

DANO.526/86 and OA 567/86

Date of decision: 17.8.90

DA 526/86

RV Elsie & another

Applicants

Vs.

Union of India rep. by Secretary,
Ministry of Personnel & Trg.New Delhi
and two others

: Respondents.

Shri G Sivarajan & S Santoshkumar : Counsel of applicants

Mr NN Sugunapalan, SCGSC : Counsel of respondents

OA 567/86

Thankamma & 2 others

: Applicants

Union of India rep. by Secretary,
Ministry of Personnel & Trg.New Delhi
and 6 others.

: Respondents

Shri G Sivarajan & S Santoshkumar : Counsel of applicants

Mr NN Sugunapalan, SCGSC : Counsel of (R 1 to 3)

Mr MR Rajendran Nair : Counsel of (R 4 & 8)

CORAM

Hon'ble Shri NV Krishnan, Administrative Member

Hon'ble Shri N Dharmadan, Judicial Member

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- 1 Whether Reports of local papers may be allowed to see the judgment? ✓
- 2 To be referred to the Reporter or not? ✓
- 3 Whether their Lordships wish to see the fair copy of the judgment? ✗
- 4 To be circulated to all Benches of the Tribunal? ✓

JUDGMENT

Shri NV Krishnan, Administrative Member.

The applicants in both these cases were substantive Stenographers Ordinary Grade in the Income-tax Department under Respondent-3, the Commissioner of Income-tax, Cochin. They have challenged the Annexure V order dt.18.6.86 of the Commissioner of Income-tax, Cochin, by which they were reverted from the post of selection grade stenographers and re-appointed as Stenographers (Ordinary Grade). The applicants in OA 567/86 challenge, in addition, another order of the same date (Annex. VI) by which the respondents 4 to 9 were deemed to be appointed as Stenographers Selection Grade from 1.8.83 after the reversion of the applicants. The Annexure-V and Annexure-VI orders are based on the decisions taken in a Review D.P.C. meeting held in 1986. As the issue raised in these two cases are

the same, they have been heard together with the consent of the counsel and are being disposed of by this common order.

2. The basic controversy is the date on which appointments to the post of selection grade stenographers could be made. The applicants contend that the appointments could be made only from 1.8.83 when the posts were created and they alone could be appointed thereto being senior to the respondents. The respondents contend, on the basis of certain curculars that the appointments were to be made from 1.8.76 and on that date, ^u ~~and~~ ^{and} dates upto 1.8.87, they alone were eligible for appointment and not the applicants.

3. A brief history of the case is necessary to understand these contesting view-points. Unless otherwise stated, all references are to the papers in OA 567/86 in which case alone party respondents have been impleaded as respondents 4 to 9, party respondents, for short.

4. The orders of the Government of India relating to the introduction of selection grades in the Group 'C' and Group 'D' cadres as part of the implementation of the recommendations of the Third Pay Commission were issued by the Ministry of Finance, Department of Expenditure, in its Memorandum dated 10.1.77 (Annexure-I). The salient features of this Memo necessary for disposal of these applications are as follows:-

(a) The President sanctioned the introduction of selection grade in Group C. & D cadres with effect from 1.8.76, subject to certain conditions.

(b) The memo contains certain guidelines on issues such as the cadres which would qualify for introduction of

Selection Grade, the number of selection grade posts which could be created in a cadre and how the selection grade pay scale should be determined for each cadre, etc.

(c) The eligibility of persons for consideration to be appointed to the selection grade was that, subject to having a minimum service of 14 years, those employees only will be eligible who have rendered such length of service as would have brought them to the stage of 3/4th of the span of the revised scale of pay of the ordinary grade, inclusive of the service rendered in the pre-revised scale of pay. However, by a subsequent memorandum dated 24.10.78 (Annexure-R.I-A) it was clarified that an employee who has crossed 3/4th span of the revised scale of pay of the ordinary grade, will be eligible for grant of selection grade even if he did not have the minimum length of service of 14 years in that grade.

(d) In another memorandum dated 13.2.80 (Annexure-III) it is stated that the appointment to the Selection Grade made after 30th December, 1977, should be on the basis of seniority subject to rejection of unfit and not on the basis of merit-cum-seniority as was stated in the Annexure-I O.M.

(e) The Annexure-III also clarified that the eligibility for grant of selection grade will be determined with reference to the above criteria, irrespective of the position in the seniority list and it was stated that in certain circumstances, juniors may be eligible but not the seniors.

(f) The zone of consideration was limited to twice the number of vacancies expected to be filled in the year.

(g) Ministries were directed to refer their proposals about the time scale of pay proposed for selection grade to the Ministry of Finance, Deptt. of Expenditure, for sanction.

(h) Respondents 1-3 admit that in pursuance of these instructions, selection grade posts were created in the Department by the order dated 1/4-8.83 (Annexure-R.I-E in OA 526/86) which became effective from the date of issue of that sanction letter.

4. Admittedly, the applicants were appointed to the selection grade on various dates such as 4.10.83, 1.3.84, 12.9.84 and 4.2.85 until they were reverted to the ordinary grade, as stated in the order dated 18.6.86 (Annexure-V). The party respondents were then promoted by a separate order of the same date (Annexure-VI). The reasons assigned by the Commissioner of Income Tax, Cochin (Respondent-3) for the reversion of the applicants in the Annexure-V order ~~are~~ are as follows:-

"The above appointments were made from panels which were prepared considering only those who have completed 14 years of service in the Stenographer (Ordinary Grade) and without considering those who have crossed 3/4th of the span of the scale of pay in the Ordinary Grade. It has since been clarified by the Central Board of Direct Taxes that the appointments to the Stenographer (Selection Grade) is to be made also on the basis of crossing the 3/4th of the span of the scale of pay in the ordinary grade even if the officials have not completed 14 years of service in that grade. Accordingly a review DPC was held and a revised panel prepared. It is found that the above mentioned officials do not find a place in the said panel and hence they have to be brought down to the position which they would have held but for the erroneous appointments made to the Grade of Stenographer (Selection Grade). Accordingly I hereby re-appoint the following officials who are at present officiating as Stenographers (Selection Grade) to the post of Stenographers (Ordinary Grade.)"

It may be noted that the need for having the appointments reviewed by a Review DPC was not that the eligibility for appointment was to be determined as ^{on} 1.8.76 and not as on 1.8.83. That contention was made later and Annexure-VII-A

order dated 18.6.87 was passed by the 3rd respondent appointing the party respondents to selection grade from various dates before 1.8.83, the earliest of which is 1.8.76.

5. As the pleadings did not contain particulars either about the applicants or about the party respondents as to when they completed 14 years of service and/or as to when they had crossed 3/4th of the pay scale, we directed the respondents 1 to 3 to file a statement containing these details. That statement was filed by the respondents 1 to 3 on 24.10.89 in OA 526/86. The statement given below gives the relevant information about the ^{the party} applicants and/respondents.

	Name	Date of apptt. in Kerala Cir-charge	Date on which 14 years service completed	Date on which 3/4 of span of pay scale completed
	(1)	(2)	(3)	(4)
Applicants	1. RV Elsie	9.1.69	9.1.83	1.1.82
	2. T.Valsakumari	7.1.69	7.1.83	1.1.86
	3. K.Thankamma	21.11.68	21.11.82	1.11.83
	4. N.A.Malathi	2.12.68	2.12.82	1.12.81
	5. P.I. Jollykutty	2.12.68	2.12.82	1.12.81
Party Res-pondents	6. G.K. Nair	10.6.71	22.6.77	1.3.76
	7. K. Kurien	26.10.70	10.9.76	1.12.76
	8. S.M. Menon	8.11.71	10.9.76	1.8.78
	9. S.Swaminathan Pillai	9.4.73	1.6.77	1.10.78
	10. K.G. Pillai	13.4.71	9.9.79	1.9.79
	11. N.Muraleedharan	6.10.70	9.9.79	1.9.80

Remarks:

1. S.No.1&2 are applicants in OA 526/86 and 3 to 5 are applicants in OA 567/86
2. Applicants at 1 to 5 entered the service of Department on the same date as shown in Column.2.
3. S.Nos. 6 to 11 are respondents 4 to 9 in OA 567/86. They entered the Deptt. outside Kerala between 1962 and 1965 and came on transfer to the Kerala Charge on the dates given in Col.2. Hence, they have longer service but are juniors to the applicants.
4. For S.No.6 to 11 eligibility condition is satisfied on the basis of Col.4 only and not on the basis of length of service, as service in Kerala Charge ~~is~~ alone is to be counted.

6. It is clear from this statement that the ^{Party} Respondents had 14 years service, if service rendered before they joined the Kerala Charge is also included. What seems to have happened is that for the earlier DPC meetings the service rendered by the party respondents after joining Kerala Charge alone was taken into account which rendered them ineligible as, on this basis, they had less than 7 years service. In the review DPC meeting their names were considered ~~without~~ reference to the length of their service, as they had completed 3/4th of the span of the pay scale, and were eligible in terms of Annexure-R.1(A) letter dated 24.10.78 even if they had not completed 14 years service.
7. It is also clear from the statement that all the party respondents have crossed the 3/4th span of the pay scale earlier than the dates on which all the applicants crossed such span. That seems to be the reason why they were appointed by the Annexure-VI order after reverting the applicants by the Annexure-V Order.
8. As against this, the applicants contend that the appointments should have been made from 1.8.83 only because the selection grade posts were admittedly created only from that date. As on that date, all the applicants had also become eligible for consideration as they had crossed 3/4th of the span of the pay scale, in addition to party respondents. From the eligible candidates, appointments should have been made only on the seniority subject to the rejection of the unfavourable candidates who are senior to the party respondents, they were appointed after the earlier appointments in 1986 by the Review DPC and they should

reverted by the Annexure-V Order.

9. On the crucial question as to how the party respondents have been given (vide the Annexure-VII-A order) selection grade from dates prior to 1.8.83 (i.e., the date on which the posts were created), various submissions have been made by Shri P.V. Madhavan Nambiar, SCGSC, the then learned counsel for respondents 1 to 3. He filed a statement on 18.12.89. He admitted that, no doubt, the Ministry of Finance, Deptt. of Expenditure, sanctioned the posts of Stenographers in the selection grade in their letter F.No.A-11019/30/81-AD.VIII dated 1.8.83/4.8.83 (Exhibit R.I-E in OA 526/86), which clearly stated that the orders were effective from the date of their issue. It is absolutely clear from this memorandum that the posts were created w.e.f. 4.8.83 or at any rate, from 1.8.83 only.

10. Nevertheless, the justification for issuing the order at Annexure-VII-A giving the benefit of the selection grade from dates prior to 1.8.83 is stated as follows in the statement dt.18.12.89 filed by the S.C.G.S.C. in OA 526/86.

"As per Annexure-VI dated 18.6.86, the deemed appointment was made with effect from 1.8.1983. The Ministry of Finance, Department of Revenue vide letter F.No.A-12034/67/86-Ad.VII dated 11.5.1987 have clarified that the Selection Grade is to be created with effect from 1.8.1978 or its anniversary and that the fixation of pay of such eligible persons in Selection Grade should be made only from the date they become so eligible for appointment in selection grade. The arrears of pay is also admissible to persons so appointed in selection grade from the date of their such appointment. Accordingly a revised order C.No.2(7)/86-87 dated 18.6.87 was issued changing the date of effect of appointment as per their eligibility."

The respondents, specially respondents 4 & 8, also strongly rely on the OM dated 10.1.77 (Annexure-I), OM dated 13.2.80 (Annexure-III) and on the OM dated 4.10.85 (Ex.R.I-C) to explain the ante-dating of the appointments in Annexure-VII-A. We can consider these circulars in their chronological order.

11. Stress is laid on the fact that the Annexure-I order itself sanctions the selection grade from 1.8.76. This is true, but it only means that Govt. had agreed to introduce selection grade from 1.8.76. This by itself does not give any authority to give the benefit of selection grade to employees from 1.8.76 unless such posts are first created from that date. The Annexure-I circular mentions the preliminary work that has to be done before selection grade is introduced in any cadre by the creation of posts in that grade. We have referred to this briefly in para 4 supra. It can be seen therefrom that unless the posts are created from a particular date, the benefit of selection grade cannot be given ~~from~~ for more than one reason. Firstly, the date with reference to which the eligibility criterion should be reckoned (crossing 3/4th of the span of the pay scale) cannot be determined. This has necessarily to be determined with reference to the date on which the post is created or there is a vacancy. Secondly, subpara (IX) of para 1 of the same circular states that the zone of consideration for appointment will be limited to twice the number of vacancies expected to be filled in a year. Therefore, the number of vacancies existing should necessarily be known before the DPC is convened. The DPC can meet for the first time only if the posts stand created by a formal order. In the present case, this has been done only in 1983. Therefore, the respondents' plea that posts can be filled up from earlier dates on the strength of the Annexure-I memorandum is unacceptable.

12. Next, we can consider the Annexure-III memorandum dated 13.2.80. It contains certain clarifications to the Annexure-I letter. The respondents rely heavily on the

following sentence in this circular to contend that selection grade in the Income Tax Department was effective from 1.8.76:-

"Such eligibility will be determined initially on the date on which the selection grade is deemed to take effect, for example on 1.8.76 and every anniversary or on the date of DPC hereafter, eventhough the consideration of the DPC may be on a subsequent date or dates." (emphasis ours).

13. The respondents contend that this gives the necessary authority to make appointments from 1.8.76. We are not satisfied that respondents have interpreted this circular properly. This extract has to be read with the Annexure-I letter dated 10.1.77 introducing selection grade from 1.8.76. Each Department had to create posts of selection grade w.e.f. a date not earlier than 1.8.76 as may be approved by the Finance Ministry. Obviously, the posts would be created by orders issued after 10.1.77. The posts may be created with effect from the date the order is issued (as in the present case, i.e., R-I.E) or from a retrospective date. If the order was retrospective in effect, it should have to state that the posts are deemed to have been created from earlier dates e.g., from 1.8.76 or 1.8.77, etc. When the Annexure-III dated 13.2.80 refers to the deemed date from which selection grade takes effect, it refers to such deemed dates from which the selection grade posts stood created by the orders creating them with retrospective effect. If the interpretation of the respondents is correct - Viz. that in all circumstances, the selection grade posts should be deemed to have been created from 1.8.76 - the underlined portion of the extract of the order reproduced above should have merely read "deemed to take effect from 1.8.76". The underlined portion, therefore, means that eligibility for consideration should be reckoned only from the date on which the vacancy is avai-

lable either by creation or otherwise or on the date^{of} the DPC meeting, if it ^{is held on} ~~was~~ a later date. In the present case, the posts became available from 1.8.83 only.

14. The next letter on which respondents rely is Annexure-R1(C) dated 4.10.85. This was issued by the Central Board of Direct Taxes to the Chief Commissioner of Income Tax, Bombay City and states that the pay in the selection grade is to be fixed "as on 1.8.76 or the subsequent anniversary thereof even though the consideration of the DPC may be on a subsequent date or dates. However, arrears arising out of such fixation of pay will be payable ~~only~~ from the date of actual joining the post by the official." Respondents rely on this circular for the contention that the Annexure-VII.A order giving appointments to some party respondents from 1.8.76 is validly issued.

15. We are not satisfied with this explanation. Annexure-R-1(C) is a circular which only clarifies how the pay is to be fixed. It is not an authority for respondents 3 to make appointments from dates prior to 1.8.83 in his Annexure-VII A order dated 18.6.87, despite the fact that the posts were created from 1.8.83 only. This will be clear from a perusal of the letter dated 20.10.84 (Annexure-R-1-I in OA 526/86) of the Chief Commissioner of Income Tax, Bombay, to which it is a reply. Though the posts were actually created from 1.8.83 only, as the employees were making various demands for fixation of pay from 1.7.86, etc., two questions were raised in Annexure-R.1-I, viz. (i) whether pay should be notionally fixed from 1.8.76 or from the date of issue of the orders creating the posts from 4.8.83 and (ii) whether arrears would be paid from 1.8.76 or from the date the posts were

created. The reply, therefore, refers to pay fixation only. It is only necessary to add that this Annexure-R-1(C) letter has been considerably modified by the Annexure-VIII letter dated 11.5.87 which is being considered next.

16. The Deptt. of Revenue's letter dated 11.5.87 on which very strong reliance is placed is at Ann.VIII. After stating that the selection grade posts were created in the Income Tax Deptt. by the order dated 4.8.83 in pursuance of the Annexure-I order dated 10.1.77, the circular adds, "However, ~~that~~ the appointment in selection grade post so created should be made only from those persons who fulfil the eligibility criterion laid down in para 1(v) thereof (i.e., of the Annexure-I order dated 10.1.77) read with the Deptt. of Expenditure OM No.7921)-E.III(A)/74-Vol.II dated 24.10.78 and fixation of pay of such eligible persons in selection grade should be made only from the date they become so eligible for appointment in selection grade. The arrears of pay will be admissible to persons so appointed in selection grade from the date of their such appointment." (emphasis ours). There is no mention that the posts stand created from 1st August, 1976 and, therefore, appointment can be made from that date. Essentially, this is a circular regulating pay fixation and has nothing to do with the date on which the appointment has to be made.

17. The real meaning of this circular seems to be somewhat different. The appointment can be made in the first instance from the date on which the posts were created by the Annexure-R.1.E (OA 526/86), i.e., from 1.8.83. The employees should necessarily be eligible for such appointment as on 1.8.83, i.e., should have crossed the 3/4th span of pay scale on or before that

date. The circular seems to direct that, if such eligibility has been acquired before 1.8.83, the benefit of fixation of pay in the selection grade should be given from ^{Such} ~~that~~ earlier date, but the arrears as a result thereof are payable only from the date of appointment. Thus, both S.No.1 and S.No.6 ^{could} be considered for appointment from 1.8.83 when the vacancy arose. However, they had acquired the eligibility to be so appointed on 1.1.82 and 1.2.76 respectively, though the post was not available then. Therefore, if they are appointed, the formers' pay will be notionally fixed as on 1.1.82 and the latter's as on 1.2.76. On that basis ~~their~~ pay on 1.8.83 will be worked out which will be higher than what they were given earlier as pay. Hence, under these orders they will draw as arrears the difference between the pay fixed on 1.8.83 earlier and ^{as} ~~would~~ now be fixed on the above basis. The contention of the respondents as extracted in para 10 that the Annexure-VIII circular dated 11.5.87 authorised either the creation of posts as on 1.8.76 or the appointment to the selection grade as on 1.8.76 is ^{thus} ~~not~~ well founded.

18. Having seen the records of the cases, we are satisfied that the Respondents 1 to 3 had totally misunderstood the instructions as to how selection and appointment should be made to the post of selection grade Stenographers. The instructions in Annexure-III are clear that the selection of persons eligible to be appointed to selection grade is to be made on the basis of seniority subject to fitness.

This is made more explicit in the Annexure-A.1 OM dated 13.12.83 from the Central Board of Direct Taxes produced by respondents 4 & 8 in another context, i.e., to prove that the Board never said that 4.8.83 was a crucial date for considering eligibility, as alleged in Annexure-V. It clarifies as follows:-

/of selection
grade,

"according to the instructions in regard to grant/~~the~~ of the incumbents should have ~~xxxx~~ either crossed 3/4th of the span of ordinary grade or have worked for 14 years in the grade, is to be fulfilled. The position in this regard may further be clarified that all Stenographers (O.G.) who fulfil either of these eligibility conditions may be arranged in their inter-seniority and selection granted on the basis of seniority-cum-fitness."

19. As against this, in the review DPC held in June, 86, the respondents have not taken into account the seniority in service of the persons who have become eligible for consideration for appointment to the selection which can be seen in para 5. grade as on 1.8.83. Apparently, the respondents 3 reckoned inter se seniority from the date on which the applicants and the respondents first became eligible for consideration to be appointed as Selection Grade Stenographer, i.e., date on which date they crossed 3/4th of the span of the pay scale. This was a serious mistake. Obviously, all the applicants and the party respondents had become eligible as on 1.8.83 therefore for appointment. Their names should have been inter se arranged on the basis of their seniority, in which case the applicants alone could have been appointed as they were all senior to the party respondents who, admittedly joined in the Kerala Charge on bottom seniority basis.

20. As the respondents 1 to 3 strongly felt that there were other instructions/orders which justified the

Annexure-VIII-A order appointing respondents to the selection grade from dates prior to 1.8.83, we granted the respondents sufficient time to produce such evidence. No such evidence was produced till the cases were reserved for order. In fact, on the last date of hearing, Shri N. Sugunapalan, the SCGSC, submitted that certain officials from the Govt. of India who had come to Cochin in connection with these cases had confirmed that apart from the Annexure-R-1.E order dated 1/4-8.83 in OA 526/86, no other order of creation of selection grade post exists.

21. The party respondents except Respondents 5 and 7 have also filed reply affidavits. Respondent 7 has accepted the reply of Respondents 1 to 3. The replies filed ~~xxxx~~ cover more or less the same ground as those of Respondents 1 to 3 and hence do not need separate consideration.

22. However, it is necessary to refer to one grievance of Shri M.R. Rajendran Nair, the learned counsel for Respondents 4 and 8. He submitted that the Respondents 1 to 3 had all along taken the plea that the selection grade became effective from 1.8.78 and yet on the last two hearings, the learned SCGSC conceded that the posts were created from 1.8.83 only. He submitted that this admission, to say the least, was objectionable.

23. We have considered this matter. The respondents 1 to 3 were fair enough to concede that apart from the Annexure-R.1-E order dated 4.8.83, there is no order which creates the posts of selection grade from any earlier date. The posts were created only w.e.f. 1.8.83. Their claims that the effective date for granting selection grade is 1.8.78 is based only

Annexure-

on inferences flowing from Annexure-III, R1(E) and the Annexure-VIII memorandum. We have examined these circulars and held that their interpretation is not correct and that they had drawn wrong conclusions. Hence, we do not find that any impropriety has been committed either by the Respondents 1 to 3 or their counsel in submitting that apart from the Annexure-R1-E circular in OA 526/86, there is no order creating the posts from dates prior to 1.8.86.

24. After having examined in detail all aspects of the case, we are fully satisfied that the respondents 1 to 3 have totally misunderstood and misapplied the relevant instructions concerning the date on which the selection grade became effective and the manner in which the employees who satisfy the eligibility conditions should be selected for appointment. In the result, we allow these applications with the following orders, directions and observations:-

(i) Annexure V order dated 18.6.86 is quashed in so far as it cancels the appointments of the applicants as stenographer selection grade and reappoints them to the post of stenographer ordinary grade. The applicants are entitled to continue ^{uninterrupted} as stenographers selection grade from ^{the date of their initial appointment} ~~XXXXXX~~ and, therefore, they are reinstated to that post with effect from the date they were reverted as stenographer ordinary grade.

(ii) The Annexure-VI order dated 18.6.86 is quashed in so far as it appoints the party respondents to the post of Stenographer Selection Grade w.e.f. 1.8.83.

(iii) The Annexure-VII-A order dated 18.6.87 is also quashed in so far as it appoints the party respondents to the post of selection grade stenographers from dates earlier to 1.8.83.

(iv) We have not quashed the Annexures V, VI and VII-A orders in their entirety as persons who ^{are} not parties in these two cases will be affected. This may well create some anomalies, which the respondents ^{no doubt} 1 to 3 can set right by amending or cancelling those orders, after proper notice to the parties.

(v) The respondents 1 to 3 are directed to grant the applicants all the consequential benefits as a result of this order within a period of three months from the date of receipt of this judgment.

25. The applications are allowed with the above directions and there will be no order as to costs.

(N. Dharmadan)
Judicial Member

(N.V. Krishnan)
Administrative Member

17-8-90