failed to qualify in such a test they were not eligible for confirmation or continuance as Steno. grade III in the pay scale of Rs.130-280, as the two posts (stenotypists and steno grade III) were not equivalent but different posts and belonged to different cadres. The post of Steno grade III formed part of the Stenographic Cadre whereas the post of Stenotypist did not.

3. The stenotypists who qualified in the ISTM test mentioned above were eligible for confirmation or continuance in the post of Steno. grade III.

4. With respect to the particular case of Shri Ramesan who was appointed as Stenotypist in April, 1972 in the pay scale of Rs.110-180

with Special Pay of Rs.20/-, he was required to qualify the ISTM test to become eligible for confirmation in the grade of Steno Gr.III in the pay scale of Rs.130-280. He qualified the ISTM test in Sept. 1978, and became eligible for confirmation in the grade of Steno.III. His seniority as Steno Gr.III will, therefore, be determined from the date he qualified the ISTM test. Similar case of conversion of stenotypists appointed by the Department to the grade of Steno.III should be regulated in the same manner."

14. In pursuance of this decision, a draft seniority of stenographers grade III as on 30-10-84 was published by the Memo dated 18-9-85 (An.R6). This was finalised by the Memo dated 20/22-5-86 (An.R7). The applicant was kept at Sl.No.42 and the 3rd respondent at Sl.No.43 but the latter was shown now as "ad hoc PA" from 16-7-76. That decision to treat him as ad hoc PA was conveyed by the Cabinet Secretariat in the Memo dated 20-5-86 (An.R7) reproduced in para 5 supra. It was made clear therein that the promotion of third respondent and two others would be regularised by the DPC only when their turn comes according to their normal seniority.

15. It is stated in the reply that as the 3rd respondent and two others had already rendered more than 9 years of continuous service as steno grade II(PA), their reversion on the basis of the revised final seniority list (An.R7) would have been too harsh. Hence they were not reverted. It was decided to treat their promotion as ad hoc subject to regularisation by the DPC only when their turn comes on the basis of the revised seniority. This was done w.e.f. 19-12-86 on the basis of the DPC recommendations vide office order 934 M/86 endorsed

(5)

under No.51/E.4/79(1) dated 19-12-86, a copy of which has been produced for our perusal by the learned counsel for the Department at the time of final hearing.

16. In the circumstances, it is contended that the applicant does not have any right to claim parity in pay with the 3rd respondent. The learned counsel for the respondent was asked to clarify whether the Govt. of India instruction O.M.No.F.2(78)-E.III(A)/66 dated 4-2-86 under FR 22-C would not entitle the applicant to parity in the matter of pay. The learned counsel submitted that the refixation of seniority of the applicant vis-a-vis the respondent was not with retrospective effect. It is the seniority list as on 30-10-84 that underwent a change and therefore, the benefit cannot be given to the applicant even on this ground.

17. We have carefully considered this matter. We are unable to accept the contention of the applicant that the 3rd respondent was appointed as PA in 1976 on an ad hoc basis. The explanation offered by the respondents appears to be reasonable. For, the third respondent was considered to be a stenographer grade III from 1-1-1973 and for the purpose of seniority his date of appointment as stenotypist from 1971 was also taken into account. As against this, the applicant was a fresh recruit who joined as a stenographer grade III only in 1976, after passing the relevant examination, though, in that examination he was placed higher than the 3rd respondent. Therefore, in 1976, when the promotion to the post of PA took place, the Department found that the 3rd respondent was eligible for regular promotion but not the applicant. Hence, the promotion made in 1976 cannot be faulted. It is due to a

subsequent development that the appointment of the 3rd respondent as PA PA was declared to be ad hoc. That became necessary when the criterion for determining seniority was clarified by the letter dated 3-6-85 (An.R5) of the Cabinet Secretariat that seniority will count only from the date stenotypists qualify in the ISTM test for steno grade III and not from the date of appointment as stenotypists. On this basis, draft seniority list of stenographers grade III as on 30-10-84 was issued (vide An.R6 Memo dated 20-9-85) in which the 3rd respondent was shown as junior to the applicant at Sl.No.43 and his date of regularisation as stenographer was shown as 5-9-75 i.e. date of passing the examination. This was finalised by the An.R7 dated 22-5-86. As a result of this new seniority, the 3rd respondent was declared to be holding the post of PA only on an ad hoc basis vide the Memo dated 20-5-86 (An.R7). Therefore, it is from 30-10-84 only that the 3rd respondent can be considered to be junior to the applicant but he was, admittedly, drawing more pay as PA than the applicant, having been given promotion from 1976 which has been declared to be ad hoc. In other words, the earliest date from which the applicant can stake a claim is from 30-10-84 only.

18. We are unable to agree with the respondents that notwithstanding these developments the applicant is not entitled to any relief regarding fixation of pay.

19. The applicant has not staked any claim under the Next Below Rule as stated in para 3 of the Department's Memo dated 20-5-86 (An.F). He claims relief under FR 22-C as is evident from his representation (An.G) dated 4-6-86.

20. We had some doubts about the entitlement of the applicant to protection of his pay vis-a-vis the 3rd respondent on the ground that if the 3rd respondent had not been appointed in 1976, it was not the turn of the applicant to be promoted then. There were very many persons who were senior to him. Therefore, if at all anyone has to get benefit on this account, it should be only one person and he should be the person who has now become the seniormost in the grade of stenographers grade III, but not promoted as PA.

21. The learned counsel for the applicant however, submitted that whatever that may be, the applicant alone has come before this Tribunal staking this claim on the ground of his seniority over 3rd respondent, which is not disputed. Therefore, he claims that the applicant is entitled to relief claimed by him. We find force in the argument.

22. We can now consider whether the applicant is entitled to the benefit of the Govt. of India instruction dated 4-2-66 under F.R.22-C. That instruction is reproduced below:-

"(8) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior,-
(a) As a result of application of FR.

22-C.- In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961, drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scale of pay of the lower and higher posts in which they are

entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of F.R.22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under F.R.27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

(G.I., M.F., D.M.No.F.2(78)-E.III(A)/66 dated the 4th February, 1966.)"

23. We first notice that this instruction does not stipulate that the benefit of that instruction should be given only on a 1:1 basis which is a prior condition applicable to the next below rule under FR 30. The most important condition to be satisfied for the application of this instruction is that the junior must have been promoted later than the senior and yet gets a higher pay. This condition is not satisfied in the applicant's case when 3rd respondent was first promoted as steno grade II (PA) from 16-7-76. That promotion was treated as ad hoc promotion by the An.R7 memorandum dated 20-5-86. This ad hoc promotion was regularised from 19-12-86 by Memo No.934/M/86 of even date produced before us. Therefore, the condition is satisfied for the first time from 19-12-86 only. The other conditions mentioned in the aforesaid instruction dated 4-2-1966 are fully satisfied in this case. Therefore, the applicant is entitled to parity of pay with respondent 3 from 19-12-86.

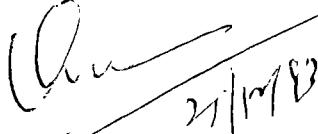
24. Accordingly, we allow this L.A. in part and direct the respondents to refix the pay of the applicant as stenographer grade II (PA) as on 19-12-86 at the same stage as the 3rd respondent was drawing

on that date and give him the next increment on the same date as the 3rd respondent and pay all arrears to the applicant within a period of four months from the date of receipt of this order. No costs.


(B.S. HEGDE)

Member (J).

21 December 93


(N.V. KRISHNAN)

Vice Chairman (A).

21 December 1993