

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. OA 272 of 96

Date of order : 21/6/02

Present : Hon'ble Mr.L.R.K.Prasad, Administrative Member

Hon'ble Ms.Meera Chibber, Judicial Member

MAHADEB PAL

VS

UNION OF INDIA & ORS.

For the applicant : Mr.Samir Ghosh, counsel

For the respondents: Ms.K.Banerjee, counsel

O R D E R

Meera Chibber, J.M.

This is the second round of litigation by the applicant by which he has sought a direction to the respondents to allow the applicant to sit for special examination for the purpose of regularisation to the post of Stenographer III (Grade D) after quashing the order dated 7.8.95 (Annexure A/6) and 9.2.96 (Annexure A/8).

2. The facts as narrated by the applicant are that he was appointed as LDC on 8.1.81 after he qualified in Clerks Grade Examination conducted by SSC. In July 1982 the respondents issued a circular for filling the post of Stenographer on ad-hoc basis from amongst the departmental candidates pursuant to which he applied and appeared for the test held on 7.8.82. After he passed the said test he was appointed as Stenographer vide order dated 21.9.82 on ad-hoc basis and thereafter he had been continuing on the said post without interruption. In the meantime vide order dated 14/19.1.88 he was confirmed as LDC u.s.f. 27.2.85. In 1987 a special qualifying exam was held by the SSC for regularisation in which applicant also appeared as he had been working on ad-hoc basis since 1982 as stenographer but the SSC refused to declare his result. Thus against non-regularisation and withholding of results the applicant filed OA 484/89 which was finally decided on 16.2.94 by directing the respondents to publish the result of the applicant and if

he is successful in the said examination he should be given the post of stenographer (Annexure 'A'). Pursuant to the directions given by the Tribunal SSC opened the result and communicated to the Director vide letter dated 18.4.94 that the applicant failed to qualify the test of stenographer. The applicant has relied on various letter dated 4.7.94 (Annexure A/3) written by his Dept. to the Ministry to regularise his services. Applicant's counsel has relied on a judgment given by Gauhati Bench which is taken on record.

3. The respondents have opposed the OA on the ground that he was appointed as stenographer purely on an ad-hoc and temporary basis for a limited period and it was specifically mentioned in the offer itself that no representation in the event of reversion to his original post of LDC will be entertained. They have stated as per Recruitment Rules the post of Stenographer can be filled only through Staff Selection Commission and the maximum age limit is 25 years while on the date when the applicant was promoted as Stenographer on ad-hoc basis he was already over-aged as his date of birth is 3.4.54 and he was already 28 years. However, on the directions of Tribunal his result was declared by SSC wherein it was intimated that applicant has not qualified for the post of Stenographer 'D'. They have thus stated that the applicant cannot claim regularisation by holding special examination as the intention behind holding special qualifying examination by SSC was to give chance to those persons who were engaged through Employment Exchange and did not have lien in any other post in Govt. organisations. The reasoning was that in case they had been thrown out they would be on roads without any means of livelihood. Therefore the applicant was not entitled even otherwise for special qualifying examination as he was already holding as regular post of LDC in the Dept.

4. They have further stated that they had taken up the matter with the authorities but since there was no justification in public interest the authorities did not agree to the proposals specially when he had already been given one chance and he could not qualify.



5. They have further explained that in view of interim orders passed by the Tribunal they have not reverted the applicant but he will be reverted after as suitable person is selected for Stenographer Gr. 'D' by the SSC and joins the post. Thus they have prayed that the OA may be dismissed.

6. The respondents' counsel has relied on number of Supreme Court judgments ~~to~~ in support of her arguments that as ad-hoc promotee has no right to get his services regularised by a method not in accordance with Recruitment Rules. The only method is to appear in the exams and compete with others.

7. We have heard both the sides and perused the pleadings also. We have seen the memorandum dated 20.9.82 (Annexure I to the reply) wherein it was specifically mentioned that it has been decided to fill the post by ad-hoc arrangements for a limited period and applicant was given the terms asking him to join the post if he was willing to accept the terms that it will only be ad-hoc and on peremptory basis and no representation would be entertained if he is to be reverted to his original post of LDC. This makes it abundantly clear that the promotion was purely a stop-gap arrangement and would not have ~~bestowed~~ bestowed any right on the applicant to claim regularisation.

8. The respondents have explained the reasoning as to why the applicant was not eligible to sit in specially qualified examination which is found to be valid. However, since the Tribunal had already directed the SSC to publish his result, the result was declared and it is seen that he could not qualify in the Stenographer's Grade. Thus he was given an opportunity to qualify for the said post but he could not qualify. Now he cannot claim it as a matter of right that he should be allowed to sit for special examination for the purpose of regularisation. The applicant has not shown us any special examination is being conducted for such category and definitely no direction can be given to the SSC to hold special examination in individual cases unless the Govt. decides to hold such special examinations again.

The Specially Qualified Examination was a one time measure which was availed by the applicant even though he was not held to be eligible but he could not qualify the same. Thus in our considered view applicant is not entitled to the relief as claimed by him in para 8(iii). As far as the note of DOPT is concerned it is self explanatory and is in accordance with the law laid down by Hon'ble Supreme Court. Therefore we don't find any justification to quash the same. In Hindustan Shipyard Ltd. & Ors. -vs- Dr.P.Sambasiva Rao reported in 1996(1) SCSCJ Hon'ble Supreme Court held as under where rules provide that regularisation be made by the selection committee -- requirement has to be followed --mere fact that no regular selection has been made after their appointment on ad-hoc basis doesn't mean that they are entitled to be regularised.

9. Similarly in Dr.Surinder Singh Janwal's case reported in 1996(1) SCSCJ 240 the Hon'ble Supreme Court held as under :



"(A) Ad hoc appointment -- regularisation -- appellants were recruited on ad-hoc basis and continuing as such for last 13 years -- No right accrues for regularisation as recruitment to the service should be made by the appropriate statutory rules by the PSC.

(B) Ad hoc appointment -- regularisation -- ad hoc appointments would be only temporary appointments de hors the rules, pending regular recruitment without conferring any right to regularisation of service."


In Dr.M.A.Haque's case reported in 1993 SCC 213 the Hon'ble Supreme Court observed as under : Of late we are finding that Courts are giving directions to the authorities to regularise the services without having any regard to the Recruitment Rules which amounts to back door entry. Rules are meant to be followed and not to be ignored.

10. In the light of the principles laid down by Hon'ble Supreme Court we find no illegality in the note of DOPT also as such the applicant is not entitled to any relief under para 8(11) as well.

11. We have seen the judgment given by Shillong Bench of Hon'ble High Court of Gauhati. A perusal of judgment shows that the directions to regularise the services of Smt Sibanta Mawlong were given on totally equitable grounds



It has laid down any principle of law. Therefore it cannot be taken as a binding judgment specially whe the issue has already been decided by Hon'ble Supreme Court. But since the applicant's counsel has informed us at bar that respondents have implemented the directions given by Shillong Bench and have already regularised the services of Smt. Siwanta Mawlong who was also similarly situated as applicant, we leave it to the respondents to consider that aspect of the matter and pass appropriate orders in accordance with law and intimate the applicant accordingly.

12. With the above ob-servations the OA is disposed of with no order as to costs.


21/6/02
MEMBER (A)

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21.6.02
MEMBER (A)