

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1292/03 .

Date of Decision 02/01/06

A.P. Dubey

Applicant(s)

Sri S. Narain

Counsel for the
Applicant(s)

V E R S U S

Union of India & ors. Respondents(s)

Sri Anil Sthalekar


Counsel for the
Respondents(s)

CORAM :

Hon'ble Mr. D.R. Tiwari Member (A)

Hon'ble Mr. K.B.S. Rajan Member (J)

1. Whether Reporters of local News Papers may be allowed to seen the Judgment?
2. To be referred to the Reporters or not? ✓
3. Whether their Lordship wish to see the fair copy of the judgment.
4. Whether to be circulated to all the Benches.


SIGNATURE

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO.1292 OF 2003.

Dated: Allahabad this the 2nd day of January, 2006.

Hon'ble Mr. D.R. Tiwari, Member-A
Hon'ble Mr. K.B.S. Rajan, Member-J

Anand Prakash Dubey, S/o Late Shiv Narain Dubey,
Permanent Residence of Village Kishunpur,
Post Janari, Distt: Ballia.
Presently, residence of, C/o Sri Lallan Jaiswal,
17A/17B, Circular Road, Allahabad,
and working on the post of Stenographer Grade 'D'
at Central Administrative Tribunal,
Allahabad.

.....Applicant.

By Adv: Sri S. Narain.

V E R S U S

1. The Union of India through Secretary,
Ministry of Personnel, Grievances and Pension,
Government of India,
NEW DELHI.
2. The Director,
Department of Personnel and Training,
NEW DELHI.
3. The Chairman, Central Administrative Tribunal,
Principal Bench,
Faridkot House, Copernicus Marg,
NEW DELHI.

.....Respondents.

By Adv: Sri A. Sthalekar



O R D E R**BY K.B.S. RAJAN, MEMBER-J**

"..... The doctrine of equality before law and equal protection of laws and equality of opportunity in the matter of employment and promotion enshrined in Articles 14 and 16 of the Constitution which is intended to advance justice by avoiding discrimination is attracted only when equals are treated as unequals or where unequals are treated as equals. (See Md. Usman v. State of Andhra Pradesh (1971) 2 SCC 188.)"

-Apex Court in Ramesh Prasad Singh v. State of Bihar, (1978) 1 SCC 37

2. In the instant case, as the applicant contends that by his not being regularized as a stenographer along with others some of whom had, in fact, joined later than the applicant, there is an encroachment on the Fundamental Rights enshrined in Art. 14 and 16 of the Constitution, it is to be seen whether equals were treated as unequal or unequals treated as equals.

3. A few facts must be narrated and the anatomy of the case projected at this stage so that a hang of the controversy may be got and its just resolution sought.

4. The entry of the applicant in the Central Administrative Tribunal, Allahabad Bench was in 1996, as a Lower Division Clerk in the scale of pay of Rs. 950 - 1500, for a period of 89 days, vide appointment order dated 24-01-1996. Courtesy, recommendations of the Staff Inspection Unit, there

was a reduction in the strength of LDCs, and the axe fell upon the applicant, whose appointment was abortively terminated vide order dated 29-02-1996. This cessation acted as a blessing in disguise to the applicant, as the C.A.T. taking into account his knowledge in stenography accommodated him, without any break, as a stenographer Grade 'D' w.e.f. 01-03-1996 on ad hoc basis, in the scale of Rs 1200 - 2040 and here again, for a period of 89 days. Unlike the earlier appointment of LDC, this appointment was extended periodically, without any break, of course with the rider fastened to it that the appointment is till further orders and subject to the approval of the Department of Personnel and Training, the administrative Ministry. While till 25-12-1997 the applicant was allowed to function as stenographer Grade D, he was w.e.f. 26-12-1997, appointed as a regular L.D.C. in the scale of Rs 3,050 - 4,590/-. This regular appointment again became ephemeral, as on the reversion of one UDC to the post of LDC, the applicant who was the latest in the list of LDC was to be knocked out, and once again, the applicant was back as an ad hoc stenographer Grade 'D' without any break in the service, w.e.f. 24-2-1998. From then, the applicant has been functioning in the same capacity of ad hoc stenographer in the prescribed pay scale, earning regularly the annual increments attached to the prescribed pay scale.

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5. To compress the long story without crippling the foundational facts, sometimes in 2001, the applicant could spot a draft seniority list of stenographer Grade 'D', whose ad hoc appointments in the said post were posterior to the date of applicant's appointment (both as of 1996 or even as of 26-12-1997 when after a short spell of regular LDC, he was afforded the ad hoc post of stenographer Gr. 'D'). The seniority list is combined one in respect of all the Benches of the C.A.T. The applicant penned a comprehensive representation dated 01-10-2001 before the Vice Chariman, C.A.T. Allahabad Bench, requesting for parity in matter of employment at par with his juniors. Regularization had been made even in respect of those whose appointments were as late as in late 98 and early 99, i.e. those who were junior by more than a year to the applicant were all regularized, to the exclusion of the applicant. The Principal Registrar, by order dated 15-01-2002 appointed the applicant on regular basis, after the ratification by the Hon'ble Chairman of the DPC recommendations, w.e.f. 14-01-2002. The applicant had, as a sequel to his earlier representation dated 01-10-2001, preferred another representation dated 23-07-2002, to the Principal Bench for antedating of his regular appointment w.e.f. 29-02-1996, the day when he was appointed as ad hoc Stenographer Grade 'D'. In the said representation, it was averred that the applicant's

services were without break and that he was given annual increment regularly in the grade of stenographer right from his initial appointment as stenographer Grade 'D' in 1996. It was in response to the same that the Principal Bench had communicated the rejection by the Hon'ble Chairman of the representation holding that the regular appointment of the applicant w.e.f. 14-01-2002 had been rightly made. The applicant has, therefore, filed this OA on various grounds, including one of hostile discrimination.

6. The respondents have contested the OA. Their contention has been that the Recruitment Rules provide for 90% of the posts to be filled by Direct Recruitment through SSC and 10% by Limited Departmental Competitive Examination and according to the counter, "the petitioner was neither appointed by the recruitment process as envisaged for direct recruitment through S.S.C. nor was he eligible for appointment under 10% Limited Departmental Examination to be conducted by C.A.T. and subjected to that process." As he did not possess adequate skill in stenography, an intimation was sent on 11-04-2000 to Hon'ble Chairman, C.A.T. Principal Bench, New Delhi of his lack of adequate knowledge in stenography and he was not recommended for regularization. His appointment as ad hoc steno having expired on 30-09-2001 for further

extension, the Department of personnel and Training was contacted which had approved the further extension vide letter dated 16-10-2001 and thus the applicant was under 'observation'. As to the regularization of even those ad hoc stenographers who had been appointed subsequent to the applicant's appointment, the respondents have stated that the same is as a matter of record.

7. Arguments were heard and documents perused. At the very outset, it is observed that the applicant has impleaded the Hon'ble Chairman, C.A.T. as one of the respondents. Since, the counter has been filed by the Registrar of this bench, the name of the said respondent No. 3 has been amended to read as the Registrar, Central Administrative Tribunal, Allahabad, as no order can be passed against the Hon'ble Chairman. Now on facts. There has been no dispute about the various dates as given in the OA in respect of the applicant's initial appointment as LDC, followed by ad hoc appointment w.e.f. 29-12-96 as Steno Grade 'D', his regular appointment as LDC and his later appointment w.e.f. 24-02-1998 as ad hoc steno Grade 'D'. Like the applicant's ad hoc appointment, many others were appointed and in the draft seniority list prepared by the Respondents in the year 2000, the earliest appointee is of 1989 (Serial No. 2 of Annexure 14) while the latest is of 25-02-1999, the last in the list. The initial date

of appointment of the applicant as steno grade 'D' ~~29-02-1996~~. It is essential to mention at this juncture the averment of the applicant in respect of dates of appointment as ad hoc stenographers as found in the list to give a comparison vis-à-vis his date of appointment and the response of the respondent thereto, to surface out and highlight the hostile discrimination meted to him. The same is as under: -

(a) Averment of the applicant:

"It is apparent from the aforesaid gradation list that candidates figuring at Serial Nos. 19, 20 and 21, namely, Sri Sunil Kumar Sharma, Ms. Jyoti Jain and Ms. Rachna, had entered service as Stenographer, Grade 'D' at Principal Bench of C.A.T., New Delhi, on ad-hoc basis, on 13.05.97, 11.02.98 and 18.05.98, respectively, but had subsequently been absorbed/regularized on 11.2.99. Likewise, the candidates figuring at serial Nos. 25 and 26 of the aforesaid gradation list, namely, Sri Rajiv Kumar Mishra and Ms. Uma Gautam, had entered service as Stenographer Grade 'D' at Jabalpur and Principal Bench of C.A.T. on 5.10.98 and 25.02.99, respectively and had subsequently been absorbed/regularized on 31.01.2000.


(b) Response of the Respondent to the above averment:

"That the facts stated in para 4 (12) of the petition need no reply being matter of record."

8. The above would go to show that the applicant has been singled out from being considered for regularization at the relevant point of time.

9. Now, let us have the reasons afforded in regard to the non consideration of the applicant's case for regularization:

(a) Vide Para 2 of the CA the respondents have given a table containing the modes of appointment to the post of Stenographer and stated that the applicant was not eligible to be appointed either under Direct Recruitment quota or under the quota meant for Limited Departmental Competitive Examination. If these are the two modes, then the seniority list of stenographers which in the appellation reflects, "Stenographer Gr. 'D' on All India Basis appointed/ **absorbed/regularized/promoted**" would become totally illegal as it contains other modes of recruitment also. If there be any justification to have the absorbed and regularized stenographers as per the list intact as having been duly appointed to the post, there is no good ground to contend that the applicant was not appointed to the post according to the Rules.

 (b) The respondents have also stated vide para 15 if the counter, "He could not be regularized on or earlier occasion on the

ground that he did not possess sufficient/adequate knowledge of Stenography nor did he possess the required speed in transcription with required accuracy as observed by the then Hon'ble Vice Chairman of Allahabad Bench in his letter dated 11-04-2000 and as such he was not recommended for regularization. This reply is far from satisfactory. The question is non regularization at par with other stenographers Gr. 'D' appointed prior as well as posterior to the date of appointment of the applicant and non reflection of the name of the applicant in the seniority **list as on 31-03-2000** and reply is that he was not recommended vide **letter dated 11-04-2000 - Means are leisurely searched to justify the end!**

10. The failure on the part of the respondents in not giving equal treatment to the applicant at par with others would result, as per their own words vide para 22 of the reply that the case of the applicant for "promotion to the next higher grade would be considered along with others on Centralized basis only after he completes five years of regular service in the grade of Steno Gr. 'D' and on availability of vacancy as per the Rules." This would mean that the applicant would figure in the seniority list at a much lower position than those

whose ad hoc appointment was posterior to that of the applicant and he would be considered after five years from 2002 for promotion to the next post subject to availability of vacancies. The loss that would telescopically would accrue to the applicant needs no special emphasis.

11. In service, seniority plays a major role. Be it for regularization of ad hoc employees or others, as stated by the Apex Court in the case of **Bal Kishan v. Delhi Admn., 1989 Supp (2) SCC 351, at page 355, " In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution."**


12. It is not denied that the applicant had been regularly functioning right from 1996 and he had been given the annual increment in the grade of Steno Grade 'D' right from 1996. Nor has there been any denial to the averment of the applicant that the respondents have afforded regularization even to those who were inducted as ad hoc stenographers after the induction of the applicant in that grade. Since the seniority list as on 31st March, 2000 contains the names of even those whose date of ad

hoc appointment is posterior to that of the applicant and since the applicant has not been considered for regularization at the time of consideration of others for regularization, **the applicant, who stands in equal footing as others as ad hoc appointee has been treated unequally. Also it is not the case of the respondents that the applicant is unequal to others who have been considered for regularization and whose services have been regularized.** Here exactly, the law laid down by the Apex Court in the case of (See *Md. Usman v. State of Andhra Pradesh* (1971) 2 SCC 188.) referred to in para 1 above springs into play. The rejection of applicant's request for regularization at par with others for regularization on the basis of length of service as ad hoc stenographer is thoroughly illegal and unjust, as the same hits the Fundamental Right of the applicant enshrined under Art. 14 read with Art. 16 of the Constitution of India.

13. In the end, the OA. succeeds. The order dated 24-09-2002 is hereby quashed and set aside. It is declared that the applicant is entitled to be considered for regularization with effect from ~~21-12-1996~~ ⁰²⁻¹⁹⁹⁶ in the grade of Stenographer Grade 'D' and his seniority shall be above those who have been appointed as ad hoc stenographer Grade 'D' in the C.A.T., after the date of joining of the applicant

29-02-1986
 i.e. 29-02-96(AN) Consequently, the applicant is also entitled to be considered for promotion to the higher grade on completion of requisite years of service in the grade of Stenographer Gr. 'D' from the day the junior to the applicant had been considered and in case the applicant is found fit he should be promoted accordingly and seniority in the next higher Grade should also be fixed accordingly. It is made clear that in case of promotion to the higher post, the applicant would be entitled to notional fixation of pay and notional seniority in the higher post and his actual pay in the higher post shall be only from the date he assumes the higher responsibility. The respondents may complete the exercise of considering the case of the applicant for regularization in the grade of Stenographer Gr. 'D' as stated above, within a period of three months from the date of communication of this order and within four months thereafter, they may consider the case of the applicant for promotion to the higher grade.

14. No cost.


 Member (J)


 Member (A)

/pc/