

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 643/87
T.A. No.

198

DATE OF DECISION 18.12.1989

Shri T.K. Udaya Bhanu

Applicant (s)

Shri B.B. Rawal

Advocate for the Applicant (s)

Union of India ^{Versus} and Others

Respondent (s)

Shri M.L. Verma

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

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. To be circulated to all Benches of the Tribunal ? NO

JUDGEMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha, V.C.)

The applicant, who is working as Stenographer Grade II in the Office of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- (i) to strike down Rule 6(1) of the DGS (Secretarial) Service Rules, 1975;
- (ii) to direct the respondents to consider him for seniority and confirmation at his appropriate place and time by following sealed cover procedure for the year 1975, when the D.P.C. met at the initial constitution stage;

Ans

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- (iii) to reckon his seniority w.e.f. 1.3.1968, the date of his joining as a direct recruit, and to confirm him from the due date and, in any case, before his juniors in service were confirmed;
- (iv) to direct the respondents to consider him for further promotion as Senior P.A.;
- (v) to direct the respondents to finalise the seniority list of Stenographers Grade II in the D.G.S. before a D.P.C. is constituted to consider promotions for the post of Senior Personal Assistants; and
- (vi) to direct the respondents to pay him the difference in pay and allowances that would accrue to him after restoring his seniority at appropriate place and time.

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2. On 24.6.1987, the Tribunal ~~passed an order directing~~ selection or promotion made subsequent to the filing of the application will be subject to the result of the application and cannot affect the rights of the applicant as ultimately declared by the Tribunal.

3. The career of the applicant in the office of the respondents is a somewhat chequered one. He was originally recruited in service of North-Eastern Frontier Agency (NEFA), now forming part of Arunachal Pradesh, in 1962. He came over to the Directorate General of Security (DGS), Cabinet Secretariat, on deputation as Stenographer Grade III and was posted at Bomdila w.e.f. 1.4.1964. He was repatriated to NEFA in 1967 on his appointment as Personal Assistant (Stenographer Grade II), to the Security Commissioner, NEFA. On 1.3.1968, he was directly recruited as Stenographer Grade II in the Office of the Divisional Organiser, Special

Service Bureau (S.S.B) in D.G.S., Cabinet Secretariat and joined duty on that date at Tezpur. While on duty there, he met with an accident on 6.5.1972. He was suspended, ^{the} pending the decision of L criminal court. The criminal court acquitted him of all the charges on 25.11.1976. Thereafter, the period of his suspension was treated as on duty for all purposes.

4. After the revocation of suspension, the applicant resumed duty on 23.11.1977 as Stenographer Grade II. He is presently working in the office of the Director, A.R.C., Cabinet Secretariat at New Delhi.

5. The Directorate General of Security (Secretarial) Service Rules, 1975 (1975 Rules for short) were made on 4.11.1975, when the applicant was undergoing suspension. The respondents constituted a Screening Committee which met on 11.12.1975 and 5.1.1976 to adjudge the suitability of Stenographers Grade II for permanent absorption in the service of Directorate General (Security). The said Committee did not assess the suitability of the applicant. Two reasons have been given for not assessing his suitability, viz., that his A.C.Rs for the years 1972-73, 1973-74, and 1974-75 were not available, and that the Committee discovered that he was under suspension for nearly three years and may be repatriated to his parent cadre. His case was again considered by the Screening Committee on 29.12.1980. The Committee had recommended that the applicant was not suitable for permanent absorption in the Cadre, apart from the fact that there was no permanent post available to accommodate him. In other words, even if a permanent post was available at the initial constitution of the

Cadre of Stenographers Grade II, the Committee did not recommend him for appointment against such a post.

6. The first provisional seniority list of Stenographers Grade II was circulated on 29.11.1976. It was revised and circulated on 28.1.1978 and 18.7.1979, respectively. In these lists, the name of the applicant was not included because of the recommendations of the Screening Committee, mentioned above.

7. On the receipt of representations from the applicant, the Screening Committee was constituted by the respondents who did not recommend his name on 29.12.1980 for permanent absorption.

8. The case of the applicant may be summed up as follows:-

- (i) As he was under suspension during the period when the D.P.C. met in 1975 and 1976 to adjudge the suitability of officers for permanent absorption in the Service, it should have followed 'sealed cover' procedure. This was not done.
- (ii) The respondents did not allow him to go on deputation as Senior Personal Assistant on promotion to the Office of the Inspector General of Police, Arunachal Pradesh in 1981. The respondents did not forward his ACRs in time to Arunachal Pradesh and in that process, he missed the chance of permanent absorption in the Office of Inspector General of Police and he was also not finally absorbed by the respondents.

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(iii) His request dated 22.5.1982 for voluntary retirement on completion of 20 years of service addressed to the Director, S.S.B. (Respondent No.3) was not accepted on the ground that he was not holding the post in a substantive capacity and hence he was not covered under the voluntary retirement scheme. Instead, the respondents asked him to submit resignation if he wanted to leave the job. This is alleged to be arbitrary.

(iv) He has challenged the vires of Rule 6(1) of the 1975 Rules which prescribes for a Screening Committee to consider the suitability of officers for absorption in the Service.

9. The case of the respondents may be summed up as follows:-

(i) The Screening Committee did not find the applicant suitable for permanent absorption. That apart, there were also no permanent posts available to accommodate him.

(ii) The application is barred by limitation and the principle of res judicata.

10. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. We may, at the outset, consider the preliminary objections raised by the learned counsel for the respondents as to the maintainability of the present application. With regard to the question of limitation, it may be stated that

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the applicant has challenged the validity of the seniority list of Stenographers Grade II as on 1.9.1986 which was circulated vide memorandum dated 7.10.1986. The applicant made a representation on 23.12.1986 which was considered by the respondents in their memorandum dated 29.1.1987. In his representation, the applicant also referred to his non-confirmation. Referring to this, the respondents informed him that his case will be considered as and when a permanent post covering his name will become available. The present application was filed in the Tribunal on 4th May, 1987. In the facts and circumstances of the case, we are of the opinion that the application is not barred by limitation.

11. We also do not see any substance in the plea of the respondents that the application is not maintainable on the principle of res judicata. It is true that the applicant had filed a writ petition in the Kerala High Court in 1983 (OP-9048/83) praying for directing the respondents to declare him permanent in the post of Stenographer Grade II, or directing them to allow him to retire voluntarily and avail himself of all the retirement benefits. At the request of his counsel, the petition was dismissed as withdrawn. This clearly indicates that the Kerala High Court did not dispose of the petition on merits. Consequently, the bar of res judicata will not apply to the instant case.

12. The admitted factual position is that the applicant was directly recruited as a Stenographer Grade II in the Office of the respondents in 1968. In view of this, the question of his repatriation to his parent cadre would not have arisen. At the time of the initial constitution of

the Service, he was under suspension, pending investigation into a criminal case against him. He was eventually acquitted by the criminal court. In law, he was entitled to be considered for appointment at the initial constitution of the Service along with other eligible officers, notwithstanding his suspension or pendency of criminal proceedings against him. The correct procedure should have been to consider his suitability for such appointment and keep the assessment made by the Screening Committee in a sealed cover to be opened after the conclusion of the criminal proceedings. This was not done in the instant case. The respondents have taken contradictory stands in the counter-affidavit filed by them. At one place, they admit that he was directly recruited as Stenographer Grade II in the Office of the Divisional Organiser (SSB) on 1.3.1968. At another place, they state that he might be repatriated to his parent cadre. Again, at one place they state that his ACRs for the years 1972-73, 1973-74, and 1974-75 were not available to assess his suitability for appointment to the initial constitution of Service and at the same time, it has been stated that the Committee discovered that he had been placed under suspension for nearly three years. The Screening Committee ought to have considered the case of the applicant for absorption as a Stenographer Grade II when it met in 1975 and 1976 and assessed his suitability on the basis of the ACRs for the years 1972-73, 1973-74, and 1974-75, as in the case of other officers and should have kept the results of their assessment in a sealed cover to be opened after the conclusion of the criminal proceedings.

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After his acquittal, the applicant should have been appointed to the Service w.e.f. the due date.

13. The plea of the respondents that the applicant could not be absorbed in the Service as Stenographer Grade II for want of a permanent post, is also not very convincing. The applicant had been declared quasi-permanent w.e.f. 1.3.1971 by the respondents vide their order dated 30.6.1980. Determining the confirmation of an officer on the existence of a permanent post is, in our opinion, arbitrary. The Supreme Court has observed that "The archaic rule of confirmation, still in force, gives a scope to the executive authorities to act arbitrarily or mala fide, giving rise to unnecessary litigations. It is high time that the Government and other authorities should think over the matter and relieve the Government servants of becoming victims of arbitrary actions." (Vide Shiv Kumar Sharma Vs. Haryana State Electricity Board, Chandigarh, A.I.R. 1988, S.C. 1673; see also S.B. Patwardhan Vs. State of Maharashtra, A.I.R. 1977 S.C. 2051). The respondents ought to have passed orders of confirmation of the applicant after he had successfully completed the period of probation instead of declaring him quasi-permanent. The plea of the respondents that he was declared quasi-permanent by an authority which was not competent to do so, is, in the facts and circumstances of the case, devoid of any substance.

14. In the light of the above, we consider that it is not necessary to strike down Rule 6(1) of the D.G.S. (Secretarial) Service Rules, 1975. In the interest of

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justice and fairplay, we order and direct as follows:-

(i) The applicant must be deemed to have been confirmed with effect from 1.3.1971 when he was declared quasi-permanent, irrespective of whether a permanent vacancy in the Stenographer Grade II was available or not. The respondents shall also deem him to be absorbed in the Service on its initial constitution from the due date, as the constitution of a Review D.P.C. at this stage is not likely to serve any useful purpose. The respondents are directed to consider him for further promotion on the basis of the revised seniority.

(ii) Subject to the directions in (i) above, the applicant would be entitled to all consequential benefits, including arrears of pay and allowances that would be admissible to him.

(iii) The respondents shall comply with the above directions within a period of six months from the date of communication of a copy of this order.

(iv) The parties will bear their own costs.

Sh. Ruply
(I.K. Rasgotra)
Administrative Member
(18/12/85)

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18/12/85
(P.K. Kartha)
Vice-Chairman (Judl.)