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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 1413/90

New Delhi this the 15th day of Sept., 1994.

Hon'ble Mr. S.R. Adige, Member (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Mrs. Kanta Bajaj,
w/o Shri Vinod Bajaj,
Jr. Stenographer,
Indian Agricultural Research Institute,
Genetics Division,
Pusa,
New Delhi-110012.
Resi. Address:

W.Z. 153-B, Varinder Nagar,
New Delhi -110058 Applicant

By Advocate Shri G.D. Bhandari

Versus

1. Union of India, through,
The Secretary,
Ministry of Agriculture,
Government of India,
Krishi Bhawan,
New Delhi.
2. The Director General,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.
3. The Director,
Indian Agricultural Research Institute,
Pusa,
New Delhi-110012. Respondents

By Advocate Shri H.C. Kapoor

JUDGMENT

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

In this application, Mrs. Kanta Bajaj, Junior Stenographer, Indian Agricultural Research Institute (IARI), Pusa, New Delhi has prayed for counting of ^{her} seniority as Junior Stenographer w.e.f. 6.8.70, and interpolation of her name in the seniority list of Junior

Stenographer as on 1.1.88, issued vide Circular dated 7.3.88 (Annexure-1) just below Serial No.6 Mrs. Sudesh Uppal, with all consequential benefits.

2. From the materials available on record, it appears that an offer of appointment was made to the applicant on 29.7.70 (Annexure-6) for the post of Junior Stenographer at IARI. Condition No.5 of the offer (Annexure-6) specifically stated that she would be put on trial basis for one year, which could be extended at the discretion of the competent authority. Failure to complete the period of trial to the satisfaction of the competent authority would render her liable to be discharged from service. A note at the bottom of the offer of appointment, stated that her appointment was subject to the condition that she would improve her performance in shorthand to the prescribed level within the period of one year. The recruitment rules for the post of Junior Stenographer prescribe a minimum shorthand speed 80 words per minute in English. According to the respondents, the applicant had appeared in the competitive test for recruitment but did not qualify upto the above prescribed standard in Stenography, but because of administrative exigencies of work and non-availability of qualified persons, the offer of appointment was made to the applicant on trial basis for one year subject to her reaching the above prescribed standard. It further appears

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that in the stenography test held on 7.3.76 (Annexure-R2) and 19.10.76 (Annexure-R3), the applicant failed to qualify. A seniority list of Junior Stenographers as on 1.1.76 was published showing the date of regular appointment of various Junior Stenographers. The applicant was not included in that seniority list and at no stage did she challenge that seniority list. It further appears that the applicant finally passed the stenography test only on 19.4.78 and was regularised as Junior Stenographer with effect from that date vide Office Order dated 8.8.78 (Annexure-20).

3. Meanwhile, it appears that by office Order dated 17.9.73 issued over the signature of ^{the} Establishment & Store Officer (Annexure-7), the applicant upon the DFC recommendations was deemed to have completed the probationary period w.e.f. 5.8.72.

4. In July, 1979 the applicant filed two representations (Annexures-8 and 9) for being permitted to appear in Stenography test for promotion to the post of Senior Stenographer which required five years service in the grade of Junior Stenographer. The applicant claimed that she had nine years' service as Junior Stenographer on the basis that she was appointed on 6.8.70 in response to offer dated 29.7.70. Thereupon, it was pointed out to her vide memorandum dated 16.8.79 (Annexure-10) in reply to her representation of 24th July, 1979 (Annexure-8) that five years regular service in Junior Stenographer Grade would be counted not from the date of initial

appointment but from the date of her passing the stenography test in the Junior Stenographer Grade. The applicant represented against that decision more than once and then ultimately she was allowed to appear in Stenography test on 19.9.81 on a provisional basis.

5. The applicant thereafter filed a series of further representations for being treated as having been appointed on regular basis w.e.f. 6.8.70. By Memo dated 21.7.82 (Annexure-13), it was pointed out to her that as per recruitment rules a person had to achieve the minimum prescribed speed of 80 WPM in English before regular appointment, and as she qualified for the same on 19.4.78, she has been treated as a regular Junior Stenographer from that date. Her prayer for treating her on regular basis from an earlier date was not acceded to. The applicant has drawn attention to the proceedings to the meeting of Institute Grievance Cell of IARI dated 10.6.88 wherein the applicant's case ^{was} raised. It appears that in that meeting, the Joint Director (Admn) stated that the applicant could not be considered as having been appointed on regular basis w.e.f. 6.8.70 although the Staff side maintained that she should be given seniority from the date of her appointment because she was never given an opportunity in any test held prior to 1976. It appears

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that the Chairman observed that the applicant should not suffer and lose seniority because of administrative lapses and his own feeling was that the applicant should get her seniority w.e.f. 6.8.70. The applicant states that in spite of this, her grievance remained unredressed, compelling her to approach the Tribunal.

6. We have heard the learned counsel for both the parties and have also perused the materials on record.

7. There is no doubt that the offer of appointment made to the applicant vide memo dated 29.7.70 expressly stated that the appointment would be on trial basis for one year and her appointment was subject to her improving her performance in shorthand to the prescribed level within that period. Shri Bhandari for the applicant stated that the actual level was nowhere prescribed and hence this was vague, but in the background of the fact that the recruitment rules prescribed a minimum speed of 80 WPM in shorthand in English, there can be little doubt that the applicant was expected to achieve this speed within the period of one year, and till then her appointment would continue on a trial basis. It is true that the respondents have not been able to produce any material to show that they held a stenography test at the end of the period of one year to ascertain whether the applicant had achieved the

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prescribed speed, and the first test thereafter which they held, in which the applicant also participated was on 7.3.76 but the applicant failed to qualify ⁱⁿ that test. This lends support ^{that} to the respondents' contention/when the applicant was appointed in July/August, 1970, she was below the prescribed standard in Stenography but in view of the administrative exigencies and lack of suitable hand, she was appointed on trial basis for a period of one year during which period she was expected to achieve the prescribed standard. It was stated that the applicant failed even in the stenography test held on 19.10.76 and finally cleared the test only as late on 19.4.78 from which date she was regularised.

8. Under the recruitment rules, regular appointment as Junior Stenographer would take place only if the applicant possessed the minimum prescribed speed in stenography and as the available materials on record do not show that she had acquired that prescribed speed in stenography till 19.4.78, she cannot be treated as regularly appointed before that date.

9. It is no doubt true that an order was issued over the signature of Establishment & Store Officer on 17.9.73 stating that the applicant upon the DFC recommendations was deemed to have completed the probationary period w.e.f. 5.8.72 but the basis on which the Estt. & Store Officer issued such order, is not clear and further more, the respondents have ^{correctly} ~~clearly~~ pointed out in their reply that the DFC

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recommendations are neither final nor is the letter dated 17.9.73 a confirmation order passed by the competent authority. Further more, at no stage did the applicant impugne the seniority list dated 1.1.76 in which her name was not included.

10. The question of counting the period from 7.8.70 uptill 19.4.78 towards seniority can also not be acceded to in the light of the ruling in I.K.Sukhija Vs. UOI and connected cases (O.A.No.727/87 decided on 13/14.9.93) , wherein the latest rulings of the Hon'ble Supreme Court have been discussed. The ratio of those rulings, shortly stated, is that such a period can be counted towards seniority only where the appointment is made strictly in accordance with the rules, or where if it is made de-hors the rules, such period is of 15-20 years' duration. Neither of those two features are visible in the present case. The appointment was not made in accordance with rules, because the rules prescribed a minimum stenography speed 80 W.P.M. which the applicant did not possess and hence her appointment was on trial basis for one year during which period she was required to achieve the prescribed standard. Clearly, therefore, the appointment was made in administrative exigencies and in the absence of suitable candidate as averred by the respondents. Secondly, the period involved is barely 8 years which is nowhere near the 15-20 years as discussed in Sukhija's case (Supra). Further more, granting of relief prayed for by the applicant would involve

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her becoming senior to nearly 53 persons who are at present senior to her. Although their rights are affected, none of them have been impleaded in this O.A.

11. During argument, Shri Bhandari relied on rulings 'M. Dawngliana Vs. UOI' -1990(1)ATLT, Gauhati 124; K.R.M. Pillai & others Vs. UOI-1988 (2) ATLT(CAT) 49; and G.P. Doval & others Vs. Chief Secretary, Govt. of U.P.-1984 SC 1527, on the question of counting of officiating service towards seniority. In the light of the discussions in I.K. Sukhija's case which as mentioned above, has referred in detail to all the recent and relevant rulings of the Hon'ble Supreme Court on this subject, the cases relied upon by Shri Bhandari do not help him.

12. Under the circumstances, the relief sought for by the applicant cannot be granted under law and this application, therefore, fails and it is accordingly dismissed. No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

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

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