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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH; DELHI

O.A.NO. 355 OF 1987

DATE OF DECISION: 8-8-1991.

Shri K.P.Nair and others.

.. Applicants.

v.

Union of India and others.

.. Respondents.

COURT:

Hon'ble Mr.G.Sreedharan Nair, .. Vice-Chairman

Hon'ble Mr.S.Gurusankaran .. Member(A).

Shri M.K.Gupta, Counsel for the applicant.

Mrs. Rajkumari Chopra, Counsel for the Respondents.

S.GURUSANKARAN, MEMBER (A):

JUDGMENT

The undisputed facts of the case are that the applicants joined as Stenographers in the offices of the Central Intelligence Officers called sub-ordinate offices at Jaipur, Bhopal and Delhi on various dates between 1960 and 1967 in grade Rs.130-200 plus special pay of Rs.25/- p.m., whereas the Stenographers in the offices, where the Head of Office is Deputy Director were given the grade of Rs.210-530 between 1-7-1959 and 10-1-1973. The Government accorded sanction on 1-4-1967 creating a post of Deputy Director to head a new Subsidiary Intelligence Bureau('SIB' for short), Delhi over the offices of Central Intelligence Bureau Offices at Jaipur, Bhopal and Delhi. The posts held by the applicants were upgraded to Rs.210-530 w.e.f. 23-1-1971. They were also compensated by grant of four advance increments so as to bring their pay to the stage which they would have reached had they been brought to Rs.210-530 scale w.e.f. 1-4-1967. Their pay scales were revised to Rs.425-800 on the recommendations of the III Central Pay Commission in November, 1973 with retrospective effect from 1-1-1973. The advance

increments granted to them earlier resulted in fixation of their pay at a higher stage as compared to their seniors, who were already in grade Rs.210-530. Hence, the grant of advance increments was reviewed in the revised pay scales and only such number of advance increments <sup>were granted</sup> as would bring their revised pay to the stage, where they would have reached had the scale of Rs.210-530 been granted to them w.e.f. 1-4-1967. The Intelligence Bureau Stenographers' Service Rules, 1971 (hereinafter called IBSS Rules) came into force on 21-12-1971 classifying them into four grades namely Rs.130-280, Rs.210-530, Rs.350-770 and Rs.350-900. These grades were revised w.e.f. 1-1-1973 to Rs.330-560 Rs.425-800, Rs.650-1040 and Rs.775-1200 respectively. As per Rule 16 of IBSS Rules in the seniority list of Grade-II Stenographers, persons who had passed the All India Competitive Examinations held are to be placed above those, who had been selected by the Department by other means. As per Rule 16(B) (iv), the latter category would be eligible for being assigned seniority in Grade-II after completion of 10 years service in that grade or on attaining the age of 45 years, whichever is earlier. The IBSS Rules also provided that persons recruited initially other than those recruited through open competitive examination, but who pass the competitive examination held by the UPSC or Intelligence Bureau will also be assigned seniority along with others on the basis of the rank in the said examination. Hence, even though the <sup>Official</sup> State respondents gave the pay scale of Rs.210-530 with some advance increments w.e.f. 23-1-1971, they were not given the seniority in that grade even from that date. Aggrieved by this, four stenographers in Grade-II, other than the applicants in the present case, who were working in the Bhopal Office, but who were similarly situated as the applicants, filed M.P.No.693 of 1980 in the High Court of Madhya Pradesh. The High Court

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allowed the petition partly and directed that -

"the petitioners' salaries shall be fixed on the basis that they are to be fixed in the pay scale of Rs.210-530 with effect from 1-4-1967 and later, when the pay scales are revised they will be entitled to that pay scale and on this basis, the amounts which have not been paid to them shall be paid and their seniority and other benefits shall be available to the petitioners on the basis of the application of this pay scale from 1-4-1967. It is also directed that the four increments and the pay fixation which was first done on the basis of higher pay scale and was corrected will be of no effect and all the amounts which were paid on that basis will have to be adjusted and after calculating, if the petitioners are entitled to something they will be paid and if something remains to be recovered from the petitioners, it shall be so done. It is, however, made clear that they will earn their increments normally as if they were drawing the salary in the pay scale of Rs.210-530 from 1-4-1967 and subsequently on revision, in the higher pay scale. The petitioners shall be treated in this pay scale from 1-4-1967, or from the date of appointment if any one is appointed later, and other benefits will be made available to them as soon as an opportunity is available. Their seniority shall be refixed on that basis and the question of confirmation also shall be considered on that basis and they shall be considered for promotion also on the basis of the seniority so fixed as directed above".

The applicants in the present application also made <sup>official</sup> several representations to the State respondents to give them similar benefits. They were, however, finally informed on 24-12-1986 (Annexure-A2) that -

" We had approached the Government in June, 1985 for reconsideration of their earlier decision and requested to convey their approval for giving benefit of fixation of pay in the higher scale to the PAs similarly placed. However, the Government of India did not agree to our proposal for giving the benefits to the PAs. under the circumstances explained above we regret our inability to accede to the request of the PAs for giving higher scale of pay..."

Aggrieved by the same, the applicants have filed the present application seeking ~~for~~ reliefs similar to those afforded to the petitioners before the High Court.

2. The counsel for the applicants <sup>contended</sup> that <sup>Since</sup> a final considered reply was given only on 24-12-1986 rejecting the requests of the applicants, the application filed in March, 1987 is not time barred. The counsel for <sup>official</sup> the State respondents and the counsel for the private

respondents vigorously argued that the application is time barred. It is clear from the letter of 24-12-1986 (supra) that the matter was referred to the State <sup>official</sup> respondents in June, 1985 for re-consideration and hence, it is only proper that the applicants filed this application immediately after getting the final reply. Hence, we agree with the contention of the applicants that this application is not hit by limitation.

3. The counsel for the applicants argued that since the applicants were performing the duties, which were of the same nature and responsibilities as those of other Stenographers in the SIBs, they should be given the grade Rs.210-530 from 1-4-1967, the date from which the offices at Bhopal, Jaipur and Delhi were upgraded as sub-ordinate offices. He referred to the detailed orders of the High Court and contended that they are entitled to the same relief. The counsel for the respondents argued that the fact that the applicants did not have the requisite requirements and qualifications have not been considered by the <sup>official</sup> High Court. The State <sup>official</sup> respondents have also stated that due to administrative difficulties, the said judgment could not be assailed further and accordingly <sup>was</sup> implemented with reference to the petitioners therein. During the arguments, the counsel for the applicants did not press <sup>the</sup> relief regarding <sup>vires</sup> of Rule 16 of IBSS Rules. There is no dispute that the applicants were recruited locally through the employment exchange and were also given the scale of Rs.210-530 from 23-1-1971 before the IBSS Rules came into force. At the same time, they were given the Grade-II, without any condition being laid down like subject to the provisions of the Recruitment Rules as and when finalised. Further such appointment was not as a purely stop gap arrangement. In view of this and for

the reasons stated in the judgment of the High Court of Madhya Pradesh, we do not see as to how the contention of the applicants that they should also be given the scale of Rs.210-530 from 1-4-1967 as in the case of the petitioners before the High Court can be rejected. Hence, we agree that the applicants ~~as well as those, who are similarly situated, but who are not before us,~~ should be given the grade from 1-4-1967 or the date of their appointment, whichever is later subject to the other conditions laid down in the judgment of the High Court with regard to fixation of pay and adjustment of amount paid due to grant of advance increments both in the old scale as well as the revised scales effective from 1-1-1973.

4. Regarding seniority and confirmation, we are afraid that we cannot grant the reliefs asked for fully. In the case of P.S.SADASIVA SWAMY v. STATE OF TAMILNADU (AIR 1974 SC 2271), the Supreme Court have observed that "it would be sound and wise exercise of discretion for the court to refuse extraordinary powers under Article 226 in the case of persons, who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward claims and try to unsettle settled matters". In this case also, particularly since the IBSS Rules had been introduced from 21-12-1971, the Rules specifically provided for confirmation of persons recruited differently, the applicants waited all this time to approach the Tribunal and did not think it fit to join with the petitioners before the High Court in 1980, substantial justice can be done by confirming them and giving seniority with immediate effect. However for the purpose of eligibility for promotion to the higher grades, the service rendered in grade Rs.210-530 will be counted for eligibility.

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5. Accordingly, the application is partly allowed and the official respondents are directed to -

- (i) grant the applicants the scale of pay of Rs.210-530 with effect from 1-4-1967 or from the date they were appointed, which ever is later. They will also be entitled to fixation of pay in the revised pay scales as and when introduced and under the relevant Rules. The four increments <sup>and</sup> ~~fixation~~ under the pay ~~revision~~ which was first done and was corrected will be treated as cancelled and all amounts which were paid on that basis will be fully adjusted/recovered after calculating to see whether the applicants are entitled to something more than they have been paid already.
- (ii) they will be treated to be in continuous service in grade Rs.210-530 with effect from 1-4-1967 or from the date of appointment whichever is later.
- (iii) regarding seniority, they will be granted the same taking their continuous service in grade Rs.210-530 from 1-4-1967 or from the date of their appointment whichever is later by adjusting the seniority in that grade with effect from 8-8-1991 without disturbing the seniority of those persons in grade Rs.210-530 or equivalent who have ~~already~~ been promoted to the next higher grade prior to 8-8-1991.
- (iv) After the revised seniority in grade Rs.210-530 or equivalent, they will be considered for promotion to the next higher grades and subsequent higher grades giving weightage to the continuous service in grade Rs.210-530 with effect from 1-4-1967 or the day from which they joined the Intelligence bureau whichever is later.

*Amritaray*  
8/8/1991  
MEMBER (A)

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8.8.1991  
VICE-CHAIRMAN.