

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 210/90
T. A. No.

199

DATE OF DECISION 7.10.91

N. Thriyikraman Potti & Applicant (s)
another

M/s MR Rajendran Nair & Advocate for the Applicant (s)
P.V. Asha.
Versus

UOI, Secy., Postal Services Respondent (s)
Board, M/o Communications &
2 others.

Mr. V. Krishnakumar, ACGSC. Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan Administrative Member

The Hon'ble Mr. N Dharmadan Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
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? No

JUDGEMENT

SHRI N. DHARMADAN, JUDICIAL MEMBER

Applicants who are working as Grade II Stenographers in the Postal Department, approached this Tribunal for a declaration that they are entitled to be considered for promotion to the post of Senior Personal Assistant, Group B, (SPA Group-B for short) in the scale of Rs.2000-3200 on the basis of their total length of service as Stenographer in the pay scales of Rs.1400-2300 and in the alternative to quash Column 12 of Schedule to Annexure-I, SR PA General Central Service Group-B(Gazetted) Recruitment Rules, 1989.

No

2. The applicants are working as Stenographers Grade-I in the Kerala Circle in the scale of Rs.1400-2300. This scale was introduced by IV Pay Commission. According to the applicant, prior to 1.1.86 the following different scales existed.

- i) 330-560
- ii) 425-640
- iii) 425-700
- iv) 550-900

The applicants submitted that grades of Rs.425-640 and
Rs.425-700 were merged and replaced by a common/scale
of Rs.1400-2400 by Annexure-II. The relevant portion
of the notification Annexure-II is extracted below:

"All posts carrying
present scales specified
in Column 3.

-do- (a) 425-15-560-EB-20-640)
(b) 425-15-500-EB-15-560- } 1400-40-1800-
 EB-20-700 } EB-50-2300
(c) 455-15-560-EB-20-700)

*While communicating the Notification No.F.15(1)/IC/86 containing the Pay commission's report 1986, the D.G. Dept. of Posts in his Memo No.4-2/86-PCC dt.24.9.86, in para 4 clearly states as under-

Para 4: The revised pay scales applicable to the employees have been indicated in the first Schedule to the Revised Pay Rules, 1986. These pay scales are the appropriate revised scales for the existing scales indicated therein and cover the bulk of the employees."

2. Prior to the introduction of the revised scale of Stenographer Grade-II they were having two

different scales namely Rs.425-640 and 425-700. By notification Annexure I dated 21.8.89, Statutory Rules under Act 309 of the Constitution of India, the post of Personal Assistant on an All India basis was introduced with the provisions for recruitment and with the provisions for method of qualifications thereon. On account of the unification of two scales as stated above the applicants are fully eligible and qualified for promotion to the post of SPA Group-B. The relevant portion of the Recruitment Rules providing for qualification for promotion is extracted below:

"Promotion: Stenographer Grade I (Rs.1640-2900) with 2 years' regular service in the grade failing which Stenographer Grade I with combined regular service of 7 years in the grades of Stenographer Grade I (Rs.1640-2900) and Stenographer Grade II (Rs.1400-2300). and failing, both Stenographer Grade II (Rs.1400-2300) with 7 years regular service in the grade."

3. ^{relevant} The ~~eligibility~~ conditions as per Recruitment Rules for the post of SPA Group-B are that Stenographer Grade-I (1640-2900) with two years regular service in the grade failing which Stenographer Grade-I with combined regular service of seven years as Steno. Grade-I and Grade-II (1400-2300) with seven years regular service in the grade. The applicants submitted that they have completed 7 years in Grade-II and they are eligible to be included in the list of persons to be promoted as SPA Group-B on all India basis. While Annexure-I

Recruitment Rules were pending notification, the Director General by letter Annexure-III dated 23.4.89 addressed to all Heads of Circles with the request to forward list of eligible officials of Stenographer Grade-I and Grade-II in the enclosed proforma. On the basis of this letter, Chief Post Master General, (CPMG), Trivandrum, sent Annexure IV list of officials, in which the applicants were included as Serial Nos. 4 & 5, since they have completed 7 years four months and 28 days in the category of Stenographer Grade-II as on 1.1.89. Based on this list Annexure-V seniority list of eligible officials for promotion to the grade of SPA Group-B was prepared in which the applicants figure at Sl.Nos. 24 & 25. Thereafter, Annexure-VI telegram was received by the CPMG directing to indicate clearly the correct date of appointment of Stenographers in Grade-I and Grade-II with special reference to M/s. M. Krishnankutty, V. Radhakrishnan Nair, K. Ramachandran and Venkata Ramaiah. The CPMG in the detailed letter Annexure-VII dated 18.8.90 mentioned that in the case of Mr. Venkata Ramaiah, 3.7.82 was the date on which he was actually promoted to Selection

Grade in the scale of Rs.425-640. The applicants'

date were given as follows:

" A reference is also invited to the office letter of even number dated 14.3.89 wherein particulars of two more officials senior to Shri R. Venkitarama Iyer were furnished. Their dates of appointment in Selection Grade/ Grade II are furnished below:

		<u>Date of appointment in</u>	
		Selection Grade	Grade II
i)Shri N.Thriyikraman	Potti	- 3.8.81	2.11.83 "
ii)Shri V.K.Jacob		- 4.8.81	

On getting information of Annexure-VII the second

applicant submitted Annexure-VIII representation to

the Chief PMG, Trivandrum requesting to correct the

seniority position of the applicants and Shri Venkata-
ramaiah who is junior to the applicants.

4. The applicants seek promotion to the post of

Sr. PA, Group-B on the ground that as they had served

as Stenographer Grade-II in the old scale of

Rs.1425-640 from 3.8.81, in the case of the first

applicant xxxxxxxx and 4.8.81, for the second applicant

because, they should be treated as having qualified for

promotion from these dates because this is equivalent to

the scale of Rs.1400-2300/- In that view according to

the applicants they are fully eligible and qualified

to be included in the list of candidates to be promoted.

5. The respondents have filed reply statement in which they have stated that the cadre of SPA is an all India cadre and the seniority of Stenographers in Grade-I and II has been fixed for promotion taking into consideration the length of regular service in each circle. The pay scale of Rs.330-560 belongs to Stenographer Grade-III. Pay scale of Rs.425-540 (pre-revised) has been a non-functional selection grade for Stenographers Grade-III whose normal pay scale is Rs.330-560 (pre-revised). So if the service period of Stenographers in the pay scale of Rs.425-640 is counted it will tantamount to inclusion of Grade-III Stenographer in the eligibility list of Stenographers for promotion of SPA, whereas the Recruitment Rules only provide that Stenographers Grade-II with 7 years regular service alone will be eligible for promotion to the post of SPA. As such, the Stenographer in Grade-II who have rendered service in regular scale of pay of Rs.425-700 (Pre-revised) will be considered for promotion to the post of SPA. In this view, the applicants are not eligible but on the basis of the

particulars furnished by the Circle Offices to the Directorate, eligibility list was prepared (Annexure-V) and circulated. But, later it was found that most of the Circles had included ad hoc services with regular service rendered by the officials in Grade-I or Grade-II. Accordingly persons who are not having regular service were also included in Annexure V list of eligible persons for promotion. It is on account of this mistake that the names of the officials who were in service in the pay scale of Rs.425-640 (pre-revised) non-functional selection grade were also included. Thus the applicants' names happened to be included in that list. In order to rectify this mistake an amendment of the list became necessary. Hence, the list was amended taking into consideration the regular service put in by the Stenographer Grade-I and Grade-II as on 1.10.81, according to the Recruitment Rules.

5. We have heard the arguments and considered the documents. The Recruitment Rules Annexure-I make the position very clear. Rules states that those stenographers in Grade-II who have put in 7 years regular service in the pay scale of Rs. 1400-2300/-

XXXXXX have to be considered for promotion to SPA Group-B. The applicants though submitted that there were four scales for the Stenographers prior to 1.1.86 they were not able to substantiate this contention. On the other hand the clear statement of the respondents in the reply statement is that the scale of pay of Rs.330-560 belongs to Grade III and the pay scale of Rs.425-640 has been a non-functional Selection Grade-III. This appears to be the correct position. So if the service of a Stenographer in the scale of pay of Rs.425-640, non-functional Selection Grade, is also counted it will tantamount to inclusion of Grade-III Stenographer in the eligibility list for promotion which in effect is contrary to the provisions of the Recruitment Rules. Annexure VII, the relevant portion of which extracted above, would indicate that though the applicants were given Selection Grade in 1981, they were appointed in the Selection Grade II in a regular only manner/from 2.11.83. Counting their service from that date, they would not complete seven years and are not eligible and qualified for inclusion in the list of officers for promotion as SPA.

6. The Recruitment Rules do not make any provision for inclusion of the non-functional selection grade, x-xxx within the feeder category. It is also pertinent to note that while particulars of the officers for enlisting the candidates were called for from the Circle Offices, the respondents never intended to include ad hoc service with regular service rendered by the officials for determining the length of service for promotion. But, the list was prepared and circulated after including the ad hoc service of most of the officers with regular service. Accordingly ineligible persons also found place in the list as seniors to the officers whose regular service in the cadre was alone considered. Thus, the names of officers who had put in service in the pay scale of Rs. 425-640 (pre-revised) the non-functional Selection Grade III were also included in the list. This is against the rules. Hence, the respondents issued an amended correct list of officers considering only the regular service put in by the Stenographers Grade I, Grade I plus Grade II and Grade II xxxx as on 1.10.89. Nobody having service in Grade III was included in the

final list. In the light of these explanations of the respondents we are not prepared to accept the contention of the applicants that after the unification of the scale the officials who worked in both scales should be considered for promotion.

7. Of course there is stagnation and lack of prospects of promotion for Stenographers before the introduction of Annexure-I Recruitment Rules and the promotional avenue on an all India basis may not strictly available to all the officers on the basis of the length of the service considering the services rendered by the officers in each Circle. It is quite possible, that when officers of different Circle are brought together for promotion and an all India promotion post is created with selection procedure to that post, Stenographers with lesser length of service and juniors in another Circle may at times get promotion due to the fortuitous circumstances enacted by the process of integration. A Stenographer in Grade I in one Circle may not be equal in every respect to his counter part in another Circle. This may be the result of the peculiar circumstances enacted as indicated above and the inevitable consequences of integration. So, because of the fortuitous circumstance arose on account of the introduction of Annexure-I⁴ Rules, there may be some casualties and disadvantages for the officers.

This cannot be salvaged. The applicants have not placed before us sufficient materials to come to the conclusion that there is clear discrimination. Hence, we do not find any ~~illegality~~ and patent discrimination between Stenographers in one Circle and another Circle in the implementation of Annexure I Recruitment Rules.

8. The applicants further contented that they were included in the Annexure-V list prepared for promotion to the post of SPA but their name had been deleted without any notice or intimation. Hence, it is against the principles of natural justice. This is answered by the respondents in the counter affidavit by stating that the particulars of officers provided by the Circle offices to the Directorate were not correct. Some ineligible officers were also enlisted on account of the inclusion of the ad hoc services of them. This was noticed at a later stage. The list was sought to be amended restricting the regular service of the Stenographers in Grade-I and Grade-II as on 1.10.89. Accordingly, names of such officials whose length of services were mistakenly shown were deleted. This is only a correction of mistake and no notice such ~~as~~ need be given before correcting ~~of~~ mistakes.

9. We have, the same bench, considered the question of application of principles of natural justice in regard to the correction of such mistakes by the administrative authorities in *Anil Kumar PA Vs. Superintendent of Post Office & others, ATR 1991(1)*

CAT 483 and held as follows:

" If an order passed by the administrative authority is vitiated by a mistake it will not correctly reflect the actual order or the decision taken by such authority; it must be open to correction and it will not have any sanctity to prevail over or override the correct one. Say for example a case where the actual decision taken by the authority is that a person should be appointed only on a provisional basis subject to verification of details, but by mistake, the appointment order has been issued describing it as substantive appointment. Can it be suggested that the authority cannot rectify the mistake by issuing a further order so as to bring it in accord with the real decision of the authority even without any further notice? A mistaken order invariably would not confer any legal right on the party to whom it is issued because such order will not correctly reflect the actual decision. Mukerji J. of Calcutta High Court held in *Smt. Anima Pal vs. State of West Bengal and Others*⁶ that in such a situation principles of natural justice would not apply. Same view was taken by Punjab and Haryana High Court in *Mrs. S. Bhan vs. Director of Public Instruction*,⁷ The Central Administrative Tribunal, Bangalore Bench in *C. Pillappa vs. Divisional Officer, Southern Railway*,⁸ considering a similar situation held as follows after following a catena of decisions:

"What in effect, the respondent has done in this case, is that by his impugned order dated 24.9.87 (Annexure-C), he has merely corrected a patent administrative error, though belatedly but within the period of limitation, but in that process, has not offended either the provisions of Article 311 of the Constitution, particularly the principles of natural justice or transgressed the bar of limitation for the reasons aforementioned."

6. 1980 (1) SLJ 392
7. 1980 (1) SLR 120
8. 1989 (1) CAT 391

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The Chandigarh, Bench of the Tribunal discussed the case law on the subject and came to the following conclusion in Shri D.R.Sharma vs. Union of India and Others:⁹

" Now the question crops up as to whether a bona fide mistake can be rectified without observing the canons of natural justice and without following the procedure laid down under Article 311 of the Constitution of India. In the preceding paragraphs, we have examined the various decisions of the High Courts on which the learned counsel for both the parties have relied upon. After due examination of catena of judgments adverted to above, we are of the view that no benefit can be allowed on a mistake. If owing to some bona fide mistake, the department has taken a decision to delete the name of the applicant from the select list of those persons who opted to go outside Chandigarh in other Ministries/Departments to officiate as Assistant on long term basis, as against the applicant who did not opt as such, the department's action in correcting the mistake at some subsequent stage when mistake come to notice is decidedly justified. It cannot be inferred that a bona fide mistake should be allowed to perpetuate when it is discovered."

The observation of the Supreme Court in District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another vs. M. Tripura Sundari Devi, ¹⁰ in connection with the refusal of permission to join a candidate on the basis of a mistaken order may be used with advantage in support of the proposition advanced in this case by the respondents. The following passage is relevant in this connection:

" The Selection Committee presumed that all those who had applied in response to the advertisement must have had the requisite qualifications needed for the posts. However, the order appointing the respondent had made it clear that the respondent should come along with the original certificates. When the respondent approached the appellants with the originals of the certificates which were scrutinised, it was found that in fact that she was short of the qualifications. It is in these circumstances, that she was not allowed to join the service. It cannot, therefore, be said that the appellants had selected the respondent with the knowledge that she was underqualified. According to us, there is a good deal of force in this contention. It is common knowledge that sometimes the Selection Committee proceeds on the basis that all those who appear

before it, are otherwise qualified, However, the second stage at which the documents are scrutinised is when the higher authorities go through them at the time the candidate concerned approaches them for resuming (sic assuming) duties along with the original certificates. It is at that stage that the mistake was discovered in the present case and the respondent was not permitted to resume her duties. We see nothing wrong in this action."

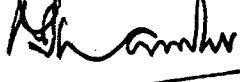
10. The applicants' second prayer in the application is to strike down column 12, in the Schedule to Annexure-I, Senior PA General Central Service Recruitment Rules 1989. For attacking this rule no specific grounds has been raised in this application except stating that it may happen that while Stenographers with more than 7 years in Grade-II do not come within the zone of consideration as SPA in a particular Circle ... Stenographers with lesser service in Grade-II, who might have had the fortune of being promoted to Grade-I, right figure in the list in the zone of consideration, resulting in discrimination and violation of Article 14 and 16 of the Constitution of India. From the provisions of Annexure I Recruitment Rules, it is clear that principal object of framing the same is to give a new promotional channel on an all India basis to the Stenographers who are stagnating. ^bxxx The Courts or Tribunals, while examining the validity

of the Rules challenged as infringing the equality clause which causes injustice, make an assumption that the provisions are reasonable and not violative of Article 14. In order to dispel this assumption there should be sufficient facts and figures with clear ^{of} instance ^h particularly ^h such infractions ^{due to the implementation} of Annexure-I. They are absent in this case. As indicated above, when a new promotional post had been created on an all India basis making provisions for promotion and filling up the ^{same h} there may arise fortuitous circumstance having the possibility of affecting the chance of promotion of some officers when compared with the chance of promotion of others in various Circles. This is only natural. This cannot be helped and this is inevitable consequence of the implementation of Annexure-I Recruitment Rules. But, on the other hand if the implementation of Annexure-I results in unequal treatment of same set of officers of equal status and position working in different Circles in the matter of promotion to the post of SPA Group-B, it is a matter ^{be h} to ^{be h} examined and relief granted. If the applicants produces and ^h facts ^h figures with details in this behalf to substantiate

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the infringement of Article 14 : I hope the Government would look into the matter and pass orders in accordance with law.

11. In the result having considered the matter in detail ~~I am~~ of the view that the application is devoid of merit and it is only to be rejected. Accordingly I dismiss the same with the above observations. There will be no order as to costs.


N. Dharmadan

7. 8. '91

(N. DHARMADAN)
JUDICIAL MEMBER

N.V.Krishnan, Administrative Member

12. I agree with the judgement of my learned Brother. I would like to add a few words of my own.

13. It is true that the scale of pay of Rs 1400-2300 is the revised pay scale replacing the pre-revised pay scales of Rs 425-640 applicable to the non-functional Selection Grade of Grade-III Stenographers and Rs 425-700, the pre-revised scale of the Grade-II Stenographers. Therefore, the two posts--one on the non-functional Selection Grade of Grade-III Stenographers and one on Grade-II Stenographers, can be considered to be equal only from 1.1.86 onwards when the revised pay scales came into force. Merely because of this fact, it cannot be said that prior to 1.1.86 also, the two posts were equal to each other. Further, if an all-India seniority list of Stenographers Grade-II had been drawn as on any date prior to 1.1.86 the length of service of the applicants for the purpose of their placement in that seniority list would have been counted only from the 2.11.83, i.e. / date with effect from which they were appointed to the Grade-II Stenographers post. Hence, for the purpose of promotion to the post of Stenographer-Grade I, ~~xxxxyx~~ their service in the pre-revised pay scale of Rs 425-700 applicable to the post of Stenographer-II alone would be taken into account for computing the required 7 years regular service in Grade-II.

14. The contention that there may be discrimination, if while preparing the all-India seniority list for considering promotion to the post of Personal Assistant, the total length of service as Stenographer is not taken into account, is without any foundation.

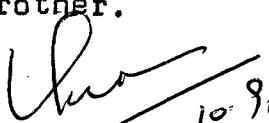
45. According to the Recruitment Rules, priority would be given to Stenographer Grade-I with 2 years regular service, failing which Stenographers Grade I with combined regular service of 7 years, both as Stenographer Grade-I and Grade-II, and failing both only Stenographer Grade-II with 7 years regular service in the grade will be considered. Thus, until the claims of Stenographers Grade I are exhausted, the Stenographers Grade-II cannot stake any claim. This is a reasonable provision. This requires preparation of seniority grade-wise.

16. If a seniority list based on total service as stenographer has to be depended upon as suggested by the learned counsel for the applicant, it would amount to treating unequals as equals for the purpose of seniority list. It may happen that in Circle A, promotion from Grade-III to Grade-II is given in 5 years and from Grade-II to Grade-I also in another 5 years, while in Circle B such promotions may take 8 years each. Therefore, if a seniority list is prepared as on 1.1.91, a Stenographer Grade III recruited in Circle A on 1.1.80 would be a Stenographer Grade-I having completed 11 years' service, while a Stenographer Grade-III recruited in Circle B on 1.1.67 and completing 14 years' service would still be a Stenographer Grade-II. According to what has been suggested by the learned counsel for the applicant, the latter should be treated as senior to the former, merely on the greater length of his total service as Stenographer. This will be unjust to the former who is already holding a Grade-I post. The length of service principle ignores the grades of posts held and this treats unequals as equals.

17. Therefore, the arguments based on this consideration do not have any force at all. Admittedly, the general principle is that the seniority in the feeder cadre alone should count for further promotion to the next higher grade. For that purpose, an all-India seniority list will have to be prepared taking into account only the length of service in each grade separately, as it is the minimum length of service in each grade as prescribed in the Rule, that renders one eligible for promotion as Personal Assistant.

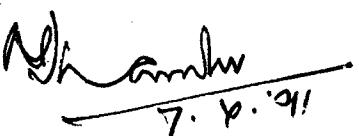
18. I am, therefore, of the view that the allegation that the method of promotion provided in column 12 of the Schedule to the Recruitment Rules for the post of Personal Assistant (Annexure-I) is ultravires of Articles 14 and 15 of the Constitution is devoid of substance.

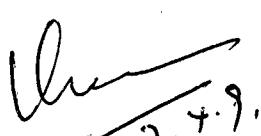
19. With these observations, I fully agree with the judgement prepared by my learned Brother.


(N.V. Krishnan)
Administrative Member

Order of the Court

In the result, the Original Application is dismissed but without any order as to costs.


(N. Dharmadan)
Member (Judicial)


(N.V. Krishnan)
Member (Administrative)