

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

THIS THE 11 DAY OF DECEMBER, 2002

ORIGINAL APPLICATION NO. 1193 OF 1995.

HON. MR. GOVINDAN .S. TAMPI, MEMBER-A

HON. MR. A.K.BHATNAGAR, MEMBER-J

Smt. Vimlesh Chhibber,
w/o Sri Sunil Kumar Chhibber,
r/o Railway Quarter No. 620 B Smith
Road, Civil Lines,
Allahabad.

...Applicant.

(By Advocate:-Shri V.K.Goel)

Versus

1.Union of India through the Secretary Govt.
of India, Ministry of Finance, Department
of Revenue, New Delhi.

2.The Secretary (Administration-VII) Central
Board of Direct Taxes, New Delhi.

3.The Chief Commissioner of Income-tax, U.P.
Lucknow.

4.The Commissioner of Income-Tax, Allahabad.

5.The Deputy Commissioner of Income Tax,
Allahabad Range, Allahabad. "Respondents.

(By Advocate:- Shri Amit Bthalekar)

O R D E R

HON. MR. GOVINDAN, S. TAMPI, MEMBER-A

Reassignment of the seniority of the applicant in the
post of Stenographer-III w.e.f. 5-4-1982 and regularisation
in that post from the said date alongwith consequential
benefits are the reliefs sought for in this O.A.

2. Heard Shri V.K.Goel, learned counsel for the applicant
and Shri Amit Bthalekar, learned counsel for the respondents.

3. Smt. Vimlesh Chhibber the applicant responded to the advertisement dated 23-7-1982 published in Northern India Patrika for appointment to the post of Stenographer in the pay scale of Rs. 330-560 (now revised scale Rs. 1200-2040), issued by the Commissioner of Income-Tax, respondents in the ^{CAS} ~~case~~ appeared for both the written test and the interview, ^{was} ~~were~~ selected and was appointed on 27-3-1982 to the said post on Adhoc basis. She worked in the post for five years but was not regularised. Hence, she, ^{along with her} some of our colleague, apprehended the termination of their services on the basis of Central Board of Direct Taxes (CBDT) order NO. A-12034/84-85-AW, VII dated 17-4-1985 approached the Tribunal in various O.As, which were disposed of on 23-9-1991 with a direction to the respondents to give one more opportunity for all those who appeared in the examination conducted by Staff Selection Commission (SSC) for regularisation and then regularise their services from the date they entered the service in which they have gained sufficient experience. The respondents did not conduct any examination for regularise the services but in between the applicant appeared for the Stenographer Grade III the examination conducted by SSC on 7-2-1988 and 3-7-1988 and ^{was} ~~she~~ successful in the same. She was appointed on 5-12-1989 in the Office of the Commissioner of Income-Tax. Thus on 8-1-1990 when she joined the ^{same} Office on the basis of the Staff Selection Commission examination of 1988 she had already put in 8 years of service and had reached the basic salary of Rs. 1380/- but she was fixed at Rs- 1200/-. The representation against the reduction in pay was rejected by the Deputy Commissioner of Income Tax on 11-2-1991, which decision was endorsed by the Commissioner and the Chief Commissioner as well. This was inspite of the earlier order of the Tribunal on 23-9-1991 directing the regularisation of service of the

successful candidates from their original date of appointment. In between the CSDT had issued surplus on 29-4-1991 and 8-8-1991, communicated by letter dated 6-4-1993 directing that the services of the Ad-hoc Stenographers Grade-III who had since then pass the SSC we regularised only from the date of their passing the examination and not from their earlier date. After repeated representation her salary was re-fixed at Rs- 1380/- which she was drawing earlier but no order was passed for the regularisation of services from the date of original appointment as directed by the Tribunal. In between the Department had entered into internal correspondings as to fixation of her seniority. The applicant also filed ² another representations reiterating her claim by specifically pointing out that the Department had not filed any appeal against the order of the Tribunal's Judgment Dated 23-9-1991 in D.A NO. 250/86 at that the order has become final.

4. In the Income Tax Department Stenographers are permitted to appear to the post of UDC/Inspector. The applicant accordingly passed the test for UDC in June-July 1991 and Inspector in 1993 hence she was accordingly placed on the promotion list. She was also awarded two additional increments on 15-4-1994 and she has thus become eligible for promotion ^{as} hence inspector.

5. In the seniority list of Stenographers Grade-III published on 1-9-1984 her name ^{being an Ad-hoc Stenographer} was at Sl. No. 119, while two others Ram Rriti and Smt. Padma Rani were shown at Sl. No. 99 and 100, being regular appointees. However, as the applicant's services had been regularised on the basis of SSC Examination she should have got to regularisation from 5-4-1982 with placement above the two individuals.

The subsequent list issued on 28-4-1994 showing the position as that on 31-1-1994 the applicant's name had been excluded for no fault of her's. The applicant's representation dated 9-6-1994 for rectifying her seniority position and ^{inclusion in} including the list of 28-4-1994 did not evoke any response. On 30-10-1995 orders have been issued by Chief Commissioner Income Tax, Lucknow granting promotion to Ram Priti and Smt Padma Rani to the Grade of Stenographer II above the claims of the applicant .

6. Grounds raised in this O.A are as below:-

- (i) the Applicant's having ^{been} working continuously from 5-4-1982 and ^{her} ~~has~~ services having been since regularised is entitled to the benefit of fixation from 5-4-1982.
- (ii) Tribunal's order dated 23-9-1991 in O.A 250/86 ^{has} ~~hence~~ directed grant of regularisation to go to succeed in the examination from the date of his original appointment.
- (iii) Central Board of Direct Tax ^{order} ~~surplus~~ dated 29-4-1991 and 8-8-1991, communicated on 6-4-1993 were contrary to Tribunal's directions.
- (iv) Exclusion of her name in the seniority list dated 28-4-1994 was incorrect.
- (v) She was entitled for placement above Padma Rani Ram Priti on account of her continued service from 5-4-1982.
- (vi) She is also entitled to the benefit of promotion to Stenographer Grade II above the Ram Priti and Padma Rani.

7. In the reply on behalf of respondents it is pointed out that the applicant has no case at all in law. According to them the seniority list dated 28-4-1994 as well as order dated 1-7-1993 regularising the applicant's services from 22-1-1990 was absolutely legal. The preliminary objection is also raised that the application is hit by limitation. Applicant's original appointment on 23-7-1982 was purely on ad-hoc basis and the position change only on 3-1-1990 when she cleared SSC and joined. While the Tribunal's order 23-9-1991 was a matter of recall the fact was that the applicant who cleared SSC examination was originally allotted to Telecom Department and not to Income Tax and only subsequently she came over to the Income Tax Department on her request. Therefore, the applicant cannot claim the benefit granted to the other petitioners in O.A 250/86. The benefits of the such judgments only can be given to those who appeared in the special examination conducted by the SSC and not to those like ^{to} the applicant who have cleared SSC regular examination. Respondents also state that the applicant cannot have any genuine grievance as her pay has been protected taking into consideration her service from 1982 and nothing more remains to be done since her services as Stenographer Grade can be counted only from 8-1-1990. She would be entitled for the benefits only from the said date and all ^{her} have averments to the contrary cannot be accepted. She would get her rightful dues in turn keeping in mind her seniority after her regularisation as a Stenographer in 1990 and not earlier. She ^{was} ~~has~~ improperly and incorrectly seeking the benefit of the decision of the Tribunal in O.A NO. 250/86 and the same cannot be given.

8. During the oral submissions both Shri Goel and Shri Sthalekar reiterated their respective pleadings.

Shri Goel also refers to the applicant's rejoinder wherein it has been brought out that two persons namely Shri Dinesh Kumar and Shankar Lal similarly placed as the applicant and who passed the qualifying examination in 1994 were given the benefit of regularisation of his services from 1979 and 1982 respectively, the date of their first appointment.

9. Shri Sthalekar stated that the applicant's case is not admissible as she was not recruited to Income Tax Department but came over from Telecom and therefore, the decision of the Hon'ble Supreme Court in the case of Puranjeet Singh Union Territory of Chandigarh and others (1994 Supp(3) Supreme Court Cases 471 would apply.

10- We have carefully considered the matter.

11. ^{Here the} ~~Although~~ applicant, who had joined the respondent's organisation in 1982 as Stenographer Grade III on adhoc capacity, and ~~became a regular stenographer~~ in 1990 following her selection by Stenographer Examination conducted by SSC, 1988, ^{reports} ~~is~~ that keeping in mind her continuous and unbroken spell of service, her service as stenographer should be treated from 1982 the original date of appointment. On the other hand, the respondents state that the applicant's case cannot be considered as she was appointed in Income tax department only in 1990 and following her selection she was posted to Income tax department not in the beginning but only after her appointment ^{to Telecom} ~~in the SSC~~. On examination of the ^{matter} ~~case~~ we are totally convinced that the applicant has a case. It is seen that the applicant had earlier approached Tribunal alongwith a few others in O.A 250/86 which was disposed of on 23-9-1991 with the following observations:-

"They may even after appearing in the test failed, may be given one more opportunity to appear in the examination to be conducted by the Staff Selection commission, after relaxing the age, in case they have become over-age and in case they pass in the examination, they may be regularised with effect from the date they entered the service in which they have also gained sufficient experience."

12. The directions to the Tribunal are therefore, specific it is not brought out by the respondents in any manner that the order of the Tribunal has been set aside, stayed or modified. The said order therefore, would have to be honoured. While it is true that the CSDT has issued letter ^{in order} ~~surplus~~ dated 21-4-1991 and 8-9-1991 holding that adhoc stenographer Grade III who had appeared and qualified in SSC examination will have the benefits of regularisation only from the date of qualifying the examination and not from the original date of appointment. These ^{in order} ~~surplus~~ which are communicated on 6-4-1993 cannot ^{over-ride} ~~override~~ the direction of the Tribunal in O.A 250/86. If the Income Tax Department felt uncomfortable with the order of the Tribunal they should have filed a SLP and got the same ^{altered. They had not done so.} ~~It~~ therefore, follows that the applicant who has been working continuously for a period of 8 years as stenographer Grade III ~~and got~~ and became successful in the SSC Examination of 1988 should get the benefit of regularisation from the date of her original appointment. The Tribunal's order of 23-9-1991 can be interpreted only in this manner. The applicant is correctly entitled for the benefit. The decision of the Hon'ble Supreme Court in Puranjit Singh's case (SUPRA) relied upon by the learned counsel for the applicant does not come to be assistance as the circumstances are different. In that case the concerned applicant who had worked as ~~necessary~~ ^{an} ~~an~~ ^{Asst} Engineer ^{Irrigation} Department of Punjab Government opted in January

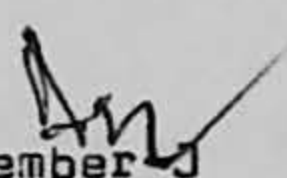
1969 to join the PWD, thereafter he became a direct recruited in the subsequent organisation on 18-8-1972 hence his service as Assistant Engineer in the Irrigation Department or PWD prior to 18-8-1972 was wiped out. The position here is different. The applicant had joined as an adhoc stenographer Grade III in Income Tax Department in 1982 and continued to work in the same organisation. Though on her successful completion of the SSC she was allotted to Telecom organisation she had not joined there and got appointment herself to income tax department itself. Her service was, therefore, continuous and unbroken with Income tax department from her original date of appointment as an adhoc stenographer Grade III till her subsequent selection through SSC. That being the case her period of service of 8 years with the Income Tax Department from 18-2-1990 before a posting on passing the SSC examination cannot be considered hence a stop gap arrangement and therefore she should get the benefit decision of the Hon'ble Apex Court in the case of Narendra Chadda Versus Union of India and others

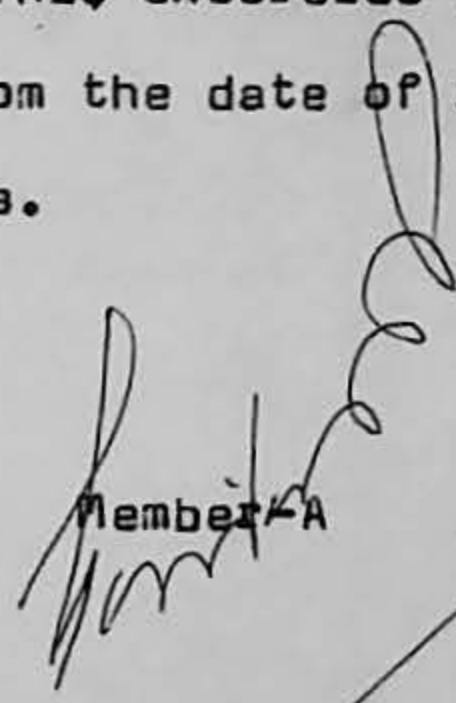
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It is found that her original appointment as an adhoc stenographer is also on the basis of proper selection procedure adopted by the Department, with the written test and interview he should be treated as regular appointment, thereby granting the applicant's benefit as per the decision of the Supreme Court in the case of Rudra Kumar Sain Versus Union of India (September, 2000)

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Thus on the basis of the Tribunal's order on 23-9-1991, supported by the decisions of the Hon'ble Supreme Court in the Case of Narendra Chhada and Rudra Kumar Sain, referred above the applicant is correctly entitled to the benefit of regularisation of her services from the date of her first appointment. The fact that in the case of two others

namely Dinesh Kumar and Shankar Lal who were permitted to take the qualified examination 1994 and regularised from 1979 and 1982 by order dated 16-7-1990 also support the case of the applicant. Denial of this regularisation could be denial of total justice to the applicant and disobedience to the Tribunal's order dated 23-9-1991 this cannot be countenanced.

13. In the above matter the O.A is, succeeds and is accordingly allowed. The respondents are directed to grant the benefit of regularisation as stenographer Grade II to the applicant from her initial date of appointment that 27-3-1982 with all consequential benefits including revised the placement in the seniority list and consideration for promotion on that basis. This exercise shall be completed within two months from the date of receipt of a copy of this order. No costs.


Member J


Member A

Madhu/