

8

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 564/1990

New Delhi this 8th Day of July 1994

Hon'ble Member Mr. J.P. Sharma, Member (J)
Hon'ble Member Mr. S.R. Adige, Member (A)

Shri T.S.P. Subrahmanyam,
Stenographer Grade II,
Customs, Excise & Gold (Control),
Appellate Tribunal, New Delhi. ... Applicant
(Applicant in Person)

Vs.

President,
Customs, Excise & Gold (Control),
Appellate Tribunal, West Block No. 2,
Ramakrishnapuram,
New Delhi-110 066. ... Respondents
(By Advocate : Shri P.H. Ramachandani)

ORDER

Hon'ble Member Mr. J.P. Sharma, Member (J)

The applicant initially joined Central Excise
Collectorate, Guntur (Ministry of Finance) as L.D.C. on
16.4.1959. He was appointed Stenographer Gr. III w.e.f.
19.10.1964. He was sent on deputation on temporary basis
in the Directorate of Communications (Customs & Central
Excise, Ministry of Finance) on 2.4.1979. He remained
there till the end of 1982 and then proceeded on another
deputation post to join Customs, Excise and Gold (Control)
Appellate Tribunal ("CEGAT" in short) as Stenographer Gr.
II. "CEGAT" is also under Ministry of Finance. The scale
of Stenographer Gr. II is Rs. 425-700 (Revised to Rs.1400-
2300). Though the applicant was Stenographer Gr. III on
the substantive post but because on being on deputation
earlier in the Directorate of Communication from 2.4.1979
to 24.11.1982, He again remained on deputation in CEGAT
in the scale of Stenographer Gr. II meaning thereby that

J.C

he has been continuously getting the grade of Stenographer Gr. II with effect from 2.4.1979 but he was never appointed on regular basis to that grade of Stenographer Gr. II. However, the applicant has been absorbed with his consent in CEGAT as Stenographer Gr. II on 3.9.1987. The next promotional post to that of Private Secretary in the scale of Rs.650-1300 (Rs.2000-3500 Revised) which requires eligibility condition of 8 years of regular service in the grade of Stenographer Gr. II in case of promotion. The grievance of the applicant is that his service from April 1979 has not been considered for considering him to the post of Private Secretary and that only regular service from the date of absorption in CEGAT i.e. with effect from 3.9.1987 is going to be counted for eligibility for promotion to the post of Private Secretary. The applicant filed this application on 26.5.1990 for the grant of the reliefs that the direction be issued to the respondents to regularise the services of the applicant from 2.4.1979 to 2.9.1987 and that the applicant be promoted to the post of Private Secretary from 2.4.1987 with all benefits including fixation of pay.

2. The respondents opposed the application and stated that the application is not maintainable as the applicant has not put in the requisite period of regular service of Stenographer Gr. 'C' in the scale of Rs. 425-700 (Rs. 1400-2300 Revised) in the Central Government as per the provisions contained in the notified Recruitment Rules for the post of Private Secretary in CEGAT. The applicant was only confirmed as Stenographer Gr. 'D' in the scale of Rs. 130-300/Rs.330-560 (Rs.1200-2040 Revised) in the Central Excise Collectorate Guntur and he continued to be in that grade in the parent Collectorate upto 3.9.1987, the date of his absorption on transfer basis in CEGAT.

Earlier, the applicant was on deputation in the Directorate of Communications (CBEC) Stenographer Gr. 'C' in the scale of Rs. 425-700 and thereafter with CEGAT with effect from 25.11.1982 and continued on deputation till 2.9.1987. His service on deputation cannot be regular service for the purpose of promotion as Private Secretary in CEGAT has the applicant continued to be Stenographer Gr. 'D' in his parent Collectorate for the entire said period. In view of this it is prayed that the application be dismissed.

3. The applicant has also filed rejoinder reiterating the facts again quoting certain judgements. We have heard the applicant in person and the Counsel for the Respondents at length. The applicant is only confirmed Stenographer Gr. 'D'. He did not go back to his parent Department and from one deputation post he opted for another deputation post of Grade II Stenographer, though the applicant was not promoted to that Grade in his parent department. The applicant has made representation in December 1983 to the Collector of Central Excise requesting that since some of his juniors have been promoted as Stenographer Gr. II he should also be given promotion on regular basis and he had already requested the Collector of Central Excise, Guntur for next below rule promotion. He had made another representation to Registrar CEGAT on 5.3.1984. Another representation he has made on 7.5.1984 to the Collector of Central Excise, Hyderabad. The Central Excise Collectorate by its letter dated 29.5.1984 informed Collector of Central Excise Guntur that the applicant has been found fit by the D.P.C. to officiate as Stenographer Gr. II. The formal order of promotion was issued on 2.6.1984 by the Central Excise Collectorate, Hyderabad. By the Order dated 6.6.1984 Office of the Collector of Central Excise Guntur, the applicant was given promotion to Stenographer Gr. II and posted to Deputy Collector Unit Vishakapatnam. He was ordered to be relieved immediately so as to join the

post. A copy of the order was also sent to the Registrar CEGAT. The applicant, however, did not join and made a representation to the Collector of Central Excise Guntur on 23.6.1984. He only requested that he should be granted promotion next below rule. However, this was not accepted by the Office of the Collector Central Excise, Guntur and the parent department has written to the Registrar, CEGAT to relieve the applicant to join the promotional post. On the basis of the above the applicant has stated that he should have been deemed to be in the grade of Rs.425-700 since the date of his joining the first deputation post in the Directorate of Communications with effect from 3.4.1979 and subsequently on deputation in CEGAT from November 1982 and as such he has completed 8 years of service entitling him to be considered for promotion for the post of Private Secretary in the grade of Rs. 650-1300 revised to Rs.2000-3500. It appears in the meantime that during the pendency of this application, the applicant was promoted on ad hoc basis for a period of six months with effect from 20.11.1993 to the post of Private Secretary. During the course of the arguments, the applicant has also stated that since he is superannuating on 30.9.1994, his promotion on ad hoc basis has also been extended till that date but he has not been regularly appointed as Private Secretary. The respondents have a clear case that the applicant did not join the parent department when he was given promotion from the Stenographer Gr. 'D' to the post of Stenographer Gr. 'C' and did not join at Vishakapatnam Collectorate as was ordered by his parent department Office of the Collector Central Excise Guntur. The applicant, therefore, could not claim as a right regular service in the grade of Rs. 425-700 because he was not regularly appointed to that post. We have given a careful consideration to the various averments made by the applicant and also the law laid down by the Hon'ble Supreme Court in the case of K. Madhavan V. Union of India AIR 1987 SC 2291. That is totally a

12

different case and the facts of that case cannot be applied to the circumstances in which the applicant has been working on the post of Stenographer Gr. II. In the case of K. Madhavan, the 1963 rule did not provide that the period of 8 years should be computed from the date of deputation to CBI as the Deputy Superintendent of Police. In the absence of any such express provision in the rules it was held that the period during which one held the post of DSP in the State Police Service should also be taken into account for computing the period of 8 years. In the present case the Recruitment Rules provided that eligibility for promotion to the grade of Private Secretary in CEGAT is 8 years regular service in the grade of Rs. 425-700. The applicant was only confirmed Stenographer Gr. 'D' in lower scale than Rs. 425-700 and he went on deputation to Directorate of Communication on the higher scale to the post of Stenographer Gr. II on temporary basis and after completing 3 years in November 1982 he did not return to parent department Central Excise Collectorate, Guntur but he went on another deputation to CEGAT on the post of Stenographer Gr. II. Thus, it cannot be said that the applicant was promoted to Stenographer Gr. 'C' post according to rules by the regularly constituted D.P.C. unless and until for a selection post a person is considered along with other eligible and found fit only then he can claim the benefit of the promotional post on a regular basis. Thus the posting of the applicant on deputation basis in the scale of Rs. 425-700 does not entitle him for counting the service he has spent on deputation having not been regularly appointed to Gr. II in the parent department.

4. The applicant has also referred to the case of K.N. Mishra and others Vs. Union of India & Ors. ATR 1986(2) CAT 270 but here in the reported case the officiating

service was counted for seniority when the incumbent has been regularised in service. The applicant case is different. He came on deputation and was never appointed on regular basis to Gr. II of the Stenographer service. The applicant was all alone worked on ex cadre post and the benefit of continuous officiation on ex cadre post either on transfer basis or on deputation will not entitle the benefit of regular service in the parent cadre in the scale of Rs. 425-700. CEGAT by its order dated 27.10.1983 informed the applicant that the parent department Central Excise Collectorate, Guntur desired the willingness of the applicant for promotion to Stenographer Gr. II in the Central Excise Collectorate Hyderabad. The applicant however, instead of going back to the parent department continued to make representation aspiring for promotion on the basis of next below rule and that was not accepted by the parent department. Thus, the applicant cannot get the benefit of the service he has rendered on deputation basis in the grade of Rs. 425-700.

5. However, one fact is clear that the Collector Central Excise Guntur has written to Registrar to CEGAT to relieve the applicant to join the post of Stenographer Gr. II by a Memo dated 21/7/1984. Registrar, CEGAT did not relieve the applicant and in a manner connived with the applicant. The applicant, therefore, is entitled to count his service in Gr. II Stenographer from the date 21.7.1984 though he was absorbed in CEGAT in 1987 on 3.9.1987. The period from August 1984 till September 1987 when the applicant was absorbed cannot be allowed to be washed out as the Registrar, CEGAT did not take any step to relieve the applicant and the applicant also cannot be said to be free from fault.

One who seeks equity must do equity. The applicant, therefore, was eligible for the post of Private Secretary only on completion of 8 years service taken on notional basis from August 1984 to September 1987 and thereafter the balance period of 8 years shall get completed in August 1992. The applicant, therefore, cannot aspire to the post of Private Secretary before that date and has to be considered by D.P.C. only thereafter to which it appears that the applicant had already been given ad hoc promotion in October 1993 for six months, of course, in relaxation of rules.

6. In view of the above facts and circumstances we do not find a fit case for directing a review DPC to be held to consider the claim of the applicant for promotion to the post of Private Secretary in view of the fact that as held above the applicant was eligible for that post in August 1992. We have already stated the reasons in earlier part of the order and again observe that the applicant is equally at fault in not joining the parent department when he was given promotion to the post of Stenographer Gr. II on regular post. However, in the circumstances of the case the ad hoc promotion given to the applicant with effect from October 1993 shall be treated as regular promotion to the post of Private Secretary and to this extent the claim of the applicant is allowed. The application, therefore, is disposed of with the direction to the respondents to treat the ad hoc promotion of the applicant to the post of Private Secretary with effect from October 1993 as regular promotion to that post and shall be allowed to continue in that post till the age of superanuation. In the circumstances the parties to bear their own costs.

Arif Ali
(S.R. Adige)
Member (A)

Om Prakash
(J.P. Sharma)
Member (J)