

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No.493/93

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New Delhi this the 7th day of December 1999

HON'BLE MR.JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN  
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

1. Raj Kanwar,  
Son of Shri B.L. Verma,  
Working as Stenographer, Grade III,  
Sales Tax, Delhi Administration,  
R/o 189 Ishwar Colony,  
Village & P.O. Bawana,  
Delhi.
  2. O.P. Sachdeva,  
Son of Shri P.R. Sachdeva,  
Working as Stenographer, Grade III  
Office of the Commissioner Excise &  
Entertainment Tax,  
Delhi Administration,  
Rajpur Road, Delhi.  
R/o B.Q 123 Shalimar Bagh, Delhi.
  3. M.P. Sharma,  
Son of Shri P.L. Sharma,  
Working as Stenographer Grade III  
Directorate of Social Welfare,  
Delhi Administration,  
R/o 4229, Gali Bahuji, Pahari Dhiraj,  
Delhi.
  4. Chander Mohan,  
Son of Shri Rattan Lal,  
Working as Stenographer, Grade III,  
G.B. Pant Hospital, New Delhi.  
R/o 5L/120 NIT, Faridabad.
  5. Surjeet Singh,  
S/o Shri Chiranji Lal,  
Working as Stenographer, Grade. III  
Directorate of Training & Tech. Education,  
Delhi Administration,  
R/o 4271/A Gali Bahuji, Pahari Dhiraj,  
Delhi.
- Applicants

(By Advocate: Shri A.K. Behra)

-Versus-

1. Chief Secretary,  
Delhi Administration,  
5, Sham Nath Marg,  
Delhi-110 054.
  2. Secretary (Services),  
Delhi Administration,  
5, Sham Nath Marg,  
Delhi-110 054.
- Respondents

(Shri Kulanand Joshi, Dy. Secretary  
on behalf of the respondents)

## O R D E R

BY MRS. SHANTA SHASTRY, MEMBER (A)

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The applicants, 5 in number, have sought a direction to the respondents to modify the final seniority list dated 14.1.1998 and to refix their seniority by counting their seniority of Stenographer Grade III w.e.f. 1.4.1972 and further to consider them for promotion to Grade II of Delhi Administration Subordinate Service (DASS) with effect from the date Smt. S.D. Thapar was promoted to the said Grade i.e. from 14.2.1990. The applicants have also asked for consequential benefits including pay and allowances.

2. The applicants 1 to 5 were initially appointed in Delhi Administration as Lower Division Clerks on the following dates:

Applicant No. 1	16.12.1968
Applicant No. 2	2.11.1964
Applicant No. 3	25.6.1968
Applicant No. 4	25.4.1970
Applicant No. 5	14.10.1963

3. The promotion to the Grade of Steno-typist was being made by Delhi Administration from amongst the LDCs on the basis of qualifying test conducted by the Delhi Administration. Accordingly, all the five applicants appeared for the qualifying test on different dates and were appointed as Steno-typists on ad hoc basis as follows:

Sl.No.	Date of appearing in the qualifying test	Date of appointment on ad hoc basis
1.	29.12.1971	1.1.1972
2.	25. 5.1970	6.6.1970
3.	29.12.1971	6.1.1972
4.	29.12.1971	1.1.1972
5.	4. 1.1971	-

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was

4. On 1.4.1972 the post of Steno-typist was upgraded as Stenographer Grade III in the pay scale of Rs. 130-300. The Delhi Administration issued a letter to all Heads of the Departments under Delhi Administration on 30.4.1973 giving instructions about filling up of the converted posts, determining seniority etc. In this letter it was stipulated that the Steno-typists who were appointed on ad hoc basis without passing the test in English/Hindi Shorthand and typing at the prescribed speed and belonging to Grade IV and who had continued against the post of Steno-typist upto 1.4.1972 or who were appointed subsequently would be required to pass within a period of two years from the date of issue of the letter a test in Stenography at a speed of 80 WPM or 60 WPM in English or Hindi as the case may be to be conducted by the Delhi Administration, from time to time. The question of their regularisation would be considered from the date of passing the test within a period specified above. However, the first such qualifying test was conducted only in 1976. The applicants numbers 1 to 4 appeared for the test and qualified on 22.5.1976. Applicant No. 5 who claimed absence of knowledge about the test appeared in 1978 and qualified on 24.8.1978.

5. The tentative seniority list of Junior Stenographers under Delhi Administration, appointed between 1.2.1976 to 24.8.1978 was issued to all Heads of the Departments under Delhi Administration in 1980. ~~(The applicants state that the same was not brought to their notice at any point of time.)~~ In the said seniority list, the applicants were shown at SL. Nos. 630, 631, 633, 636

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and 699 respectively. Smt. S.D. Thapar was shown much below the applicants 1 to 4 and slightly above applicant number 5 at Sl.No. 693. The seniority list was finalised on 14.1.1988. In the meantime Smt. S.D. Thapar who had earlier been given the seniority on 24.8.1978 and was shown at Sl.No. 602 vide orders dated 15.2.1979, was given seniority from 1.4.1972 placing her at Sl.No. 434(A) vide Addenda letter dated 8.7.1983. Thereafter, she was given further promotion to Grade II of Delhi Administration Subordinate Services on the basis of the revised seniority vide orders dated 28.11.1991. The promotion was made effective from 14.2.1990.

6. The applicants represented between 1988 to 1992 individually as well as through their Association to grant them also seniority w.e.f. 1.4.1972 as given to Smt. S.D. Thapar, but their representations were rejected.

7. The learned counsel for the applicants contends that applicant numbers 1 to 4 had qualified the requisite test for regularisation as Stenographer Grade II in 1976 i.e. earlier than Smt. Thapar who qualified the test on 24.11.1978. The counsel emphasises that though Smt. Thapar was appointed as Lower Division Clerk initially like the applicants and was promoted on adhoc basis as Steno-typist with effect from 21.5.1968 and though she passed the qualifying test only in 1978 much after the applicants 1 to 4, she was given the seniority in the Stenographer Grade III w.e.f. 1.4.1972. Since the applicants and Smt. Thapar are on similar footing, the applicants cannot be discriminated against and therefore they should be given the seniority from 1.4.1972 as the

applicants also became Stenographer Grade III from that date. Based on this they deserve to be given promotion also as was given to Smt. Thapar.

8. The learned counsel for the respondents has raised the issue of limitation as a preliminary objection. According to him the cause of action arose in 1983 when the name of Smt. Thapar was placed at Serial No. 434-A in the seniority list by giving her the date of 1.4.1972 vide Addenda issued on 8.7.1983 and not in the year 1992. Hence, the OA is time barred. The learned counsel further averred that the case of Smt. Thapar is not exactly similar to that of the applicant in as much as she had been appointed as Stenographer vide order dated 19.6.1969 in the DC's office whereas none of the applicants were either declared as quasi permanent or appointed as Stenographer prior to 1.4.1972. The learned counsel also submits that Smt. Thapar qualified the shorthand/typing test in 1969 and was, therefore, promoted to the post of Stenographer on an emergent basis on 19.6.1969 subject to her regularisation by the DPC. Before, however, the DPC could meet her services were placed at the disposal of the Register, Delhi High Court where she was declared quasi permanent on 20.6.1972. Even though she appeared in 1978 for the qualifying test, she did so under protest. The respondents, therefore, are of the view that the applicants have no case.

9. After hearing the learned counsel for the applicants and the respondents and after perusing the record made available to us, we find from a letter from the DC's Office that Smt. Thapar had appeared for some qualifying test conducted by the DC's office in 1969.

However, we do not find any other proof of her having passed the test conducted by Delhi Administration. The file relating to that period could not be made available by the respondents. However, it is gleaned from the notings in other relevant files made available that Smt. Thapar had not passed any qualifying test in Stenography conducted by the Delhi Administration. It was a local test only. But the Delhi Government had taken a conscious decision, in a review, not to disturb her seniority when this fact came to their notice.

10. In the absence of any definite proof of her having passed the requisite qualifying test for Stenographer Grade III giving her the seniority from 1.4.1972 cannot be said to be regular. It was wrong to give her the seniority from 1.4.1972 and therefore the order dated 8.7.1983 needs to be set aside. It is, however, not advisable to disturb her seniority now after a lapse of so many years particularly when she also got a promotion in 1990. We are not in favour of disturbing her seniority at this stage. The Hon'ble Supreme Court also has held in the case of Govt. of Andhra Pradesh Vs. M.A. Kareem and Ors. 1991 (17) ATC 303 that the Courts and Tribunals should be slow in disturbing the settled affairs in service after long period. This is also supported by the case of K.R. Mudgal and Sons Vs. R.P. Singh & Sons (1986(4) SCC 531 that promotion should not be disturbed after a long lapse of time. The learned counsel for respondents also informs that Smt. S.D. Thapar has retired voluntarily. Further, it is clear from the available record that all said and done she was

otherwise senior to the applicants prior to the upgradation of the post of Steno-typist to that of Stenographer on 1.4.1972.

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11. The respondents have raised the issue of limitation. The applicant represented for the first time in 1988-89 to grant them seniority from 1.4.1972 when the final seniority list was issued in 1988. Thereafter, Smt. Thaper was promoted in 1991 to the higher grade w.e.f. 14.2.1990. The applicants' representations in regard to the seniority were rejected on 23.1.1992 and 8.4.1992. It is settled law that the cause of action shall be taken to arise on the date of order of higher authority disposing of the representation, when no such order is made within six months from making the representation, the cause of action would arise from the expiry of six months (S.S. Rathore Vs Madhya Pradesh (AIR 1990 SC 10)). The applicants should have approached the Tribunal immediately when they did not receive any response from the higher authorities in respect of the representations made in 1989. The applicants have impugned the order dated 28.11.1991 whereby Smt. Thapar was appointed in Grade I<sup>1</sup> post of DASS on regular basis on the basis of her seniority. There does not appear to be any representation from the applicants against the impugned order. The representation relates only to seniority. As such, we find that the application is time barred and needs to be dismissed on the ground of limitation.

12. Even on merits the application cannot be allowed. The applicants were appointed as adhoc Steno-typists between 6.6.1970 to 4.1.1972. Normally ad hoc

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appointments are regularised only after a period of 3 years subject to availability of vacancies and subject to those appointments having been made according to the recruitment rules. In this case the applicants had not completed even 3 years as Steno-typist let alone as Stenographer. Secondly, passing of the qualifying test was a pre-requisite for regularisation as Stenographers. The instructions contained in the letter dated 30.4.1973 were very specific that the regularisation would be only from the date of passing the requisite qualifying test. This being the condition, the applicants cannot be expected to be entitled for regularisation from 1.4.1972. Their cases cannot be compared with that of Smt. Thapar as she had already been working as ad hoc Stenographer since 1969 rightly or wrongly. The applicants have no case. Therefore the question of further promotion on the basis of seniority from 1.4.1972 does not arise.

13. In the facts and circumstances of the case, the OA is dismissed.

  
(Mrs. Shanta Shastri)  
Member (A)

  
(V. Rajagopala Reddy)  
Vice Chairman (J)

\*Mittal\*