

U.K

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

R.A.394/94 IN
O.A.765/89

NEW DELHI THIS THE 25th DAY OF DECEMBER, 1994.

HON'BLE SHRI J.P. SHARMA, MEMBER(J)
HON'BLE SHRI B.K. SINGH, MEMBER(A)

Shri M.V.B. Shastry,
R/o No.16/425
Lodhi Colony,
New Delhi-3.

....Applicant

(By Advocate : None)

VERSUS

UNION OF INDIA, THROUGH

1. The Secretary to the
Government of India,
Ministry of Personnel,
Public Grievances and Pensions
(Dept. of Personnel & Training)
(C.S II Section), Nirvachan Sadan,
6th Floor, New Delhi.
2. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi-11.Respondents

(By Advocate : None)

JUDGEMENT

(C.G.)

Mr B.K. Singh, Member (A)

This Review Application has been filed against the judgement in O.A.No.765/89. The judgement was delivered on the 5th day of October, 1994. The main contention of the applicant was that his ad hoc appointment should have been counted for purposes of fixation of his seniority, while

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considering the question of promotion of Principal Private Secretary in the pay scale of Rs.3000-4500, introduced on the basis of the recommendations of the Fourth Pay Commission. The applicant belonged to the Central Secretariat Stenographers Service. The Cadre Controlling Authority in this case is the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. The applicant was a permanent stenographer 'B' of the Central Secretariat Stenographers Service (CSSS), in the department of Company Affairs and as per instructions then in force in the Department of Personnel and Training, Ministry of Public Grievances and Pensions, it permitted the various Ministries/Departments to promote people to meet the functional requirements purely on a temporary and adhoc basis. In the light of the new O.M. issued by the Department of Personnel and Administrative Reforms vide their O.M. dated 13.7.83, instructions were issued to the Cadre Authority fixing the zone (i.e. the range of seniority for promotion from Grade 'B' to Grade 'A') of CSSS subject to the fulfilling of

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eligibility conditions as per the provisions of Rule 11 of CSSS Rules, 1969.

2. In the light of the aforesaid instructions, it is admitted that the applicant was appointed after the inclusion of his name in Select List of Grade 'A' of CSSS for the year 1983 as Private Secretary in the scale of Rs.650-1200 in the Department of Company Affairs on a temporary basis with effect from 1.8.1983. While recommending the new pay scale of Rs.3000-4000, the Fourth Pay Commission had also made certain recommendations which have been made in Para 13 of the judgement. In addition to I(i) 2(ii) of the recommendations, the Fourth Pay Commission also stipulated that it would be functional grade requiring promotion as per normal procedure. The qualifications and modalities for such promotions were to be worked out by the Department of Personnel and Training, Ministry of Public Grievances and Pensions and were to be incorporated in the Recruitment Rules, framed by the said department. And accordingly the Central Government in DOPT formulated modalities for such promotion in the new PS grade in consultation with the U.P.S.C.

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and the Ministry of Law and the Recruitment Rules were published in the Gazette of India and vide G.S.R. 629-E dated 16.6.89, which is marked as Annexure I of the Paper-book in the original O.A. In view of the new Recruitment Rules, the new eligibility criteria came into being on the basis of which the tentative list was prepared on 22.02.89 in consultation with the U.P.S.C. and was circulated on 11.5.89. The adhoc promotions given by the various departments/Ministries were extended for three months initially and continued with the approval of Competent Authority pending finalisation of modalities for filling up of posts of Private Private Secretaries on a regular basis. It was specifically mentioned in the Order that such adhoc appointments were subject to termination on completion of the specific period of three months or the date on which persons selected for regular appointments were made available, whichever was earlier. It was made clear in the Order itself that an adhoc appointment had been sanctioned by the Competent Authority only upto 11.5.89 and was to be terminated

thereafter.

3. A charge of arbitrariness, malafide or unreasonableness cannot be levelled against the legislature enacting a law or its delegate, making recruitment rules under proviso to Article 309 of the Constitution. The general recruitment rules which are framed under the proviso to Article-309 are always for the greatest good of the greatest number. It is true that while taking into consideration the greatest good of the greatest number there may be some, who may be adversely affected even by the new recruitment rules made by the Department of Personnel & Training, Ministry of Public Grievances and Pensions. But that cannot be a ground to charge the Department/Ministry of arbitrariness. No law enacted by legislature or rule made by its delegate can satisfy all. The contention of the applicant that the cadre had been decentralised in 1962 and promotions were also decentralised, was rejected because this was subject to the exceptions mentioned in Rule 7 (2)(d)(iii) of the 1969 Rules, and Rule 11 (4) (4) in ^{the} Sixth Schedule of CSSS Rule 1969. With the introduction

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of a new pay scale, the new modalities for filling up the post of Private Secretary was evolved in consultation with the UPSC according to the recommendations of the Fourth Pay Commission. The Fourth Pay Commission itself had left it open to the Competent Authority i.e. the Ministry of Personnel, Public Grievances and Pensions to frame these new Rules and evolve the procedures and modalities for promotion of Officers to the new grade. And it was in the exercise of this power and it was 4th Pay Commission's on the basis of the/ recommendations that the new Recruitment Rules, new criteria, new modalities for selection was evolved and thus all appointments made by various departments/Ministries came to an end on 11.5.89. And the applicant's appointment also stood automatically terminated on that date since he did not come within the zone of consideration and was reverted to the pay scale of Rs.2000-3500 from the pay scale of Rs.3000-4500.

4. A Review Application can be filed under Order 47 Rule 1 of C.P.C. or under the Provisions of Section 114 of the same code.

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In order that an application can be entertained it must fall within the four corners of Order 47 Rule 1, which lays down that an aggrieved party may file an appeal against an Order from which an appeal is allowed, but from which no appeal has been preferred, or by an Order from which no appeal is allowed, or on a writ reference from a Court of small causes, or from the discovery of new and important matter of evidence, which after an exercise of due diligence was not within his knowledge when the Order was made or on account of some mistake apparent on the face of the record, or for any other sufficient reason analogous to the provisions contained in Order 47 Rule (1) or under the provisions of Section 114 of the C.P.C.

5. We have gone through the R.A. We find that the review applicant has practically reiterated what was adjudicated upon in the O.A. filed by the Review Applicant. So this Review application does not fall within the four corners of Order 47 Rule 1. The review is not permitted for advancement

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of new arguments or for adducing a new plea which was not taken during the hearing in the O.A. There is no legal or factual error apparent on the face of the record since all the facts in the application have been legally adjudicated upon. The application is accordingly summarily rejected under Order 47 Rule 4(1).

(Signature)
B.K. SINGH
MEMBER (A)

(Signature)
(J.P. SHARMA)
MEMBER (J)

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