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**Central Administrative Tribunal
Principal Bench**

OA NO. 30/2004

New Delhi, this the 30th day of October, 2006

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. V.K. Agnihotri, Member (A)

1. Shri M.J. Jose
s/o Late Shri M.M. Joseph,
Reg. No. 800008114,
Steno Grade III,
PAD BSF, Pushpa Bhavan,
New Delhi.

2. Shri E.J. Mathew,
s/o Late E.S. Joseph,
Steno Grade III,
BSF HQrs, CGO Complex,
New Delhi.

...Applicants.

(By Advocate: Shri V.S.R. Krishna)

Vs

1. Union of India through
The Secretary,
Ministry of Home Affairs,
North Block, New Delhi-11001.
2. The Secretary to Govt. of India,
Ministry of Personnel, Public Grievances & Pension,
Department of Personnel & Trg, and Public Grievances,
New Delhi-110001.
3. The Director General,
Border Security Force,
Block 10, CGO Complex, Lodi Road,
New Delhi-110003.

.....Respondents.

(By Advocate: Shri S.M. Arif)

ORDER (ORAL)

By Mr. Shanker Raju, Member (J):

Heard the counsel.

2. A Govt. servant has a fundamental right to be considered for promotion and should have at least two promotional avenues in his service career to mitigate the hardships and to tide-over the stagnation. A safety net in the form

of Assured Career Progression Scheme has been well introduced by the Government giving some respite to the concerned person.

3. In the present case, an objection as to the limitation has been raised by the respondents contending that the applicants are seeking extension of benefit of DoPT's O.M. dated 30.01.1991 on restructuring their promotion as Stenographer Grade II.

4. In the matter of meritorious claim, hyper-technical objection of limitation would not only cause an impediment in the interest of justice but also would cause miscarriage of justice. By virtue of claim of promotion on consideration their pay and allowances are to raise, which give a continuous cause of action and recurring one as well. However, in the instant case, an *ex parte* order passed on 30.5.2003 in OA No.1442/2003, whereby respondents were directed to dispose of the representation of the applicant on culmination into passing of the impugned order dated 27.8.2003, brings the application within the ambit of Section 21 of AT Act 1985. Hence, the objection as to the limitation raised stands overruled.

5. It is trite that to remove stagnation to the civilian employees, DoPT had introduced OM dated 30.01.1991 whereby the scale of Stenographic Assistance to Officers in Subordinate Offices and non-Secretariat Offices had been recommended and they have been placed, on restructuring, in Grade-II within the pay and allowances in the pay scales. The aforesaid has admittedly been adopted by the respondents pertaining to the Stenographic staff performing identical functions but restricted to combatised staff whereas a proposal, sent to the government for declaring the civilian stenographers working in the headquarters of BSF as combatised staff, has been turned down due to austerity measures. Accordingly, learned counsel for the applicant states, by placing reliance on a decision of this bench in OA No. 1688/1993 in **B.N.**

Shukla Vs. UOI & Ors; that a distinction made for grant of 'equal pay for equal work' on the basis of combatised and non-combatised staff would not pass the test of equality enshrined under Article 14 of the Constitution of India. In this backdrop, it is stated that when combatised staff had been performing identical functions, discharging same duties and is identical in all functional requirements, the distinction made and the discrimination meted out is in violation of Articles 14 and 16 of the Constitution of India. Learned counsel would further contend that whereas respondents have examined only one aspect of the matter in OM dated 30.1.1991 i.e. the office not being attached, as such OM is not applicable however have not explored the other aspects that the applicants being civilian employees in the stenographic cadre are to be treated in a non-secretariat staff which the respondents have admitted yet non-grant of the benefits would be deprivation of legitimate dues to the applicants which, on being accorded to the civilian stenographers in other non-secretariat office, would constitute disparity and anomaly.

6. On the other hand, the respondents' counsel vehemently opposed the contentions and stated that from 1990 onwards any stenographer admitted to be as civilian to the Force would have to be treated as combatised and the proposal of declaring the erstwhile non-combatised staff as combatised having been rejected, the applicants cannot be accorded the benefit.

7. Learned counsel would also contend that having accorded two financial upgradations under ACP Scheme, the grievance of Stenographers have come to an end and the claim of the applicants is without any basis.

8. We have carefully considered the rival contentions of the parties and have perused the material on record. In the decision taken by the respondents, as reflected by the learned counsel for the respondents as to existing civilian employees to continue to hold the civilian post as personal and would continue

to get promotions hereinafter in accordance with the relevant promotion rules, we do not find any promotional avenues for Stenographer Grade III like applicants, who have been stagnating for years together. However, as a benevolent Scheme, DoPT promulgated OM dated 30.1.1991 wherein it has applicability on civilian Stenographers, who have been stagnating. The only condition precedent is that they must be working in Subordinate Offices and non-Secretariat Offices. We find from the reply of the respondents that the applicants have been admitted to have been covered under non-Secretariat services yet this aspect of the matter for grant of benefits to them in consonance with OM dated 30.01.1991 having neither been explored nor implemented, amounts to deprivation of legitimate dues of the applicants which in services jurisprudence cannot be countenanced.

9. In the matter of discrimination, there must exist an intelligible differentia which has a reasonable nexus with an object sought to be achieved. The aforesaid dicta have been laid down by the Apex Court in Constitution Bench of **D.S. Nakara Vs. Union of India** 1983 SCC (L&S) 183. Applying the aforesaid, first of all, we find that the impugned order passed by the respondents denied the claim of the applicants only on the ground that they do not belong to the subordinate offices. The aspect of the matter of the applicants being in non-secretariat office has not been examined. Secondly, we find that whereas combatised staff performing identical duties had been accorded the benefit of OM dated 30.01.1991 and the applicants have been deprived of the said benefit without any reasonable basis. Admittedly, they have been performing identical duties in all respects and non-grant of the said benefit would be an anti-thesis not only to the doctrine of 'equal pay for equal work' but in violation of Article 14 of the Constitution of India. Thirdly, we find that the government, without any basis and wisdom, refused to accord combatised status to the applicants when all other conditions are identical. Lastly, we are satisfied that once a stipulation

has been made by the respondents to treat the promotion of the applicants as personal to them and their promotion would have to be governed in accordance with the rules. DoPT O.M. dated 30.01.1991 is an extension to the promotion rules as it bestows the benefits not only to the applicants but also to similarly circumstanced stenographers in non secretariat offices. Accordingly, non-application of this OM to the applicants clearly smacks legal *mala fides* and cannot be countenanced in law.

10. In the result, for the forgoing reasons, OA is partly allowed and impugned order is set aside. The matter is remitted back to the respondents for considering grant of promotion to the applicants as Stenographer Grade II in consonance with OM dated 30.1.1991 by passing a detailed, speaking and reasoned order, within three months from the date of receipt a copy of this order. It goes without saying that in the event the same is extended to the applicants, they would be entitled to all consequential benefits. No costs.



(V.K. Agnihotri)
Member (A)

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(Shanker Raju)
Member (J)