

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 601/89 & 604/89
T. A. No.

DATE OF DECISION 30.10.1990

1. K. Thulasidharan - applicant in OA 604/89
2. T. Sathyabhama - Applicant (*) in OA 601/89

M/s T.K.M. Unnithan & P.G. Ganappan Advocate for the Applicant (s)
Versus

1. Director, VSSC, ISRO (P.O), Trivandrum-22 & 6 others - Respondent (s)
- Respondents in OA 601/89 and OA 604/89

Mr. P. Santhosh Kumar, ACGSC Advocate for the Respondent (s)
(for R.1 to 4)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman
and
The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? 11/03
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Mr. A.V. Haridasan, Judicial Member)

As the facts and question of law involved in both these applications are exactly similar, these two cases are being disposed of together. The applicant in OA 601/89 is the wife of the applicant in OA 604/89. They are working as Junior Stenographers in Vikram Sarabhai Space Centre, Trivandrum in the Indian Space Research Organisation (ISRO) under the Department of Space (DOS for short), Government of India. They ^{are} aggrieved by the fixation of their seniority in the cadre of Junior Stenographers below the Junior Stenographers in the Vikram Sarabhai Space Centre (VSSC for short) who joined as Junior Stenographers there after they

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had expressed their willingness to be ranked below the existing Junior Stenographers. The facts of the cases can be briefly stated as follows.

2. The applicant in DA 601/89 joined the Space Application Centre (SAC for short), Ahmedabad under the Indian Space Research Organisation on 6.5.1982. The applicant in DA 604/89 joined as Junior Stenographer in SAC, Ahmedabad on 18.3.1982. While they were working as Junior Stenographers in SAC, Ahmedabad, coming to know of an advertisement dated 27.6.1983 calling for candidates for recruitment to the cadre of Jr. Stenographers in VSSC, Trivandrum, they requested for transfer to the VSSC, Trivandrum as Junior Stenographers. In reply to their requests both of them received communication EST/ADM/4.20/83 dated 15.11.1983 from SAC, Ahmedabad, stating that their applications for transfer would be considered subject to two conditions. The conditions contained in these communication, (Annexure-F in both these applications) were:

- "(1) Your service in the grade of Junior Stenographer in this Centre will not be counted for the purpose of seniority in VSSC for promotion and confirmation.
- (2) You will be placed in the Junior most position among the existing Junior Stenographers in VSSC."

The applicants were asked to confirm whether the conditions were acceptable to them. On account of the pressing necessity of being nearer home and believing that the conditions were warranted by the rules, on 2.12.1983 they expressed their

willingness to abide by the conditions made in Annexure-F by their letters Annexure-G in both these applications. They believed that they would be transferred without delay and that they would rank junior only to the Junior Stenographers then in position. But the orders transferring the applicants to VSSC, Trivandrum from SAC, Ahmedabad ^{about five months later} were issued only on 25.4.1984. As on 2.12.1983 when the applicants expressed their willingness to accept seniority below the then existing Junior Stenographers in VSSC, Trivandrum, there were only thirty Junior Stenographers. ~~xxxx~~ and But after that date before the applicants were transferred to VSSC, Trivandrum by orders dated 25.4.1984, especially between 2.4.1984 and 14.4.1984 numerous Junior Stenographers were appointed in VSSC. But the applicants were under the impression that even if they were bound by the condition in Annexure-F, they would get seniority over Junior Stenographers who joined VSSC, Trivandrum after 15.11.1983. ^{So} both the applicants accepted the transfer and joined VSSC, Trivandrum. But when they received copies of the provisional seniority list of Junior Stenographers as on 1.1.1986 dated 21.1.1986, the applicants came to know that they were ranked junior to persons who joined as Junior Stenographers in VSSC between 9.2.1984 and 14.4.1984. The applicants submitted their objections to the provisional seniority list setting forth their claims of seniority with effect from the date on which each of them joined as stenographers in SAC, Ahmedabad.

The objection raised by the applicants in their representations were turned down by the Administrative Officer, VSSC in the order dated 25.9.1986, Annexure-M in both these applications. Both the applicants were told that since they had accepted the transfer on condition, that their services in SAC, Ahmedabad would not be counted for seniority in VSSC, Trivandrum, and that they would take seniority below the existing Junior Stenographers, the request made in their representations could not be acceded to. The applicants thereafter submitted representations to the Head Personnel and General Administration, VSSC which were also rejected. So they filed appeals to Director of VSSC. These appeals ^{also} were rejected by the Director and the decisions were communicated to the applicants by the Administrative Officer by memos dated 21/26th July, 1989, Annexure-P in both these applications. Basing on the seniority list thus finalised a panel was prepared for promotion to the post of Stenographers in the scale of pay Rs.1400-40-1800-EB-50-2300 dated 22.12.1989, Annexure-Q in both these applications. The rank of the applicants in this panel has gone down ~~rank~~ ^{below} ~~and below~~ all the Junior Stenographers who joined after the applicants expressed their willingness to accept the seniority below the then existing Junior Stenographers on 2.12.1983. The applicants contend that as per the seniority rules for the purpose of

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fixing seniority service rendered in identical cadre in similar units of ISRO have to be taken into account, and that the condition that the applicants' service in the SAC, Ahmedabad would not count for seniority in the VSSC was unconscionable and therefore, cannot be enforced. They have in the alternative contended that even if the condition is taken to be binding on them, they should be ranked juniors to Junior Stenographers who were existing on the date on which they expressed their willingness to be transferred to VSSC, Trivandrum accepting bottom seniority. So the applicant in OA 601/89 has claimed ~~xxxxxx~~ seniority ⁱⁿ Annexure-J ^{seniority} list, between rank 75 and 76 or in the alternative to be ranked between Nos.102 and 103 and the applicant in OA 604/89 has claimed seniority at rank no.76 in Annexure-J or in the alternative at Rank No.103.

3. The respondents 1 to 4 are Director, ISRO, Director, SAC, Chairman, ISRO, Bangalore and Union of India represented by the Secretary, Department of Space. The applicants have impleaded respondents 5 to 7 in a representative capacity representing the Junior Stenographers who joined the VSSC, Trivandrum between 2.12.1983 and the dates on which the applicants joined VSSC, Trivandrum on transfer from SAV, Ahmedabad. Permission for impleading in the representative capacity was granted and publication was effected in Kerala Kaumudhi. Though respondents 5 to 7 were served with notice, they remained absent.

4. Respondents 1 to 4 in their reply statement justified their placement of the applicants in the seniority positions assigned to them on the ground that in their letters, Annexure-G in both these applications, the applicants have agreed to accept the conditions that their services in SAC, Ahmedabad ^{would not count for seniority} and that they would rank junior to the existing Junior Stenographers in VSSC.

5. We have heard the arguments of the learned counsel on either side and have carefully gone through all the documents produced.

6. Annexure-B is a copy of the Office Memorandum dated 29.9.1981 of the Government of India, Department of Space regarding the norms for preparation of seniority list.

Clause 5 of this runs as follows:

"The service in identical grade in other Centres/Units of DOS/ISRO will be counted for seniority in the particular grade unless otherwise specifically stated. Service rendered in identical grades in other Central ~~Services~~ Government Departments/Government Organisations will not however be counted for seniority in DOS/ISRO."

Annexure-H in OA 601/89 is office order by which the applicant in that application was transferred from SAC, Ahmedabad to VSSC, Trivandrum. It reads as follows:

"Consequent on her transfer to Vikram Sarabhai Space Centre(VSSC), Trivandrum, Smt.T.Sathyabhama Jr.Stenographer Accounts/SAC (PR No.5440) who is at present on Earned Leave in continuation of Maternity Leave for a period upto 25.5.1984

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is hereby transferred and stands relieved of her duties from Space Applications Centre, Ahmedabad, with instructions to report for duty to Head, P&GA, VSSC, Trivandrum, on expiry of her leave.

She is eligible for TA/DA, Joining Time etc. as per rules."

Annexure-H in OA 604/89 dated 25.4.1984 is the order by which the applicant in that application was transferred from SAC, Ahmedabad to VSSC, Trivandrum. It reads as follows:

"Consequent on his transfer to Vikram Sarabhai Space Centre, Trivandrum, Shri K.Thulasidharan, Jr.Stenographer, CA/AO (PR No.5415) is hereby transferred to VSSC and stands relieved of his duties from Space Applications Centre, Ahmedabad with effect from the afternoon of April 25, 1984, with instructions to report for duty to Head, P & GA, VSSC, Trivandrum.

He is eligible for TA/DA, joining time etc. as per rules."

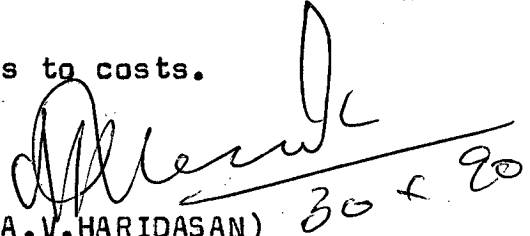
In both these orders the applicants concerned have not been specifically told that they would have to forgo their seniority. But in Annexure-F the applicants have been informed that they ^{would} have to forgo their seniority and that they would be placed as the junior most among the existing Jr. Stenographers in VSSC. It can be reasonably held that the applicants are bound by these conditions since they have accepted the conditions in Annexure-G. ~~xxx~~ The necessity for imposing the condition according to the respondents is to safe-guard the interest of the Jr. Stenographers serving in the VSSC because the seniority

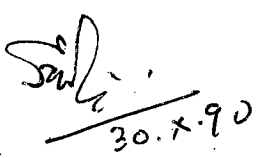
For promotion to the post of Senior Stenographers is unit-wise. The necessity to safe-guard the interest of the Jr. Stenographers who were already in service at the time when the applicants sought a transfer to the VSSC is genuine and justified. The condition in Annexure-F was that they would be placed in the junior most position among the existing Jr. Stenographers in VSSC. "Existing Stenographers in VSSC" can be taken to mean only the Stenographers who were already in ^{the} service of VSSC on the date of Annexure-F and not stenographers who were directly recruited thereafter. So the applicants in Annexure-G letter have expressed willingness to be placed in the junior most position among the stenographers who existed in VSSC on 2.12.1983 when they expressed their willingness. The Annexure-G cannot be taken to mean that they were prepared to be placed in the bottom most position ^{even} if numerous stenographers were inducted after they had expressed their willingness and even if their transfers were effected after such induction. As against the stenographers in existence in the VSSC on the date on which the applicants expressed their willingness before transfer, fairness demands keeping the seniority of those stenographers unaffected by the transfer of the applicants. But to delay the transfer of the applicants and to recruit numerous Jr. Stenographers who had not been in the service of the DOS in between and to assign the applicants' seniority below all of them cannot be held to be just or reasonable. The learned counsel for the respondents

argued that the first condition in Annexure-F warned the applicants that they would have to forgo the entire service in SAC, Ahmedabad for the purpose of seniority and that having accepted with open eyes it is not open for them now to claim that they should be allowed to count their service in SAC also for seniority which would be allowing them to blow hot and cold or to uprobate and reprobate. As per the instructions contained in Annexure-B, the Office Memorandum regarding the norms for preparation of seniority, services in the identical cadre in a different unit can be counted for seniority unless the incumbents are specifically told otherwise. Though in the Annexure-F the applicants were told that they would have to forgo their entire seniority in case of transfer, such conditions could not have been validly incorporated in the offer of transfer. The only justification put forth by the respondents for imposing the condition is that the persons already serving in VSSC should not be put to a loss on account of the transfer of the applicants from SAC, Ahmedabad to VSSC. This end could have been achieved by imposing the condition that the applicants in the event of transfer ^{whenever it is made} would rank junior to the Junior Stenographers who were in existence on the date on which the applicants expressed their willingness and the second clause of Annexure-F means only that. So to say that as both the conditions in Annexure-F have been accepted by the applicants they should take the seniority only from the date on which they took charge at VSSC through several

persons were inducted in the interregnum is absolutely unconscionable. Therefore, we are of the view that though the applicants cannot be given seniority from the date of their entry into the service in SAC, Ahmedabad, they should be given placement immediately below the Junior Stenographers who were in service as on 2.12.1983. To that extent the impugned orders Annexure-M, P and Q have to be set aside.

7. In view of the facts and circumstances discussed above, we allow both the applications OA 601/89 and OA 604/89 in part and quash Annexure-M, P and Q orders. We direct the respondents 1 to 4 to modify the seniority list of Junior Stenographers, (original of Annexure-J), placing the applicants in both these cases immediately below the Junior Stenographers who were serving the VSSC as on 2.12.1983 and above those who were recruited to that cadre thereafter. The applicant in OA 604/89 should be placed as senior to the applicant in OA 601/89. They should also be given corresponding higher rank in the panel for promotion as Senior Stenographers to the extent warranted by their revised seniority of Jr. Stenographers and they should be promoted if due in terms of such ranking. The action in the above lines should be completed within a period of two months from the date of communication of this order. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

30.10.1990