

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 12.1.90

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri N Dharmadan, Judicial Member

DA 135/89

NK Saraswathi : Applicant

Vs

- 1 The Director,
Central Institute of Fisheries
Technology, Willington Island,
Matsyapuri, Cochin-29.
- 2 The Indian Council of Agriculture
Research, Krishi Bhavan, New Delhi.
- 3 Smt R Vasantha, Stenographer,
Central Institute of Fisheries
Technology, Matsyapuri, Cochin-29 : Respondents

Mr PV Mohanan : Counsel of Applicant

Mr PVM Nambiar, SCGSC : Counsel of Respondents

O R D E R

Shri NV Krishnan, Administrative Member.

The applicant is aggrieved by the seniority assigned to her in the list of Stenographers as on 1st December, 1985 by the Memorandum dated 20th December, 85 (Annexure-4) issued by the Senior Administrative Officer of Respondent-1.

2 The circumstances in which she has filed this application to ventilate her grievance can briefly be stated as follows.

2.1 The applicant and Respondent-3 admittedly joined as Junior Stenographers on 21.7.77 and 8.7.77 respectively, the former being senior to the latter. Both of them

were confirmed as Junior Stenographer from 1st January, 81. It is admitted that in that cadre the applicant is senior to Respondent-3.

2.2 The next higher post of promotion is that of Stenographer. Earlier, all posts of Stenographer were to be filled up by promotion from the rank of Junior Stenographers. However, the provision in the Recruitment Rules in this regard was changed in 1982. It is admitted that, thereafter, the appointment of Stenographers was to be done in the following manner.

- " i) 33 1/3% by promotion of Junior Stenographers having 5 years approved and continuous service in the grade on the basis of seniority subject to the rejection of unfit.
- ii) 33 1/3% by departmental competitive examination of Junior Stenographers who have rendered 3 years approved service in the grade. Speed in Shorthand 120 w.p.m. and speed in Typing 40 w.p.m. will be required.
- iii) 33 1/3% by direct recruitment. The qualifications for direct recruitment being matriculation or equivalent, speed in Shorthand 120 w.p.m, speed in typing 40 w.p.m."

2.3 The applicant appeared in the Departmental Competitive Examination on 6.1.83 and came out successful. She was, therefore, promoted and appointed as a Stenographer from 20.1.83. She was treated as having been appointed in accordance with method(ii) of the Recruitment Rules extracted in the previous para.

2.4 Respondent-3 having completed 5 years of service was promoted with effect from 1.12.84 on the basis of the speed test held on 15.10.84. She was treated as having been appointed against a vacancy to be filled up by the method at Sl.No.(i) of the Recruitment Rules extracted above.

2.5 In view of the aforesaid decisions, the Respondents finalised the Seniority List of Stenographers as on 1.12.85 by showing the Respondent-3 as senior to the applicant, for the reason that she was considered to be holding a post recruited by the method No.1 of the Recruitment Rules, while the applicant was treated as having been recruited by Method No.2.

2.6 The applicant challenges this fixation of inter-se seniority on many grounds which, in the view ^{that} / we are taking of the matter, need not be adverted to. Suffice it to say that the applicant's grievance is that Respondent-3 was junior to her in the category of Junior Stenographers and was also promoted as a Stenographer subsequent to her promotion and hence has to be her junior.

3. The Respondent have filed counter affidavit in which reliance has been placed for assigning the seniority in the above manner on the instructions contained in OM No.9-11/55 RPS dated 22.12.59 containing the general principle for determining the relative seniority of direct recruits and promotees. It is stated that according to the amended rules, the first vacancy should be allotted to a candidate with 5 years experience, the second vacancy to a candidate who has passed the competitive test and the third to a direct recruit and so on. As the applicant passed the competitive test, she could be appointed only after a candidate was appointed on the basis of mere length of service, as provided in Method No.1 of the amended

Recruitment Rules.

10 We have carefully gone through the records of the case. Respondent-3 was neither present nor represented by counsel. We have heard the counsel of the other parties.

11 We are of the view that an obvious and apparent injustice has been done to the applicant. It would appear from the reply affidavit filed by the Respondents that two vacancies arose simultaneously after the Recruitment Rules were amended. It was also stated that one vacancy was allotted for being filled up by promotion based on the length of service i.e., Method No.1 and the second to be filled up ^{by} a candidate who had passed the competitive test i.e., Method No.2. We cannot find fault with this appointment. The serious mistake committed by the Respondents ^{to decide though} is that, ~~as~~ the applicant had been appointed in the feeder category of Junior Stenographer on 21.7.77, and has ^{thus} already completed 5 years of approved and continuous service as on 21.7.82, - while Respondent-3 completed such service only on 8.8.82.- yet, merely because the applicant also passed the competitive examination held on 6.1.83, she, in this circumstance, can ~~xxx~~ be treated only as a candidate having passed the Departmental Competitive Examination. She does not lose her status as a candidate having 5 years approved and continuous service. Being the senior most between the two of them, the applicant was entitled to be appointed even under Method No.1 i.e., on the basis of

5 years continuous service and seniority. Therefore, she acquires seniority above Respondent-3.

12 In the circumstances where the applicant has acquired both the qualifications before her promotion to the grade of Stenographer i.e., the qualifications of having put in 5 years of approved and continuous service as a Junior Stenographer as well as having passed the Departmental Competitive Examination with the necessary speeds in Shorthand and typewriting, she has to be given higher place than the Respondent-3 in the matter of seniority. Necessarily, Respondent-3 can rank only below her in this regard.

13 We notice that the applicant and Respondent-3 are immediately placed one above the other and both are senior to all those who are placed below them. None below them has any grievance about the particular place assigned to either of them. Therefore, it would not matter to any one of them whether the applicant or the Respondent is placed first in the Gradation List of Stenographers and the other person ^{is placed} in the second place.

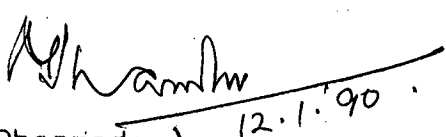
14 That being the case, and for the reasons mentioned earlier, we are of the view that the applicant should be placed immediately above the Respondent-3 in the seniority list of Stenographers.

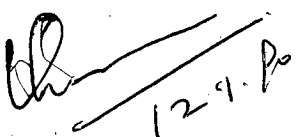
15 Accordingly, this application is allowed with the following directions:

- (i) In the seniority list at Annexure-4 in the category of Stenographer, the applicant shall

be placed at Sl.No.3 and the Respondent-3 at Sl.No.4.
The impugned order (Annexure-4) is directed to be
modified to this extent.

- (ii) The impugned orders Annexure-6 dated 5.4.86 and
Annexure-8 dated 1.10.88 rejecting the representa-
tions for revision of her seniority are also quashed.
- 15 There will be no order as to costs.


(N Dharmadan)
Judicial Member
12.1.90


(NV Krishnan)
Administrative Member
12.1.90