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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

O.A.No.554/1986

DATE OF DECISION 25-7-91

SHRI A.P.AGARWAL

-- APPLICANT

VS

UNION OF INDIA & ORS

-- RESPONDENTS

CORAM

HON'BLE MR. JUSTICE K.NATH, VICE CHAIRMAN

HON'BLE MR. A.B.GORTHI, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*

2. To be referred to the Reporter or not? *yes*

J U D G E M E N T

(DELIVERED BY HON'BLE MR.A.B.GORTHI, MEMBER (A))

The applicant Shri A.P.Agrawal, Stenographer Gr.II, Army Service Corps School, Bareilly (A.S.C. School for short) filed this application under Sec.19 of the Administrative Tribunals Act, 1985 seeking a direction to the respondents to extend him the benefit of the upgradation of his post to that of Stenographer Gr.I/Sr.Personal Assistant (S.P.A.) in the pay scale of Rs.550-900 and to pay him arrears of pay and allowances with effect from May, 1982.

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2. The applicant who joined service on 3-10-1963 as a Stenographer Gr.III was promoted as Stenographer Gr.II in the pay scale of Rs.425-700 with effect from 1-7-1979. In that grade he was the P.A. to the Commandant of the A.S.C. School, who was then of the rank of Brigadier. Some time in early 1982 the rank of the Commandant was upgraded to that of Major General. Vide Ministry of Defence letter P.C.No.84340/SDS1/3359/D(Civ-1) dated 21st May, 1979 (Annexure-1), all Army establishments were conveyed the sanction of the President authorising a revised pay scale of Rs.550-900 for the post of Stenographer attached to the officers in the non-Secretariat Organisations drawing pay in the pay scale of Rs.2250-2500 and above. Accordingly, the applicant claims that he be given the benefits under the said policy decision of the Government as the same squarely applied to the post held by him at that time.

3. The respondents denied the claim of the applicant mainly on the following grounds:-

- (a) Annexure-I did not automatically entitle the applicant for promotion. The post was designated as P.A. in the Peace Establishment (P.E. for short) of the A.S.C.School and unless it was amended to S.P.A. by the Government, the applicant could not be absorbed as S.P.A.
- (b) There was Government's ban on the creation of new posts and hence a new post of S.P.A. could not be created in A.S.C.School.

(c) Normal promotional rules would apply under which the applicant would be eligible for promotion as S.P.A. after completing five years service as Stenographer Gr.II subject to seniority cum fitness. The seniority of the applicant as per Army (Stenographers Gr.I) Recruitments Rules, 1985 (the Rules' for short) was such that he was not the senior most to be promoted as S.P.A.

4. Certain subsequent developments may be stated first. The P.E. of A.S.C. School has been amended by the Government sanctioning two posts of S.P.A. and the applicant having come up in the seniority roster was promoted as S.P.A. with effect from 1-2-1988.

5. For a proper appreciation of the rival contentions of the parties, it will be essential to briefly refer to the relevant instructions and policy decisions of the Government.

6. According to Ministry of Home Affairs, Department of Personnel and Administrative Reforms letter dated 4-7-1978, the question of improving pay scale of Stenographers in non-Secretariat Organisations was discussed in a committee of the National Council (J.C.M.) and the President was pleased to decide that the pay scale of Rs.550-900 would be allotted to posts of Stenographers attached to officers in the non-Secretariat Organisations drawing pay in the scale of Rs.2250-2500 and above. The scale of Rs.550-900 was to be introduced by adjusting the then existing sanctioned strength of Stenographers in the scale of Rs.425-700 on the basis of seniority-cum-fitness. A further clarification was given

on 18th November, 1978 that the officers drawing the pay of Rs.2250-2500 need not necessarily be Heads of Department. Ministry of defence vide their letter dated 21st May, 1979 (Annexure-1) adopted the same policy and announced it as applicable to all such Stenographers in Non-Secretariat Organisations including Head Qrs. Commands and Areas. It is obvious that the policy merely provided for an improved scale of pay as per the earlier decision taken at the National Council (J.C.M.), and not for creating any new posts.

7. With a view to ensure uniform implementation of the policy, the Government laid down certain guide-lines vide their letter dated 8th April, 1980 (Annexure CA 2). Accordingly posts of Stenographers Gr.I/S.P.A. in the new scale of Rs.550-900 were to be filled from amongst Stenographers with five years regular service in Gr.II (Rs.425-700) on the basis of seniority cum fitness. Further the promotees were to be designated as Stenographers Gr.I/S.P.A. The promotions were further subject to the usual rules regarding reservation for S.C./S.T. and the convening of the Departmental Promotion Committee. The applicant who was a Stenographer Gr.II was admittedly attached to a senior officer (Major General) in the scale of pay of Rs.2250-2500 and above. The applicant completed five years service in Gr.II on 1-7-1984 and was approved for promotion by a D.P.C. vide A.S.C. School Part I Order dated 6-7-1984 (Annexure 2).

8. In the year 1977 the Central Government imposed a general ban on the creation of new posts in the Government as an economy measure. The ban was total except for operational and technical staff. The ban continued to be operative

till 1988 when it was further extended. The point to be noticed here is that though the ban was imposed in 1977, the improved scale of pay to Stenographers was introduced by the Government in 1978. Obviously the latter policy decision did not amount to creating new posts as would attract the ban.

9. New Rules regulating the method of recruitment to the post of Stenographers Gr.I in the lower formation of the Army were introduced in 1985. These Recruitment Rules came into force on 17-7-1985. Though there is a dispute as to whether the said date was 17-7-1985 or 17-8-1975, it is immaterial so far as the case of the applicant is concerned. Under these rules, the Stenographers are to be promoted on the basis of their seniority within the Command/Corps. Whereas the term 'Command' means a Formation below Army Head Qrs., the word 'Corps' when used in juxtaposition with Command should mean the Formation just below the Command, but it seems the Government's reference to Corps in these rules is not to any Formation of the Army but to an Arm/Service in the Army, as such as, Armoured Corps and Army Service Corps. Accordingly the applicant's name was to be in the seniority roster of Army Service Corps, where there were other Stenographers senior to him. Prior to the introduction of the rules, the applicant reckoned his seniority among the staff of A.S.C. School where, undisputedly, he was the senior-most Stenographer Gr.II.

10. The first and foremost plea of the respondents was that the post authorised on the P.E. of A.S.C. School

was that of Stenographer Gr.II and hence the applicant cannot be given Gr.I. The A.S.C. School had to take up the case for the upgradation of the post and for amendment to its P.E. and unless that was done the question of the applicant getting promotion did not arise. We are unable to appreciate the logic behind this contention. The sanction accorded by the Government vide Annexure-1 was for the authorisation of revised scale of pay of Rs.550-900 for the post of Stenographers attached to certain senior officers and such appointments were to be filled up by promotion from amongst the Stenographers in the pay scale of Rs.425-700 on the basis of seniority cum fitness. The Annexure-1 did not specify that the post of Stenographers Gr.II were first to be upgraded by amending the P.E. of the concerned unit or establishment before the benefits under the said Annexure could be given to those eligible for the same. No specific ^{Rule} or policy letter was shown to us by the respondents under which it was mandatory to amend the P.E. first before implementing the policy outlined in Annexure-1. On the other hand, the applicant furnished a list of 35 Stenographers promoted during 1979-1981 on the basis of Annexure-1.

11. As regards the ban on the creation of new posts, the same could not have come in the way of implementing the policy in Annexure-1 which created no new post but only improved the pay scale of ^a certain categories of Stenographers. Learned counsel for the applicant has drawn our attention to Army Head Qrs' letter No.A/59829/RUL/RECTT/Q/ST 12 dated 16th April, 1985 (Annexure V attached to Annexure 3) which clarifies that all actions which ~~are~~

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are required to fill up a promotion post can be taken subject to the condition that the lowest level of the chain vacancies consequent thereon will not be filled during the ban period. In other words there was no ban on promotions, but where that resulted in a chain vacancy at the lowest level, it was not^{to} be filled up. In the instant case, there was no question of any chain vacancies. All that was to be done was to grant a higher scale of pay to the applicant and redesignate the same appointment as Stenographer Gr.1 (S.P.A.). As regards the redesignation, the same was clearly spelt out in Department of Personnel and Administrative Reforms O.M.No.22038/1/79-Estt(D) dated 8th April, 1980 (Annexure-III attached to Annexure-3). Referring to the post of Stenographer Gr.1 sanctioned vide Annexure-1, it lays down that these may be designated as Stenographers Gr.1. Incidentally^{all} this Government letter would also dispense with the requirement of each Army unit and establishment taking up separate cases to amend their respective P.Es. for change of designation. Since what was involved in the Government decision was merely a change of designation and grant of a higher scale of pay, it would more appropriately amount to grant of promotion, in the ordinary language, and certainly not to the creation of new post as was interpreted by the respondents.

12. The respondents finally contended that the applicant was not senior enough to be given the higher scale of pay. The applicant categorically stated that

he was borne on the strength of the A.S.C. School and that his seniority was to be reckoned from amongst the staff of that school. The respondents relied on the Recruitment Rules introduced in 1985 under which the seniority of Stenographer was to be reckoned Command/Corps wise and asserted that the applicant's case was accordingly included in the list of Stenographers of the entire Army Service Corps in which some Stenographers were senior to the applicant. The applicant completed five years service as Stenographer Gr.II on 1-7-1984 and was approved for promotion to S.P.A. by a D.P.C. on 6-7-1984. Promotion of the applicant was, therefore, to be governed in accordance with the rules, if any, applicable in July, 1984 and not those introduced in 1985. This aspect was considered in the case of Y.V.Rangaih and Ors. Vs. J.Srinivasarao and Ors. 1983(1)(SLR)789, wherein their Lordships held that vacancies which occurred prior to amended rules would ~~not~~ be governed by the old rules and not by the amended rules. The respondents have not been able to refute the contention of the applicant that prior to the coming into force of the 1985 rules the applicants' seniority was not reckoned Corps wise. There is thus no doubt that had the inapplicable rules been not applied to the applicant, he would have become due to be promoted with effect from 1-7-84.

13. The applicants' contention that he should have ^{been} given the higher grade and pay scale w.e.f. May, 1979 when the new policy was introduced vide Annexure-1 dated 21-5-1979 cannot be accepted in view of the Government's clarification given vide Annexure IV to Annexure-3 dated 8th April, 1980 which clearly laid down that only those having five years regular service in the post of Stenographers Gr.II would be eligible for promotion on the basis of seniority subject to rejection of the unfit. The applicant would, therefore, become eligible

for the benefits announced vide Annexure-1 from the date he completed five years regular service as Stenographer Gr.II i.e. with effect from 1-7-1984.

14. The application is thus partly allowed. The respondents are directed to grant the applicant the higher designation of Stenographer Gr.I/S.P.A. and the consequent revised scale of pay of Rs.550-900 with effect from 1-7-1984 together with all other consequential reliefs, monetary or otherwise to which he would be entitled.

A.B. Gorthi

(A.B.GORTHI)
MEMBER (A)

Kamleshwar Nath

(KAMLESHWAR NATH)
VICE CHAIRMAN