

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 412 of 1987

Suraj Narayan Kamandal Petitioner

Versus

Union of India & others Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this Writ Petition received on transfer from the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow under Section 29 of the Administrative Tribunals Act XIII of 1985, the petitioner has prayed for the issue of a writ quashing the impugned order dated 14.2.1979 and the order dated 16.11.1979 and commanding respondent no.2 not to give effect to the orders of 14.2.1979 and 16.11.1979 and to promote the petitioner as Stenographer Grade II from December 19, 1978, the date of upgrading of the post.

2. The facts of the case are that the petitioner was initially appointed as a Lower Division Clerk and was confirmed in the post in 1960. On 1.11.1965 he was appointed to officiate as Steno-Typist. He was then promoted as Stenographer Grade III with effect from 16.8.1966. This order also stated that his seniority will count in the grade of Stenographers from the date he joined duties and he would be on a probation for two years. Later he was confirmed as a Stenographer with effect from 16.8.66. On 21.3.1967 he was promoted as Upper Division Clerk.

43
2

-: 2 :-

Since the grades of Stenographer Grade III and Upper Division Clerk were same he requested for being allowed to continue as Stenographer. On a reference to Director General, N.C.C., the organisation in which he was working, he was asked to give an option if he wanted to continue as Stenographer and did not want to go as U.D.C. on 7.4.1967. On 16.8.1967 he gave his option to continue as a Stenographer. The petitioner made a request on 7.7.1971 for redesignation as a clerk as he thought there would be better promotional avenues on clerical side. His request was turned down because he had exercised the option. In March, 1979 the petitioner received the impugned letter of 14.2.1979 setting aside his confirmation as Stenographer Grade III done in 1966. Recruitment rules were issued for the post of Stenographers on 15.11.1968. The petitioner represented against this order but his representation was also rejected by the Director General, N.C.C., Delhi on 19.7.1979. Due to this letter of 14.2.1979, though the petitioner is within the zone of consideration for promotion as Gr. II Stenographer, his name has not been included in the panel. Instead on 16.11.1979 one person has been appointed as Stenographer Gr. II in his place. The respondents' case was that the petitioner was appointed in violation of the rules of recruitment which were in existence at that time so the irregular service was treated as ad hoc. Recruitment rules issued on 15.11.1968 were the same as on 1.12.1964 issued by the Ministry of Defence and petitioner was governed by these. Revised rules have only been issued on 24.4.1979. Thus having been appointed in violation of recruitment rules the petitioner has been correctly denied advantage of his previous service.

A2/27

-: 3 :-

3. We have heard the learned counsel for the parties. The contentions raised at the bar were that the petitioner was appointed and confirmed by regular orders hence his services could not be treated ad hoc and the benefits denied to him. On behalf of respondents it was submitted that since the regularisation was erroneous and against rules it was rescinded. In the rules L.D.C. could not be transferred as Stenographer. We have carefully gone through the petition and the counter affidavit filed by the respondents.

4. The rules framed in December, 1964 for appointment of Stenographer in the pay scale of Rs.130-300 as placed at Annexure 'R-2' to the reply permit appointment by direct recruitment failing which by transfer. On transfer persons working in similar or equivalent grade from other Central Government Departments/offices can be considered. There is no age bar for transferees. The petitioner was a L.D.C. and he was appointed to officiate as Steno-Typist by the Directorate's letter of 6.1.1966 with effect from 1.11.1965. He was given a special pay of Rs.20/- only. Thus L.D.C. and Steno-Typist were in equivalent grade. But Steno-Typist could not become a Stenographer. There is a proviso in the recruitment rules that "provided that the Central Government may if satisfied that there are special grounds for so ordering, exempt any person from the operation of these rules". In February, 1979 by the impugned letter of 14.2.1979 the respondents regularised the appointment of the petitioner who was working as Stenographer relaxing the method of recruitment. But by this order all the previous service was treated as 'ad hoc'.

5. We have perused the letter of 29.7.1966 issued by the Directorate General, N.C.C., New Delhi

A3
-1

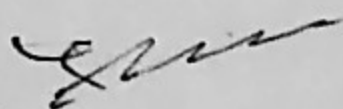
-: 4 :-

promoting the petitioner as Stenographer till further orders. The 1964 rules had no provision of recruiting Stenographers by promotion. The posts had to be filled by direct recruitment or by transfer from equivalent or similar grade. But the fact remains that respondents in full knowledge of the rules promoted the petitioner, put him on probation and later on confirmed him by their letter of 30.7.1973. Thus if the matter in regard to violation of the recruitment rules had been straightened out by the respondents by exercising their power of relaxation of recruitment rules, they should have confirmed their own order on 29.7.1966. They, however, regularised appointment from 14.2.1979. This has taken away the benefits of the service rendered by the petitioner from 29.7.1966 to 14.2.1979. The petitioner was a regularly appointed Stenographer and the appointment was given by the respondents themselves. We feel that the power of relaxation should have been exercised to condone the mistake made by themselves and the petitioner should not have been allowed to suffer for a mistake done by the respondents. They had accepted his options and then denied him to revert back to his initial recruitment cadre of clerks.

6. We also do not see any violation of fundamental or statutory rights in the appointment offered to the petitioner. Mere violation of a rule justifying a particular manner of appointment, when the respondents, who made it, had powers to relax it and could have used the same to regularise their own orders and thus the appointment of the petitioner from the date they put him to officiate and confirmed him, could have not been invalidated making it ad hoc. If at all they violated

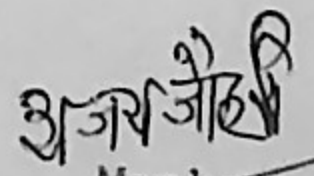
their own rules and cannot penalise the petitioner for it. He had generated a right to the post by the very mode of offers and orders issued to him regarding his appointment, probation and confirmation. After all ad hoc appointments can only be for short periods and not for 12 years or so. By the impugned orders the petitioner is seen by both civil and evil consequences. He stands to lose the benefits in matters of seniority and further promotion. The action suffers from arbitrariness.

3/ ✓
7. We, therefore, quash the orders of 14.2.1979 inasmuch as they treat the period service rendered upto 14.2.1979 as ad hoc. The petitioner would be considered to have been regularised from the date of his promotion as Stenographer and the entire service rendered by him will count for seniority and promotion. He will be considered to have been confirmed in terms of letter of 30.7.1973 with effect from 16.8.1966. The petition is disposed of accordingly. We made no order as to costs.


Vice-Chairman.

Dated: January 21, 1988.

PG.


Member (A).