

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 739/90

New Delhi this the 10th day of October, 1994.

Shri N.V. Krishnan, Vice Chairman(A).

Smt. Lakshmi Swaminathan, Member(J).

Shri Chattar Singh
S/o Shri Sunka Ram,
R/o DG 1043, Sarojini Nasgar,
New Delhi. ..Petitioner.

By Advocate Shri S.M. Kumar, Sr. Counsel with
S/Shri R.K. Kapur and Vipin Sehgal.

Versus

1. Lt. Governor through
Chief Secretary,
Delhi Administration,
5, Sham Nath Marg,
Delhi.
2. The Secretary to the Govt. of India,
Ministry of Home Affairs,
New Delhi.
3. Director of Estates,
Government of India,
Nirman Bhawan,
New Delhi. ..Respondents.

By Advocate Smt. Avnish Ahlawat.

ORDER

Smt. Lakshmi Swaminathan.

The applicant, who has since retired, was working as Stenographer Grade-III under the Commissioner of Sales-Tax in the Delhi Administration, has filed this application for a direction to the respondents to implement their order dated 24.11.1989 (Annexure A-I) and give him all consequential benefits arising therefrom.

2. The undisputed facts which have given rise to this grievance are as follows:

2.1. The applicant was appointed as a L.D.C. in the Sales-Tax Department on 2.6.1952 in the pay-scale of Rs.110-180. On 16.7.1956, he was appointed as a Steno Typist in the pay-scale of

182

Rs.110-180 (i.e. same pay scale as that of L.D.C.) with special pay of Rs.20/- per month. On 2.8.1969, he was promoted as/^{ad hoc}U.D.C. in the grade of Rs.130-300. By an order dated the 17th March, 1972 which has been produced separately for our perusal, the Government of India (i.e. Respondent No. 2)informed the Delhi Administration of the decision of the President that the existing posts of Steno Typists in the L.D.C's Grade under the Delhi Administration shall stand upgraded to those of Stenographers in the scale of Rs.130-300 with effect from 1.4.1972. The Delhi Administration was also advised to amend the Delhi Administration Subordinate Ministerial/Executive Service Rules, 1967 accordingly. It was stated that the special pay of Rs.20/- should be taken into account in the fixation of pay as Stenographer on the analogy of F.R.22(2)(ii) read with audit instruction (1) below F.R. 22.

2.2. Acting upon this decision, the Delhi Administration issued a circular letter dated 30.4.1973 which is exhibited by the respondents and is at pages 54-59 of the paper book - briefly referred to as 1973 circular. This circular also stated that an option would be available to such Steno Typists either to revert back to the post of L.D.Cs on which they hold lien, so that they can pursue their chances of promotion in the clerical line, i.e. U.D.C. etc. or to opt to become Stenographer, in which case they would cease to be eligible for any promotion or confirmation as UDCs. In other words, the Steno Typists had to make the choice as between clerical cadre and Stenographer cadre. In case they opted to become Stenographer, the existing Steno Typists would

16

be appointed as Stenographers from 1.4.1972. The circular also contained the following instructions as to how the seniority should be determined:

"5. As you are aware, there is a joint cadre of stenographers in the scale of Rs.130-300 and the posts of stenotypists were included in Grade IV (Ministerial) of the Subordinate Service Cadre. It has, therefore, been decided that:-

- (i) in respect of the stenotypists who are appointed as Stenographers vide para 3(i) above would be treated as en-bloc junior to those stenographers in the scale of Rs.130-300 who were appointed on or before 1.4.72 and their seniority would be determined inter-se with reference to their seniority in Grade-IV (Ministerial) (i.e. Lower Division Clerks), irrespective of their date of appointment as stenotypists;
- (ii) the stenotypists who are appointed as stenographers vide para 3(ii) above, would be considered for regularisation on the posts of stenographers from the date of passing the test in English or Hindi shorthand at the speed specified in para 3(ii) and their seniority will be determined accordingly".

2.3. As the applicant was holding the post of U.D.C. on the date the circular was issued, the benefit of that circular could not be given to him directly. This matter was under correspondence between the Delhi Administration and the Government and ultimately, it was decided that the persons like

13

the applicant who were Steno Typist but were subsequently given ad hoc promotion as U.D.Cs, should also be given the benefit of the 1973 circular.

2.4. Accordingly, an option was sought from the applicant and he gave a reply on 18.8.83 stating that he opted for the cadre of Stenographers Grade III. He mentioned therein that he had earlier exercised the same option in 1979 when it was called by the Delhi Administration.

2.5. It appears that there was some correspondence between the Government of India and the Delhi Administration as to the manner in which the seniority of such U.D.Cs who opted to become Stenographers should be fixed. The applicant states that he had made representation in this behalf. Ultimately, the first respondent issued the Annexure A-I memo which is an addendum to the final seniority list of Junior Stenographers (Rs.330- 560) as on 31.3.72 which was circulated earlier on 31.7.1975. The modification made was to insert the name of the applicant at Serial No. 32-A with the further particulars that on 16.7.1956 he was Steno Typist in the Sales-Tax department.

2.6. In other words, the seniority of the applicant in the grade of Stenographer is to be counted from 16.7.1956, the date on which he became Steno Typist.

2.7. The applicant, therefore, claims that he is entitled to all consequential benefits that have been given to Shri G.M. Chawla who was at Serial No. 33 in the said seniority list.

2.8. He further claims that the place assigned to him at Serial No. 32-A itself is defective for he should be placed above J.N. Tekchandani who is at Serial No. 18-C of the seniority list. He claims that he is senior to Shri J.N. Tekchandani because he was appointed _____ as L.D.C. on 2.6.1952 whereas Shri Tekchandani was appointed only on 3.6.1952 and his seniority is counted from that date.

2.9. The wrong fixation of the seniority has deprived him of subsequent pay benefits being drawn by Shri G.L. Chawla and Shri Tekchandani.

2.10. Despite representations to the respondents, no relief was granted. Accordingly, he has filed this O.A. seeking the following reliefs:

- "1. Issue an appropriate order or direction including a writ of mandamus directing the respondent to implement the order No. F. 3/7/80-JSC/S.III/Vol.II dated 24.11.1989 (Annexure P-I) with all the consequential benefits which accrued to him;
2. Issue an appropriate order of direction including a writ of mandamus directing the respondent to award seniority to the applicant w.e.f. 1952 and also consequential relief to the applicant from the date of his appointment i.e. 1952;
3. Issue an appropriate order or direction including a writ of mandamus to direct the respondent to award pension, gratuity and other such benefits accrued legally to the applicant after giving him due seniority and retrospective promotions".

19

3. The important ground on which he seeks these reliefs is contained in para 5.2 of the O.A. which reads as follows:

"Because vide Government Order No. F(7)72-C dated 30.4.1973 the Stenographers who were working as Steno Typists have been given the seniority w.e.f. 1.4.1972 being the date of their appointment, as such the applicant who was appointed as a Lower Division Clerk (Steno-Typist) w.e.f. 1952 is entitled to the seniority-cum-benefits as per the Delhi Administration rules".

4. The respondents have filed a reply in which the main facts are generally admitted. In this connection, the respondents have stated as follows:

"Shri Chatter Singh had made representation that he may be assigned seniority as Stenographer from a date prior to 1.4.72 by taking into account his appointment as LDC/Steno-Typist etc. In this regard in an advice received from the Department of Personnel vide its letter dated 19.5.86 (received through Ministry of Home Affairs), it was stated that Shri Chatter Singh being pre-1965 entrant be given seniority in accordance with Delhi State Service (Seniority) Rules, 1954 and not as per the Delhi Administration (Seniority) Rules, 1965.

Further, the MHA vide its letter dated 26.10.88 has stated that the post of Steno-typist be treated as equivalent to Stenographer and Shri Chatter Singh be given seniority as per the Delhi State Service (Seniority) Rules, 1954.

However, the decision was taken to assign seniority as Stenographer to Shri Chatter Singh at seniority No. 32-A i.e. from a date (16.7.56) he had been holding the post of Steno-typist and this was so done when the Ministry reiterated its advice that Shri Chatter Singh be assigned seniority as per Delhi State Service (Seniority) Rules, 1954. The below mentioned instructions contained in this rule were taken into account to assign him seniority at 32-A:-

Instruction No. 4.

"While determining seniority on the basis of pay formula no restriction whatsoever should be imposed on the type of work done by the individual in his previous post. The post/service rendered in the higher scales of pay or on pay exceeding the minimum of the grade concerned will count for purpose of determining seniority".

Instruction No.8.

Special pay is paid for the performance of some additional duties and is now counted as a part of pay for purposes of seniority or equivalent grade.

While dealing with his case, in the copy of Delhi State Service (Seniority Rules, 1954, there was a typographical error in instruction No. 8 as quoted above, since instead the word 'not' it has been reflected as 'now' and this error could only be detected after he was assigned seniority at 32-A, when the juniors represented against him.

As per the decision taken by the Delhi Administration the addenda issued vide letter No. F.3/7/80-JSC/S.III/Vol.II dated 24.11.1989 inserting the name of Shri Chatter Singh at serial No. 32-A in the seniority list of Stenographers in the scale of Rs.330-560 (pre-revised) as on 31.3.1972 circulated vide letter No. F.6(1)/74-75/JSC dated 31.7.1975 is cancelled with retrospective effect vide order No. F.3/7/80-JSC/S.III/Vol.II dated 24/23.7.1990".

5. In other words, the plea raised is that instruction No. 8 was misconstrued by reading the word "not" as "now". This was noticed later on and, therefore, the Annexure A-1 addenda was cancelled by subsequent order dated 23.7.90 with retrospective effect and the applicant's seniority would continue at Serial No. 353-A of the seniority assigned to him as per seniority list circulated in 1977 read with corrigendum dated 16.1.1991. This, according to the respondents, has been assigned to him in accordance with the instructions contained in the 1973 letter.

6. We heard Shri R.K. Kapur, counsel for the applicant and Mrs Avnish Ahlawat, counsel for the respondents at great length. Subsequently, we also heard Shri S.M. Kumar, Sr. Counsel for the applicant.

7. We are of the view that unless statutory rules contrary to a common sense view point are shown, the applicant cannot claim that, on his being appointed as Stenographer/ in terms of the 1973 circular, his seniority as such Stenographer should be counted with effect from the date on which he started working as a L.D.C. i.e. 2.6.1952 or ~~xxxxxx~~

92

at any rate, from 16.7.1956 when he was working as Steno Typist. As mentioned above, the relief is claimed mainly on the basis of the provisions regarding seniority mentioned in the 1973 circular as is clear from para 5.2 of the O.A. reproduced above.

8. We have extracted the provisions of the 1973 circular regarding seniority in para 2.2. supra. That instruction is incapable of being construed in the manner it is sought to be done by the applicant. It can never be held that those persons on whom the status of Stenographers was artificially conferred upon by the 1973 circular with effect 1.4.1972 can ever be senior to original Stenographers who were appointed as such even as late 1.4.72 i.e. the date when the status was conferred. That admits of no dispute and, therefore, this O.A. has to be dismissed on this ground unless something to the contrary is shown by the applicant. We have to mention here in circumstances, such a that/more or less similar/decision has been taken by the Supreme Court in K.C. Gupta & Ors. Vs. Lt. Governor of Delhi & Ors. JT 1994(5) SC 121. The following observation is relevant in this connection:

"It may be noted that prior to the merger and integration of the two scales of the T.G.Ts, the T.G.Ts middle were in a lower pay scale of Rs.175-350 while T.G.T. Higher Secondary were in a higher pay scale of Rs.190-425 and both were revised to the pay scale of Rs.220-500. That apart, the TGTs in lower grade were recruited and appointed to teach Middle classes while the TGTs Higher were recruited and appointed to teach Higher classes in the Higher Secondary Schools. The incumbents of the lower grade were used to be promoted to the higher grade for the two Cadres were not common as the teaching upto

93

Middle classes and teaching in Higher classes could not be treated to be one and the same function. Thus the posts of TGTs(Middle) and TGT (Higher) were created separately with distinct cadres and scales for different work in Municipal Schools- Lower Cadre for teaching lower classes and the higher cadre for teaching higher classes. The claim of the TGTs Middle on the unification of the two pay scales that their seniority should be counted from the date of their initial appointment on the basis of length of service to the post of TGT is not justified".

(Emphasis added)

9. The learned counsel for the applicant submitted that the applicant's claim is rested on the provisions of the Delhi State Service Seniority Rules, 1954 and the decision of the Govt. of India that the seniority should be determined on the basis of these Rules. In support of his claim, Shri R.K. Kapur, learned counsel for the applicant, filed M.P. 3035/94 on 7.9.1994 to take on record copies of the letters dated 26.10.1988 and 11.10.1979 ~~of the Government of India to the Delhi Administration i.e. Annexures A-1 and A-2 to the M.P.~~ of the Government of India to the Delhi Administration i.e. Annexures A-1 and A-2 to the M.P. Subsequently, when Shri S.M. Kumar, Senior Counsel, entered appearance for the applicant, he sought to place on record seven documents. As these were filed at a very late stage of hearing orders thereon have been held over. It has only to be observed that in the O.A. no such pleading has been submitted.

10. In so far as the Delhi State Service Seniority Rules, 1954 (1954 Rules for short) are

concerned, they have been, by implication, made inapplicable by the 1973 circular which stipulates in para 5 thereof how the seniority is to be determined. That has been reproduced in para 2.2. supra. Shri R.K. Kapoor, the learned counsel for the applicant, has argued that this is not permissible. He has contended that the 1973 circular cannot change the principles of seniority, which have already been laid down in the statutory 1954 rules. In other words, the executive instructions contained in the 1973 circular cannot amend the statutory rules. Hence, the 1954 rules apply to this case. On the contrary, the learned counsel for the respondents, strongly contends that this argument has no merit. The 1973 circular is a composite package. It upgraded all the posts of Steno Typists w.e.f. 1.1.1972, gave them an option to become Stenographers if they wanted and stipulated the conditions, attached thereto, particularly in regard to seniority. The applicant, who had exercised the option to become a Stenographer and reaped the benefit thereof, cannot, at the same time, challenge the provision of seniority of that circular which gave the applicant promotion as Stenographer.

11. We have considered this issue. The stand taken by the learned counsel for the respondents is well taken. If the applicant felt that his seniority after becoming a Stenographer under the provisions of the 1973 circular should be determined only on the basis of the 1954 Rules and not on the basis of para 5 of that circular, he should have challenged this provision of the circular as soon as he was asked to exercise an option. In this O.A., ^{too} he has not challenged this

this provision of the circular.

That apart, a new situation had been created by the Govt. of India's order dated 17.3.72 to upgrade all the posts of Steno Typists to that of U.D.C. from 1.4.72 which would necessitate the amendment of the Delhi State Subordinate Ministerial/Executive Service Rules, 1967. This appointment as Stenographer by upgradation was not provided for in these Rules as they stood before 17.3.72. A clarification had to be issued as to how their seniority would be determined. The Delhi Administration was, therefore, competent to stipulate the conditions subject to which the benefit of upgradation would be given, in the 1973 circular. Therefore, para 5 of the 1973 circular is valid and cannot be challenged on the ground taken by the counsel for the applicant.

12. The principle of seniority to be followed is given in para 5 of the 1973 circular (reproduced in para 2.2 supra. To the extent of this specification, neither the 1954 Rules nor the later 1965 seniority rules - referred to in the respondents reply, extracted in para 4 - will apply. That provision is clear viz. that all the Steno Typists who opt for to become Stenographers will be treated as Stenographers - upgraded Stenographers for easy reference - from 1.4.72. The upgraded Stenographers will en bloc be placed junior to the regular Stenographers in position on and/or before 1.4.72. Therefore, the seniority of the persons who became upgraded Stenographers under the 1973 circular has to be determined only on the basis of the principles mentioned in para 5 thereof. The contentions of the learned counsel have, therefore, no basis.

13. The question, however, remains whether the documents sought to be introduced by the applicant at the time of final hearing should be seen. We must state here that the reply furnished by the respondents is most unsatisfactory. The respondents ought to have placed on record copies of the important documents referred to in the reply, viz. letter dated 19.5.86 and 26.10.88 of the Government of India. They have not even placed on record the order dated 23.7.1990 by which the impugned Annexure A-1 order was cancelled after the O.A. was filed in which the applicant was given a much lower seniority at Serial No.353-A.

14. Therefore, we find it just and proper to look into the documents filed on 12.9.94 by the applicant, though respondents had no notice thereof, to find out whether any case has been made out by him. The 7 documents filed include the letters dated 11.9.79, 11.10.79, 26.10.88 of the Government of India to the Delhi Administration and the order dated 24.7.1990 of the Delhi Administration. In the circumstance, M.P. 1975 of 1994 for production of records by Government of India is dismissed and M.A. 3035/94 for producing only two letters has become infructuous.

15. We shall first note the contents of the last order dated 24.7.1990. It reads as follows:-

"ORDER

The addenda issued vide letter No.F.3/7/80-JSC/S.III/Vol.II dated 24.11.1989 inserting the name of Shri Chatter Singh at seniority

27

-14-

No.32-A in the seniority list of Stenographers in the scale of Rs.330-560 (pre-revised), as on 31.3.1972 circulated vide letter No. F.6(1)/74-75-JSC dated 31.7.1975 is cancelled with retrospective effect.

Shri Chatter Singh will continue to have his seniority as Stenographer in the scale of Rs.330-560 (pre-revised) at seniority No.353-A which was assigned to him as per seniority list circulated vide letter NO.F.3(1)/76-JSC dated 28.2.77/1.3.77 read with corrigendum issued vide NO.F.3(7)/80-JSC dated 14th/16th January, 1981. This seniority was assigned to him in accordance with the instructions contained in this Administration's letter No.F.6(7)/72-CC dated 30.4.1973."

The endorsement to the applicant contains the following observations:-

"Shri Chatter Singh, DG-1043, Sarojini Nagar, New Delhi-23 with the remarks that the seniority assigned to him as Stenographer in the scale of Rs.330-560 (pre-revised) at seniority No.353-A is fully in accordance with the instructions contained in this Administration's letter No.F.6(7)/72-CC dated 30.4.1973 and with special reference to para 3(i) and 5(i) thereof (copy of the relevant pars reproduced overleaf). Further, he is well aware that there was no separate cadre of Steno-typists and when LDCs were appointed as Steno-typists they were given the pay scale of the LDCs with Rs.20/- as special pay as was done in his case also. His claim for assigning him seniority as Stenographer from the date he was holding the post of LDC/Steno-typist,

as per Delhi State Service (Seniority) Rules, 1954 is not tenable as even these rules also do not provide for the same in view of instruction NO.8 contained therein, which reads as under:-

'Special pay is paid for the performance of some additional duties and is not counted as a part of pay for purposes of seniority (or) equivalent grade.'

With the issue of this order, which briefly gives reasons for the decision taken, the O.A. should be treated as having become infructuous, because the question of implementing the Annexure P-I order does not subsist. The applicant did not amend the O.A. to impugn this order, which was a fresh development and gave a new twist to the case. Nevertheless, we would not like to hold this default as decisive.

16. The letter dated 11.9.1979 of the Government of India merely advises the Delhi Administration, which apparently had decided to absorb UDCs also as Stenographers, that they may appoint the aspirants as Stenographers pending consideration of the Govt. of India of the conditions of absorption offered to them.

17. The letter dated 11.10.1979 of the Govt. of India states as follows:-

"We have already held the view that the ad hoc UDCs whose claims have now been overlooked should be given fresh option in the same terms and conditions which were given to others. However, the Delhi Admn. have, though accepting our stand, expressed the view that they will be placed en bloc junior to all Stenographers appointed as Stenographers before them. In our view this is not correct. We may reiterate that the options now given should be on the same terms and conditions which were given to others who were initially working as Steno-typist and later appointed

29

as Stenographers." (emphasis given)

18. Admittedly, ^{the} 1973 circular did not extend to UDCs. Apparently, its benefit was given to UDCs later on, perhaps in 1979. The question was whether UDCs who opt to become Stenographers should be given seniority from the date they opt - which was much later than the option furnished by the Steno-typist - and, therefore, be made juniors to them also. The advice of Government of India was that no distinction should be made between Steno-typists covered by the 1973 circular and the UDCs. The UDCs should get the same seniority benefit as was given in the 1973 circular to the Steno-typist, i.e., from 1.4.1972 below all Stenographers appointed on or before that date, the inter-se seniority among such upgraded Stenographers being determined on the basis of their seniority as LDCs. This letter of the Government of India does not advance the applicant's case.

19. The letter dated 26.10.88 is the most important. Reference to this letter has been made by the respondents also in their reply extracted above but copy has not been produced. That letter reads as follows:-

"I am directed to refer to your D.O. letter No.F.3/7/80-JSC/S.III/Vol.II/157 dated 25.3.1988 regarding fixation of seniority of Shri Chattar Singh, Grade-III Stenographer.

2. The case has been considered in consultation with the Department of Personnel & Training and they have reiterated their earlier stand. According to them Shri Chattar Singh was holding the post of Steno-typist prior to 1965; and it was a post equivalent to those of UDC/Stenographer. The post of Steno-typist on their conversion into Stenographer posts, accommodated their incumbents. They, therefore, feel that the principle of seniority should be uniform for all those

30

who were given option to come over to Steno-
graphers Grade with effect from 1.4.1972;
irrespective of the fact whether they had
reverted to the post of UDC on adhoc basis
prior to 1.4.1972. Taking this factor into
account, it would be grossly unfair if Shri
Chattar Singh is not treated as pre-1965
entrant to the grade of Steno-typist and
allowed seniority accordingly. The Department
of Personnel have, however, suggest that
the Delhi Administration may examine the
case again in consultation with their Department
and take a final decision." (emphasis given)

The contention is that the Government of
India having held - in the portion first
emphasized above - that the post of Steno-
typist prior to 1965 was equivalent to that
of UDC/Stenographer, the service rendered
as Stenotypist should be treated as service
in an equivalent post and seniority determined
under Rule 5(1) and 5(2) of the 1954 Rules,
The Government of India had also advised,
as is clear from the respondents reply, that
the applicant, being a pre-1965 entrant the
1954 seniority Rules and not the 1965 seniority
Rules will apply.

20. We are unable to agree. There is no such
direction in that letter. It does not even clarify
that this was Government of India's intention. It
appears that the dispute was only whether the UDCs
who were given the benefit of the 1973 circular
from a later date, should be given seniority from
the date they opted or from 1.4.72 as mentioned
in the 1973 circular. The Govt. of India held that

no distinction should be made on this ground and the principle should be uniform for all. The emphasis by the Government of India on uniform application of the principle cannot be understood otherwise.

21. Thus, none of the documents produced on the last date of hearing by Sh. S.M. Kumar, learned counsel for the applicant helps to support the contentions raised in the O.A.

22. Sh. S.M. Kumar, Senior counsel argued that the respondents had no authority to issue the order dated 24.7.90 during the pendency of the O.A. and that too after the applicant retired. We are of the view that nothing in law prevents the Government from issuing that order. The provision of sub-section of the A.T. Act, 1985 (4) of Section 19 /does not apply to that order, for that was not passed in a proceeding relating to a redressal of grievance.

23. He then contended that this order has been issued without giving the applicant a show cause notice. He has relied on National Textile Welfare Union vs. Ramakishan (1983 SCC 228) and C.B. Gautam vs. Union of India ((1993) SCC (1) 78). We do not find any merit in this argument. The applicant has firstly not even chosen to challenge this order. Secondly, the order gives in brief the reasons as to why it was passed. The proposition advanced is contrary to a commonsense view of the problem. Lastly, the view we have taken is fortified by the decision of the Apex Court as stated in para 8 supra.

If the applicant felt that his seniority

after becoming a Stenographer under the provisions of the 1973 circular should be determined only on the basis of the 1954 Rules and not on the basis of para 5 of that circular, he should have challenged this provision of the circular as soon as he was asked to exercise an option. On the contrary, as noticed earlier, the ground for relief itself is drawn from the 1975 circular vide para 5(2) of the OA, reproduced in para 3 supra. The issue as raised by him in para 5.2 of the OA only calls for an interpretation of para 5 of the 1973 circular. Therefore, having got the benefit of being appointed as a Stenographer under this circular, he cannot assail the seniority determined on the basis of that circular itself. As held by us earlier in paras 7&8, the principle contained in this circular is unexceptionable.

24. For the foregoing reasons, we find no merit in the O.A. It is dismissed. There will be no order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'

N.V. Krishnan
10/11/94

(N.V. Krishnan)
Vice-Chairman(A)