

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No: O.A.No.s 1909/93, 1023/95 &
T.A. No: 1095/95

DATE OF DECISION: 14.8.96

Smt. Uma Dwivedi & Others

PETITIONER

C/A S/ Sri O.P. Gupta, Ranjeet Saxena and

R.K. Dwivedi

ADVOCATE FOR THE
PETITIONER

V E R S U S

Union of India and Others

RESPONDENTS

C/R Sri Amit Sthalekar

ADVOCATE FOR THE
RESPONDENTS

C O N T A I N S

The Hon'ble ~~Mr.~~ Dr. R.K. Saxena, Member (J)

The Hon'ble Mr. Mr. D.S. Baweja, Member (A)

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all other Bench ?

SIGNATURE

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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 14th day of Aug 1996

Original Application No. 1909/93

WITH

Original Application No. 1023/95

WITH

Original Application No. 1095/95

Hon'ble Dr. R.K.Saxena, Judicial Member

Hon'ble Mr. D.S.Baveja, Administrative Member

O.A.No. 1909/93

1. Smt. Uma Dwivedi W/o Sri R.P.Dwivedi,
r/o 405 Badshai Mandi, Allahabad.
2. Smt. Dev Sheela Srivastava r/o Sri S.K.Srivastava,
r/o Labour Colony, Naini, Allahabad.
3. Km.Amita Singh d/o late Sri S.N.Singh,
r/o 524, Katra, Allahabad.
4. Km. Anita Moitra d/o Sri B.G.Moitra,
r/o 7/11, Karela Bagh Colony, Allahabad.
5. Irshad Ali S/o Imam Ali r/o 43-Adondipur,
Allahabad.

C/A : Sri O.P.Gupta, Advocate.Applicants

Versus

1. Union of India through the Secretary, Ministry
of Personnel & Training, Govt. of India,
New Delhi.
2. The Commissioner of Income-Tax, Allahabad.
3. Central B.D.T.(Central Board of Direct Taxes),
New Delhi.

C/R: Sri Amit Sthalkar, Advocate.Respondents

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Original Application No.1023/95

1. Smt. Deo Sheela Srivastava w/o Sri Santosh Kumar Srivastava, r/o 50/10, Labour Colony, Naini, Allahabad.

C/A: Sri Ranjeet Saxena, Advocate.Applicant
Sri O.P.Gupta, Advocate.

Versus

1. Union of India through the Chief Commissioner, Income Tax, Lucknow.
2. Union of India, through the Staff Selection Commissioner, represented by its Director, Department of Personnel and Training, Block No. 12, C.G.O.Complex, Lodhi Road, New Delhi.
3. Union of India, through the Chairman, Central Board of Direct Taxes, Government of India, New Delhi.
4. Union of India, through the Commissioner, Income Tax, Allahabad.

C/R : Sri Amit Sthalkar, Advocate.Respondents.

Original Application No.1095/95

Smt. Uma Dwivedi r/o Sri Ram Prakash Dwivedi, r/o 405/475, Badshahi Mandi, Allahabad.

C/A: Sri O.P.Gupta, Advocate,Applicant
Sri R.K.Dwivedi, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Staff Selection Commissioner, represented by its Director, Department of Personnel & Training, Block No. 12, C.G.O.Complex, Lodhi Road, New Delhi.
3. The Chairman, Central Board of Direct Taxes, Government of India, New Delhi.

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4. The Chief Commissioner, Income Tax, Lucknow.
5. The Commissioner of Income Tax, Allahabad.

C/R: Sri Amit Sthalkar, Advocate.

.....Respondents.

O R D E R

By Hon 'ble Dr. R.K. Saxena, Member (J)

These three original applications have been taken up together for disposal because they are connected with the same personnels who are seeking the same remedy as a consequence of different orders.

2. The brief facts of the cases are that the applicants in the three cases were initially appointed as Stenographer on adhoc basis or on the basis of daily wages. Since they were not paid equal salary to the regularly appointed Stenographers, therefore, they approached the Tribunal seeking equal pay for equal work. In the meantime the question of their regularisation arose and the respondents chalked out the plan to regularise them if they appear in the test to be conducted specially for them. The condition was that it would be a test of one time exemption. Those who qualify, would be absorbed as Stenographers. Those who otherwise failed but qualified in typing test, were to be considered for the appointment as Lower Division Clerk. There was one more condition that if they did not appear in the test or failed in the test as aforesaid, their services should be terminated.

3. In order to appreciate the facts, it would be proper to deal with the summary of facts of each case separately. We, therefore, proceed case-wise.



O.A.No.1909/93 : Smt.Uma Dwivedi & others
Versus Union of India & others:

This case was instituted by five applicants. Their case is on was that the applicant No. 1 & 2 were appointed after qualifying the test of Stenographers and were paid daily wages @ Rs. 15-00. Their appointments had taken place on 30-10-84. The applicant No. 3 was appointed on ~~4-9-89~~ ^{4.9.84} on daily wages while the applicants No. 4 & 5 were also appointed as daily wagers on 29-11-84. Since they were not paid equal salary of regular stenographers although they were giving equal work, they agitated for equal pay for equal work. Smt. Uma Dwivedi had filed an original application No. 1043/90 Uma Dwivedi Vrs. Union of India & others seeking the equal pay of regularly appointed Stenographers. The said O.A. was decided in favour of the applicant on 8-4-91. The respondents in the said O.A. were directed to pay the salary to the applicant of the said O.A. at the minimum of the scale applicable to the regularly appointed Stenographer and Typist in Group-C w.e.f. 1-12-86 without increments but with benefit of corresponding D.A., Addl. D.A. and others benefits. It appears that the judgement which was rendered by the Tribunal in O.A. No. 1043/90, was given effect to and thus the applicant No. 1 & 2 were allowed the pay scale of Rs. 1200-2040 with gross salary of Rs. 2364/-. The applicants No. 3, 4 & 5 were placed in the Grade of Rs. 950 - 1500 for the post of Typist and their monthly gross salary was Rs. 1874-00.

The applicants wanted that they should be regularised because they had been working for sufficiently long period and there was a policy of the Government to regularise the daily wagers, adhoc employees and casual L.D.C. & Stenographers who were working for the last one year. In the light of the said policy, it is averred that

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Central Board of Direct Taxes circulated a letter dated 2-9-93 informing that the Staff Selection Commissioner would hold a test on 26-12-93 for the purpose of regularisation of casual, adhoc, daily rated Stenographers or clerks. Thus the concerned employees were informed to appear in the test. The applicants, therefore, challenged the said letter dated 2-9-93 on the ground that it was illegal, arbitrary and bad in law. The applicants, therefore, approached the Tribunal with prayer that the ~~circular~~ of the termination of services of those employees who did not pass the special qualifying examination be deleted and the respondents be ^srestrained from terminating the services of such employees who failed to qualify the examination. The applicants further approached ^{for relief} that the respondents be directed to allow applicants to continue in the employment so long as they were not regularised on the posts.

The respondents contested the case by filing a counter affidavit of Sri R.K. Srivastava, Commissioner of Income Tax, Allahabad. The grounds taken were that the letter which was issued, was perfectly legal and valid for the purpose of regularisation. The applicants would require to qualify the examination. It is averred that out of five applicants, only Smt. Uma Dwivedi and Smt. Deo sheela were appointed as a result of test which was Departmentally held but that test was only for appointment on daily wages. It is further averred that applicant Km. Amita Singh and Irsad Ali were appointed on daily wages without any examination. The ~~contention~~ ^{tention} of the respondents is that applicants were appointed purely on daily wages and were not recruited under any recruitment rules of the post. It is also stated that according to the rules, the appointment on the post of Group C is

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is made when the Staff Selection Commission recommends the names after holding the examination. Similarly the regularisation can be done after undergoing the test. For these reasons the O.A. is opposed and it is canvassed that there is no merit in the O.A.

Applicant through Smt. Uma Dwivedi filed rejoinder in which these very facts which were stated in the O.A., have been reiterated. It is, however, pleaded that the applicants had been continuously working for more than 10 years and respondents were under obligation to regularise them without holding any examination.

O.A.No.1023/95 Smt. Dee Sheela Srivastava
Versus Union of India & others.

This O.A. has been filed challenging the impugned order annexure-8 dated 4-8-95 whereby the applicant alongwith others who were working in the Grade of 1200-2040, were reduced in the lower grade of 950-1500.

The facts as disclosed, are that the applicant got appointment of Stenographer on ad-hoc basis. She had been contesting alongwith other ad-hoc appointees for the same grade of salary which was admissible to the regular appointees on the basis of principle of equal pay for equal work. Since the decision was rendered in their favour in O.A.No.1043/90, the applicant was placed in the scale of 1200-2040. The matter for regularisation was pending but in the meantime the circular for appearing in the examination for regularisation was issued. She had protested and represented against the order but no reply was received. It is contended that in place of giving any reply to the protest against the holding the examination, she was served with an order whereby her pay of scale was reduced from 1200-2040 to 950-1500. The said order is stated to be illegal, hence the O.A.

The respondents contested the case by filing the counter reply of Sri R.K.Srivastava, Commissioner of Income Tax. It has been averred that applicant alongwith others who were similarly situated ^{persons} were called to appear in the examination which was held on 26-12-93. For the purpose, a letter dated 1-9-93 was issued and it was made clear to ad-hoc employees that those who failed to qualify the test, would be considered for absorption as Lower Division Clerk if they could pass the typing test. It was further stipulated that those who failed in both, their services would be terminated. In accordance with the letter dated 1-9-93, it is averred that the applicant qualified for the post of Lower Division Clerk in the pay scale of Rs.950-1500. It is pleaded that on account of error, the appointment order dated 18-7-95 which was issued by the Chief Commissioner of Income Tax, the name of applicant was shown as appointee on the post of Stenographer of Gr.III in the pay scale of Rs. 1200-2040. When the said mistake was detected, the earlier order dated 18-7-95 was cancelled by ^{another} order dated 4-8-95. Thus, it is pleaded that it was incorrect ^{to say} that the applicant was reverted to a lower post or grade. It is also contended that continuance of the applicant on the post of Stenographer Gr.III in pursuance of the interim order passed by the Tribunal in O.A.No. 1909/93 Smt. Uma Dewivedi & others Vrs. Union of India & others and another O.A.No. 1043/90, would not give any right to hold the post of Stenographer Gr.III. It is, therefore, urged that the O.A. be dismissed.

The applicant filed the rejoinder in which these very facts which were stated in the O.A., were re-affirmed.

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O.A.No.1095/95:Smt. Uma Dwivedi Vrs. Union of India
and others.

The applicant has filed this O.A. challenging the order annexure A-B dated 4-8-95 by which she was appointed as Lower Division Clerk in the grade of Rs. 950-1500. Earlier she was working as Stenographer Gr.III in the grade of Rs. 1200-2040.

The facts of this case are similar to that of O.A. No. 1023/95. This applicant was also appointed as Ad-hoc Stenographer on daily wages but having filed the O.A. for equal pay for equal work, the grade of Rs. 1200-2040 was given but she continued as Ad-hoc employee. When the scheme for regularisation on the condition of appearing in the examination was started, she appeared in the test but failed for the post of Stenographer. She, however, qualified for the post of Lower Division Clerk but because of the mistake she was given an order of appointment dated 18-7-95 showing her to be ^{an} appointee as Stenographer Gr.III in the scale of Rs. 1200-2040. This mistake was detected and the earlier order dated 18-7-95 was cancelled by subsequent order dated 4-8-95. The case of the applicant is that once she has been appointed as Stenographer Gr.III, ^{the same} it can not be cancelled without giving any notice therefore.

The counter affidavit has been filed by Sri R.K. Srivastava, Commissioner of Income Tax and it has been pointed out that neither applicant had qualified for the post of Stenographer Gr.III, nor she was considered for the posting as Stenographer Gr.III. It is further averred that she has qualified for the post of Lower Division Clerk and she was considered for the said post but by mistake the appointment order was issued as showing her as ^{an} appointee on the post of Stenographer Gr.III. It is further contended that since the mistake was detected, ^{and} was rectified and the correct

order of appointment as lower division clerk was issued. The contention of the respondents is therefore that the applicant does not get any right of the post of Stenographer Gr.III, simply because she continued on the post on the basis of interim order. Incorrect order of appointment as Steno Gr.III was issued. It is, therefore, pleaded that there is no force in the O.A. which may be dismissed. The applicant has filed rejoinder reiterating the facts which were also mentioned in the O.A.

We have heard the learned counsels for the applicant and respondents. We have also perused the records.

First of all we shall take up the subject matter of O.A.No.1909/93 in which the relief of quashing the policy letter dated 2-8-93 about special qualifying examination and regularisation of the applicants is sought. There is no dispute that all the applicants of O.A.No.1909/93 were recruited on the post of Stenographer Gr.III on daily wages. It is transpired from the averment made by the rival parties that the applicants No.1 & 2 were appointed after qualifying the departmental test. As regards other applicants, no such test was held but they were also appointed as daily wagers. The holding the departmental test of applicants No.1 & 2 can not be equated with that of the test which is conducted by the Staff Selection Commission for regular appointment. In such a situation, the applicants no. 1 & 2 can not be allowed any benefit of the departmental test which was held before their appointment as daily wagers on the post of Stenographer Gr.III. The fact that the applicants No. 3 to 5 did not undergo through the said departmental test and they were appointed as Stenographers Gr.III on daily wages, itself suggests such a departmental test was not a condition precedent. Had it been

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so, the applicants no. 3 to 5 could not be appointed without undergoing the test. On the other hand, no regular appointment can be made unless one qualifies the test which is provided under rules and conducted by the Staff Selection Commission. Thus, there is vast difference between two kinds of examination narrated above. The examination which is held by Staff Selection Commission is a statutory requirement, whereas the departmental test which was undergone by the applicant no. 1 & 2, was not a statutory requirement. Thus, we are of the view that the applicants no. 1 & 2 can not take the plea that because they were appointed after qualifying the departmental test, they were not required to undergo any test which was stipulated in the letter annexure A-5 dated 2-9-93.

Now we come to the point whether the letter annexure A-5 dated 2-9-93 can legally be quashed and the applicants be allowed to be regularised as Stenographers Gr.III without undergoing the test. We have already discussed that the applicants did not appear in any test for regular appointment. They were appointed on the post of Stenographers Gr.III on daily wages. Since they had been serving, the question of their regularisation arose. It ^{also} became necessary for the reasons that their salary was raised to that of regular appointee on the post of Stenographers Gr.III. It was done because the one O.A. No. 1043/90 Uma Dwivedi Vrs. Union of India & others was instituted claiming equal pay of regularly appointees on the post of Stenographer Gr.III. The Tribunal had directed to give the lowest of the regular grade of Stenographer Gr.III to ad-hoc appointees or appointees on daily wages. By getting the lowest of the regular grade of Stenographer Gr.III, the applicants did not acquire any right to continue in service until and unless they were regularised. For the purpose of regularisation of the applicants and similarly situated other persons, this scheme was framed and annexure A-5 dated 2-9-93 was issued. This scheme lays down that those who qualify the test

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shall be regularised as Stenographer Gr.III but those who do not qualify the test other than that of typing test, shall be appointed as Lower Division Clerk. It further provides that those who failed in both tests i.e. typing test and other test, they would be removed from service. We do not see any illegality, unconstitutionally or arbitrariness in the scheme. A fair chance has been given to the applicants and therefore they should have availed. For regularisation of ad-hoc, daily wagers, temporary appointees, some rules would be required to be framed. This policy letter annexure A-5 is a step in that direction. Any executive order which does not suffer from any illegality or unconstitutionally, can be equated with a rule. Thus we do not find any infirmity in the policy letter annexure A-5. In view of this finding, the contention of the applicants that annexure A-5 be quashed, is not accepted..

The learned counsel for the applicants vehemently argued that keeping the fact of long service of the applicants in the department, at least one more opportunity to appear in the examination be given. We are not convinced with this argument because the opportunity was already provided and as appears from the facts of other two O.As. connected with it, it was availed by them. If they failed in test, nobody can help.

It is also contended that the regularisation of the applicants in the service without undergoing test, should be made. We also are also not convinced with this argument. If it is permitted, the back door entry would become a normal rule.

On the consideration of the points as discussed above, we do not find any substance in the contention of the applicants in O.A.No. 1909/93 and no relief can be given.

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Now we take up O.As. No. 1023/95 & 1095/95 which have been filed by two different applicants but with the same relief. Their contention is that after the applicants had undergone the test held by the Staff Selection Commission, they were given appointment letter dated 18-7-95 appointing them as Stenographers Gr.III in the pay scale of Rs 1200 - 2040. Subsequently the appointment order was cancelled by another order dated 4-8-95 and their appointment was converted into that of Lower Division Clerk in the pay scale of Rs 950-1500. It has been contended that no show cause notice had been given to them and therefore the principle of natural justice has been violated. The contention of the respondents on the other hand is that these applicants had failed in the test for the post of Stenographer Gr.III but they had qualified for the post of Lower Division Clerk but by mistake the order of appointment as Stenographer Gr.III was issued on 18-7-95. It is further averred that as soon as this mistake was discovered, the earlier order of appointment as Stenographer Gr.III was cancelled and their appointment as Lower Division Clerk in the grade of 950-1500 was made and orders were issued. In this connection, the learned counsel for the respondents drew our attention towards the letter annexure C-A-2 filed in O.A. 1095/95. This letter had been issued by Staff Selection Commission on 20-6-95 which indicated that Smt. Uma Dwivedi and Smt. Doo Sheela - Applicants in two O.As. were declared qualified for the post of lower Division Clerk. Thus, there remains no doubt that the applicant had not qualified for the post of Stenographer Gr.III. If by mistake the appointment letter for the post of Stenographer Gr.III was issued, it will not mean that the employer was not competent to rectify the mistake. The full bench of Punjab and Haryana High Court in case of Sunder Lal & others Vrs. State of Punjab 1970 S L R 59 held that where the Government had taken decision which later on turned out to be incorrect, it could not be stated that the mistake must be allowed to be

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perpetuated and that the Government had no power to rectify that mistake even after the same was discovered. The same view was again taken in Ranjeet Singh Vrs. President of India 1971 S.L.R. 561. Thus, we are fortified in our conclusion that if mistake was committed, it could be rectified by the Government and there was no illegality. In the present cases the admitted facts are that the applicants had qualified only for the post of Lower Division Clerk and thus their appointment was erroneously made vide letter dated 18-7-95 on the post of Stenographer Gr.III. On discovery of mistake, it was rectified by another order dated 4-8-95. In this way, we do not see any merit in O.As. No. 1023/95 and 1095/95.

On the consideration of the facts and circumstances of the cases, we come to the conclusion that there is no merit in the cases and therefore O.As. 1909/93, 1023/95 and 1095/95 are dismissed. No order as to costs. The stay which was granted, comes to ^{an} end.

MEMBER (A)

MEMBER (J)

T.S/-