

Central Administrative Tribunal
Allahabad Bench, Allahabad

R.A.No.22/2003
M.A. No.1291/2003
IN
OA No.1193/1995

This the 30th day of June, 2003

HON'BLE SHRI GOVINDAN S.TAMPI, MEMBER (A)
HON'BLE SHRI A.K. BHATNAGAR, MEMBER (J)

Union of India and OthersReview Applicants
Versus

Smt. Vimlesh ChhibberRespondent

O R D E R (in circulation)

MA 1291/2003

MA-1291/2003 has been filed by the review applicants (original respondents), seeking condonation of delay in filing the Review Application. The same is allowed in the interest of justice.

RA 22/2003

RA-22/2003 has been filed by the review applicants (original respondents in OA 1193/1995), seeking the recall and review of the Tribunal's order dated 11.12.2002 in OA 1193/1995.

2. The OA filed by Smt. Vimlesh Chhibber seeking regularisation of her service as Stenographer from the date of her initial appointment was disposed of with the following directions:-

"10. We have carefully considered the matter.

11. Here the applicant, who had joined the respondents' organisation in 1982 as Stenographer Grade III on adhoc capacity, and became a regular Stenographer in 1990 following has selection by Stenographer Examination conducted by SSC, 1988, requests 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. On examination of the issue 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, staying or modified. The said order therefore, would have to behonours. While it is true that the CBDT has issued letters/circulars 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 circulars which are communicated on 6-4-1993 cannot over-ride 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 became successful in the SSC Examination on 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 Puranjait Singh's case (supra) relied upon by the learned counsel for the applicant does not come to the assistance as the circumstances are different. In that case the concerned applicant who had worked as an Assistant Engineer in 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 their

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 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 as 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.

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 of decision of the Supreme Court in the case of Rudra Kumar Sain Versus Union of India.

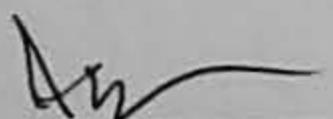
Thus on the basis of the Tribunal's order on 23-9-1991, supported by the decisions of the Hon'ble Supreme Court in the Case of Narendra Chhada and Rudra Kumar Sain, referred above the applicant is correctly entitled to the benefit of regularisation of her services from the date of her first appointment. 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 dis-obedience to the Tribunal's order dated 23-9-1991 this cannot be countenanced.

13. In the above matter the O.A. 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."

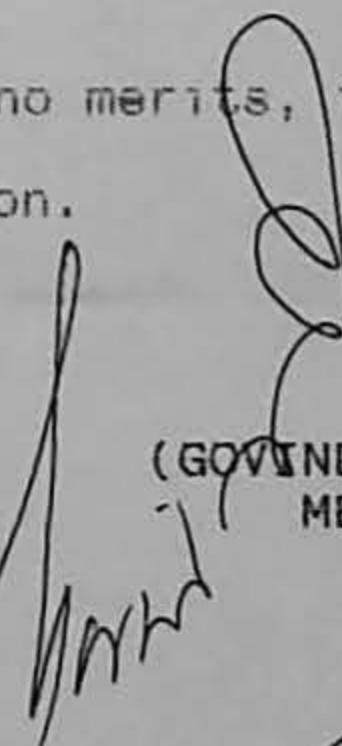
3. The review applicants now state that on the same issue, there was a decision of the Full Bench of the Tribunal dated 24.8.1999 issued while disposing of T.A. 4/1993 (OA 617/1988). The review applicants (original respondents) point out that this decision has been suppressed by the original applicant and favourable

decision has been obtained by the applicant in the OA. Interestingly the order of the Full Bench of the Tribunal, referred to above, itself relates to Income Tax Department, who were arrayed as a respondents in that OA itself and no attempt has been made by the respondents (present review applicants) to bring to the same to the notice of the Court. The fact, however, is that the present decision is based on the findings of the Supreme Court in the case of Narender Chadha Vs. Union of India (AIR 1986 SC 638) and Rudra Kumar Sain and Others, etc. Vs. Union of India and Others (2000 (2) SCLJ 168), the citation of which have not been mentioned in the order passed in OA. As the said decision of the Tribunal is based on the basis of the last decision of the Supreme Court issued in 2000, in Rudra Kumar Sain's case, much after the decision of the Full Bench of the Tribunal, the same holds the field. We do not, therefore, feel that any error has crept in our order, warranting review. RA, therefore falls out side the scope of review in terms of Section 22(3)(f) of the Administrative Tribunals Act, 1985 read with Order 47 of Civil Procedure Code. Decision of the Hon'ble Apex Court in the case of Avtar Singh Sekhon Vs. Union of India and Ors. AIR 1980 SC 2041 also fortifies our stand.

4. Review petition, having no merits, fails and is accordingly rejected in circulation.


(A.K. BHATNAGAR)
MEMBER (J)

/ravi/


(GOVINDAN S. TAMPI)
MEMBER (A)