

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2277/93

New Delhi this the 25th Day of November, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

1. V.K. Dawar,
S/o Late Sh. Hari Dass,
R/o N-4, Malka Ganj,
Delhi.

2. M.M. Malik,
S/o Sh. B.D. Malik,
R/o BD 983, Sarojini Nagar,
New Delhi-110 003.

...Applicants

(By Advocate Shri D.R. Gupta)

Versus

1. Union of India through
Secretary,
Ministry of Health
and Family Welfare,
Nirman Bhawan,
New Delhi.

2. Director General of
Health Service,
Ministry of Health
and Family Welfare,
Nirman Bhawan,
New Delhi.

3. Medical Superintendent,
Safdarjung Hospital,
New Delhi.

...Respondents

(By Additional Standing Counsel Sh. M.K. Gupta)

ORDER(ORAL)

Hon'ble Mr. N.V. Krishnan:-

The applicants are Senior Stenographers working with the Consultants-cum-Head of Department in the office of the Medical Superintendent, Safdarjung Hospital. Their claim is based on the Annexure A-3 order dated 4.7.78 from the Ministry of Home Affairs that the posts of Stenographers attached to Heads of Department in non-Secretariat organisations should be given a higher scale. It directs that the pay scale of Rs.550-900 (pre-revised) may be allotted to the posts of Stenographer, attached to Head of Department in the non-secretariat organisation drawing pay in the scale

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of Rs.2250-2500 (pre-revised). The applicants state that, already, three posts of Stenographers in the Hospital have been upgraded and the benefit given to the concerned incumbents. The applicants also made representations in this behalf but these have been disposed of by the impugned Annexure A-1 memorandum dated 11.10.93 in which it is stated that the decision regarding upgradation of posts of Stenographer will be taken on the basis of the recommendations of internal work study unit of the Ministry of Health and Family Welfare and that necessary action has been initiated by the Ministry in this regard.

2. In the circumstances, the applicants have sought the following directions:-

"8.2 To direct the respondents to upgrade the posts of Stenographers Grade.II in the scale of Rs.1400-2600 to Sr. P.As in the scale of Rs.2000- 3200 who are attached with officers of Sr. Administrative grade or equivalent posts in the scale of Rs.5900- 6700 and above in the Safdarjang Hospital, New Delhi without insisting on Study by the IWS Unit of Ministry of Health and Family Welfare as has been done by the respondents themselves in other Govt. Deptts., hitherto.

8.3 To direct the respondents to consider promoting the applicants from Stenographers Grade-II in the pay scale of Rs.1400-2600 to the posts of Sr. P.As in the scale of Rs.2000-3200 from the date they became eligible for such consideration on completion of 7 years of regular service provided in the guidelines laid down by the Deptt. of Personnel & Training."

3. The respondents have filed a reply in which it is stated that the Govt. have clarified that it is not the intention to ~~give~~ ^{that} all Stenographers attached to the posts of Head of Department etc. drawing relevant pay scale should be upgraded automatically. It is stated that, by an office memorandum dated 20.170, the entitlement in respect of officers in Central Secretariat have been prescribed. That applies to all the secretariat officers. In so far as non-secretariat offices are concerned, it was clarified in the OM dated 6.2.89 that officers in the pay scale of Rs.5900-6700

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and above (officers of the Senior Administrative Grade equivalent post) will get stenographic assistance of the level of Senior P.A. (Rs.2000-3200) (page 68). This memorandum has been clarified by another memorandum dated 9.2.90 (page 67) which states that it does not imply that the officer automatically is entitled to full time Stenographer of the corresponding pay scale. A further clarification is given on 25.6.91 (page 65) stating that in the case of officers holding technical and scientific posts etc. stenographic assistance to be provided to them should be based on the study conducted by the Staff Inspection Unit/ Internal Work Study Unit, as already mentioned in the earlier memorandum.

4. In the additional affidavit filed on 12.7.94 the respondents have also stated that the Ministry of Health and Family Welfare has already initiated a study to examine the work load and requirements of stenographic assistance and in June 1994 the Stenographers have been asked to provide necessary details. They state that this information is necessary for the disposal of the case.

5. When the matter was taken up for hearing today, the learned counsel for the applicants pointed out that OA-7/90 was received from the Supreme Court for disposal and it was disposed of by an order dated of the Principal Bench 20.4.91. Before the case was so received on transfer, the Supreme Court had given certain interim directions. It directed the respondents by an order dated 20.11.89 to appoint a work study group and directed that the report of the study group should be given within three months. However, while doing so, the Supreme Court directed that this study will be concerned with the grievance of the Stenographers, but in so far as the posts of Stenographers attached to officers drawing salary in the scale of Rs.5900- 6700 is concerned, the Supreme Court directed that the relief should be

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granted and the study group shall confine its attention to other matters.

6. The OA itself was disposed of by the Tribunal with a direction that with a view to relieve stagnation in the grade of Stenographer in the office of the respondents, i.e., Director General of Mines and Safety, a reasonable number of posts should be upgraded, notwithstanding the fact that the study team did not make any recommendation in that regard. The learned counsel for the applicant submits that in view of this direction of the Supreme Court in regard to the posts attached to the officers drawing pay in the pay scale of Rs.5900-6700 it is not at all necessary for any internal study to be conducted about the need for such upgradation. He also draws our attention to an earlier order dated 9.6.89 in OA-1472 of 1988 B.S. Gulati and Others vs. Union of India and Others decided on 9.6.89 in which the respondents were the Medical Superintendent, Safdarjung Hospital, as in the present case. That was a case where the applicants were denied upgradation of the posts of Stenographer held by them with effect from the date of issue of the OM dated 4.7.88 of the Department of Personnel which is at Annexure A-3 of the present OA. In that OA no reply was filed by the respondents despite notice. A declaration was given that the applicants therein would be entitled to be promoted w.e.f. 18.11.78, i.e., the date on which a further clarification was given in continuation of the OM dated 4.7.78. That OM is at page 35 of this OA. In the circumstances, the learned counsel contends that the applicants are entitled to the promotion sought for.

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7. The learned counsel for the respondents submits that the respondents have already taken action to study the requirements in terms of the standing instructions already issued. He also draws our attention to the judgement of the Supreme Court in Asif Hameed vs. State of Jammu & Kashmir 1989 Supp. (2) SCC 364 and he draws our attention to the decision that the judiciary has no power over sword or the purse but nonetheless it has the power to ensure that the Legislature and the Executive function within the constitutional limits and that, therefore, a direction cannot be given by us to the respondents which would involve expenditure from the comptroller fund of India.

8. Having hearing the counsel, we are of the view that the respondents have already taken decisions as to how the policy in this regard should be implemented. These are contained in the memoranda at pages 65-69 of the paper book. None of these memoranda have been challenged. The applicants have not challenged the need for a work study by the internal work study unit though the respondents have clearly stated that in such cases the upgradation will be done consequent upon the study. In this view of the matter, we are of the view that the question whether any, and if so, how many posts should be upgraded, would depend on the work study that has been taken up by the Ministry. However, we cannot help observing that such a work study ought to have been initiated long back, particularly, when the respondents stated that the upgradation would depend on such work study. That memorandum was issued on 25.6.1991 (page 68 of the paperbook). In the circumstances, we have to impress upon the respondents the urgency of completing the work

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study and passing appropriate orders.

9. The learned counsel for the applicants however, submits that there should be a direction to the respondents that in case the work study recognises the need for upgradation of the posts of Stenographer held by them who are attached to the specified heads of Department, that recommendation shall be given effect from 1990.

10. We are of the view that this is also a matter which should be considered by the respondents only. In the circumstance, we dispose of this OA with a direction to the respondents to pass final orders in regard to the upgradation of the posts of Stenographer in the Safdarjung Hospital, particularly the posts held by the applicants, within a period of three months from the date of receipt of this order and also consider the claims of the applicants for promotion to those posts in the light of the observations herein.

11. There will be no order as to costs.

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(C.J. Roy)
Member (J)

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25.11.94
(N.V. Krishnan)
Vice-Chairman(A)

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