

Central Administrative Tribunal  
Principal Bench

Hon'ble Ms. Aradhana Johri, Member (A)

Pre-delivery Order in OA No.419/2004 is sent herewith  
for consideration please.

With regards,

*V. Ajay Kumar*  
(V. Ajay Kumar)  
Member (J)  
14.11.2018

I agree with regard  
✓ Johri  
15/11

Central Administrative Tribunal  
Principal Bench, New Delhi.

OA No.419/2004

Reserved On: 13.11.2018

Pronounced On: 16.11.2018

**Hon'ble Mr. V. Ajay Kumar, Member (J)**  
**Hon'ble Ms. Aradhana Johri, Member (A)**

Vidya Vinod Sharma  
(M.E.S. No.431800)  
Stenographer Grade-II (Civilian),  
S/o Shri Sheetal Prasad Sharma,  
Office of the Garrison Engineer (M.E.S.),  
Mathura Cantt.

Resident of :

Kacchi Sarak, Near Massani Crossing,  
Mathura (U.P.) .. Applicant

(By Advocate : Shri T.N. Saxena with Mr. Shiv Kumar Tiwari and  
Mr. Vibin K. Saxena)

Versus

1. Union of India,  
Through the Secretary to the Govt. of India,  
Ministry of Defence,  
South Block, New Delhi.
2. The Engineer-in-Chief,  
Engineer-in-Chief Branch,  
Kashmir House, Army Headquarters,  
D.H.Q. Post Office, New Delhi.
3. The Chief Engineer,  
Headquarters Central Command,  
Lucknow (U.P.).
4. The Garrison Engineer,  
(M.E.S.), Mathura Cantt. .. Respondents

(By Advocate : None)

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**ORDER****By Hon'ble Mr. V. Ajay Kumar, Member (J)**

The applicant, a retired Steno, filed the OA questioning the Annexure A-I Speaking Order dated 24.10.2003 whereunder the respondents have rejected the claim of the applicant for appointment to the grade of Stenographer Grade-III/II, with effect from 17.01.1973.

2. The applicant had initially joined as LDC on a casual vacancy for a period of one month. He was transferred to MES under surplus/deficiency scheme and reported to GE Engineers Park Allahabad on 10.09.1966. While employed at CWE Agra, he had appeared at a stenography trial test held on 17.01.1973. However, as the applicant was overaged in the year 1973 for direct recruitment as Steno-III, he was not appointed as Steno basing on his passing of the said trial test. The age relaxation sought by the Ministry of Defence had not materialized. Though subsequently, the age limit was enhanced and though he appeared for fresh test in the year 1980, he was unsuccessful.

3. The applicant filed a suit before the Hon'ble IInd Senior Munsif, Mathura Court seeking appointment as Steno, on regular basis, and the said suit was dismissed on 07.09.1983. He filed Civil Appeal No.169/1983 before the Hon'ble IInd Additional District Judge, Mathura and the said appeal was allowed on 17.09.1985 as under:-

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“The appeal is allowed and the judgment and decree dated 07.09.1983 passed by Shri A.K. Srivastava, the then IIInd Addl. Judge, Mathura in OS No.450/78 is hereby set aside and it is hereby declared that the plaintiff applicant is entitled to be appointed as Stenographer on the basis of test conducted by the Board of Officers in the year 1973”.

4. Based on the aforesaid judgment of the Hon'ble IIInd Additional District Judge, Mathura in the Civil Appeal, the applicant was appointed as Steno with effect from 17.09.1985, i.e., with effect from the date of the judgment of the Appellate Court.

5. The applicant filed Misc. Case No.78/1989 in Civil Appeal No.169/1983 seeking amendment of the judgment and decree dated 17.09.1985 of the Appellate Court, and prayed for adding the words “with effect from 1973” in the judgment. The said Misc. case was allowed on 19.08.1991 and the judgment dated 17.09.1985 in Civil Appeal No.169/1983 was amended as under:-

“The application paper no.40 made under Section 152 read with Section 151 CPC, giving rise to the miscellaneous case No.78 of 1989, is allowed. The words “with effect from 1973” shall be added after the word “appointed” and before the words “as Stenographer”. With the result the relief granted to the plaintiff would be as under:

“The appellant is entitled to be appointed with effect from 1973 as Stenographer on the basis of test conducted by the Board of Officers in the year 1973. Let the judgment and decree be amended accordingly”.

In view of the peculiar facts and circumstances of this case are made easy”.

6. Aggrieved with the same, the respondents filed W.P. No.1096/1992 before the Hon'ble High Court at Allahabad against the judgment dated 19.08.1991 in Misc. Case No.78/1989 in Civil Appeal No.169/1983. While the said Writ Petition was pending, the

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applicant filed OA No.1636/2002 before this Tribunal and the same was disposed of by order dated 25.02.2003 directing the respondents to consider the representation of the applicant. In compliance of the said order in the said OA, the respondents passed the Annexure A-1 impugned Speaking Order dated 24.10.2003 rejecting the claim of the applicant for appointing him as Steno with effect from 1973, mainly on the ground that the Appellate Court, i.e., the IIInd Additional District Judge, Mathura has no jurisdiction to entertain either the Civil Appeal No.169/1983 as on the date of its decree and judgment dated 17.09.1985 or on the date of amending the said judgment and decree by way of an order dated 19.08.1991 in Misc. Case No.78/1989 in view of the establishment of the Central Administrative Tribunal with effect from 17.02.1985, on which date the said Act came into force.

7. Heard Shri T.N. Saxena, the learned counsel for the applicant and perused the counter filed on behalf of the respondents, as there was no representation for them.

8. Earlier, the instant OA was directed to be adjourned sine die by order dated 02.06.2005 of this Tribunal, on the ground that the Writ Petition bearing No.1006/1992, filed by the respondents against the orders of the lower courts was pending on the file of the Hon'ble High Court of Judicature at Allahabad. After the said W.P. was dismissed for default/non-prosecution on 11.09.2008, the

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instant OA is restored, on filing of an MA by the applicant and listed for hearing.

9. The learned counsel appearing for the applicant would submit that since the Writ Petition (C) No.1006/1992 filed by the respondents against the order dated 19.08.1991 in Misc. Case No.78/1989 in Civil Appeal No.169/1983 was dismissed, the instant OA filed for implementation of the very same order dated 19.08.1991 is to be allowed.

10. Further, the learned counsel submits that the Civil Appeal No.169/1983 was decreed on 17.09.1985, i.e., even before the Central Administrative Tribunal started functioning. The order dated 19.08.1991 in Misc. Case No.78/1989 cannot be treated as a separate proceedings as the same was filed only for amendment of the order dated 17.09.1985 in Civil Appeal No.169/1983 and hence the Misc. Case goes back to the date of the original decree.

11. A perusal of the counter affidavit filed on behalf of the respondents clearly indicates that even according to them, though the Administrative Tribunals Act, 1985, came into effect on 17.02.1985 but the Tribunal actually started functioning with effect from 01.11.1985, i.e., subsequent to the judgment and decree dated 17.09.1985 in Civil Appeal No.169/1983. Further, as rightly submitted by the learned counsel for the applicant that the Misc. Case No.78/1989 was filed only for amendment of the decree and judgment dated 17.09.1985 and though the said amendment was

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ordered on 19.08.1991, but the same goes back to 17.09.1985, i.e., the date prior to the starting of functioning of the Central Administrative Tribunal. Further, as the Writ Petition (C) No.1006/1992, filed by the respondents against the order dated 19.08.1991 in Misc. Case No.78/1989, and the judgment and decree dated 17.09.1985 in Civil Appeal No.169/1983 with the same contentions as were made in the instant OA, was dismissed by the Hon'ble High Court of Allahabad on 11.09.2008, the case of the respondents cannot be accepted and accordingly the same is rejected.

12. In the circumstances and for the aforesaid reasons, the OA is allowed and the respondents are directed to implement the order dated 17.09.1985 in Civil Appeal No.169/1983 as amended in Misc. Case No.78/1989 by order dated 19.08.1991 and accordingly appoint the applicant as Stenographer with effect from 17.01.1973 with all consequential benefits. However, in the circumstances, the applicant is not entitled for any arrears or interest. This exercise shall be completed within 3 months from the date of receipt of a copy of this order. No costs.

  
**(Aradhana Johri)**  
**Member(A)**

  
**(V. Ajay Kumar)**  
**Member (J)**

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