

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~KAXXIX~~

292/

1998 89

DATE OF DECISION 14.12.90

R. Venkittarama Iyer Applicant (s) ✓

M/s. MPR Nair, George K. Joseph Advocate for the Applicant (s) ✓
V.V. Nandagopal

Versus

Union of India represented by Respondent (s)
its Secretary,

Postal Services Board,

Ministry of Communications, New Delhi & 5 others

Mr. P. Santhosh Kumar, ACGSC Advocate for the Respondent (s)

(R1 -4)

CORAM: M/s. MR Rajendran Nair &
P.V. Asha (R5-6)

The Hon'ble Mr. S.P. MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

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

JUDGEMENT

(Hon'ble Shri S.P. Mukerji, Vice-Chairman)

In this application dated 16th May 1989 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Selection Grade Stenographer in the Office of the Postmaster-General, Kerala Circle has challenged the order dated 14th August 1979 at Annexure-V revising and bringing down his seniority in the cadre of Stenographers and has prayed that the seniority assigned to him as on 1.1.74 at Annexure-IV should be restored and on that basis he should be given appropriate position in the subsequent gradation lists of 1.7.1981 and 1.7.1986. He has also prayed that on the basis of his restored seniority he should be appointed to the grade of

Rs.425-700(pre-revised) from the date on which the 5th respondent who was junior to him in the gradation list of 1.1.74 was promoted to that grade, with all other consequential benefits. His further prayer is that he should be considered along with the 5th and 6th respondents for promotion to the next higher grade of Senior P.A to P.M.G. The brief facts of the case are as follows.

2. The applicant joined service in the department on 29.10.1963 and after passing various tests was posted as steno-typist with a special pay of Rs.25/- in the Office of the Supdt. of Post Offices, Kottayam in 1967. In 1971 it was decided to abolish the posts of steno-typists carrying special pay and to convert the posts into those of Stenographers in the scale of Rs.330-560. The steno-typists working in the subordinate offices like the applicant were given only one chance to appear in the examination to be passed for appointment as Stenographers. The applicant accordingly appeared in the test on 17.10.1971. Thirtysix Stenographers appeared of whom twentysix qualified, but the applicant did not qualify. The applicant's contention is that the test held on 17.10.71 was not in conformity with the syllabus and standard of test prescribed. The applicant represented against his failure and according to him

the second respondent as a special case held another test on 2.5.1972 in which three steno-typists including applicant who had failed in the 1971 test ^{appeared and} passed. The _h applicant was accordingly appointed as a Stenographer with effect from 19.6.1972. When the combined seniority list of the Stenographers and up-graded steno-typists was issued as on 1.1.1974(Annexure-IV) his name was shown at Sl.No.25 by clubbing together on the basis of their original seniority with those who passed the examination on 17.10.1971 _h those who passed the subsequent examination on 2.5.1972. Five years later in 1979 by the impugned order dated 7.5.79(Annexure V) the applicant's position was brought down from Sl.No. 25 to Sl.No.37(c) in the gradation list. His appeals right upto the PMG were rejected. The final rejection letter was dated 27.10.1980(Annexure VIII) in which it was stated that since he passed ⁱⁿ the second test on 2.5.1972, according to the decision of the Directorate of Posts and Telegraphs all those officials who were selected in the first examination on 17.10.1971 had to be placed 'enbloc' senior to the applicant and others who passed the test subsequently. The applicant represented to the Director General on 4.4.81(Annexure IX) and sent several reminders in 1982, 1983 and 1984 and thereafter sent a memorial to the President. Finally he received a communication dated 17.2.89(Annexure XVII)

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rejecting his representation without giving any reason.

The applicant's contention is that the principle adopted

by the respondents that those who passed ^man earlier test will rank senior enbloc to those who passed ^ma subsequent test cannot be applied to him because the test passed

by him in 1972 was not a subsequent test, but a part

of the 1971 test. His contention is that the 1971 test

was held in violation of the prescribed standard and

recognising this it is the respondent-department which

held the 1972 test allowing ^{only} those who had failed in the first test to appear again. Thus those who passed in the

1972 test have to be clubbed with those who passed in

the 1971 test in the seniority list. This was actually

done in the first seniority list as on 1.1.1974 at

Annexure-IV. The respondent-department could not

revise the seniority list unilaterally and that too

after five years without giving the applicant any

notice. He has also referred to Rule 32(D) of P&T

Manual Vol.IV in accordance with which if there is any

mistake in a seniority list, it should be corrected

within a period of one year after which any petition

for correction would be treated as time-barred.

Since none of the Stenographers represented against

the gradation list at Annexure IV within the prescribed ^{time} limit of one year, the gradation list had to be treated

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as final and valid. The respondent-department, therefore, could not have revised the seniority list to his detriment on the basis of representations received from two of his juniors in the 1974 gradation list which were filed after three years from the date of publication of the gradation list. He has also bemoaned that his representation dated 4.4.81 to the D.G. in spite of a number of reminders was rejected eight years later in 1989.

3. According to the respondents 1 to 4 the second examination held on 2.5.72 was arranged on representation and by relaxed standards. It was a mistake that in the 1974 seniority list those who qualified in the 1971 examination and 1972 examination were clubbed together. They conceded that the applicant was not heard or given notice before his seniority was altered to his disadvantage. However, they have relied upon Rule 32(D) of P&T Manual which permits alteration of seniority without notice.

In his rejoinder the applicant has stated that in accordance with the guidelines prescribed, 560 words were to be dictated for 7 minutes at the rate of 80 words per minute and 560 words so dictated were to be transcribed in 55 minutes. However, in the test held on 17.10.71 the dictation was for 10 minutes, whereby 800 words were dictated and they had to be transcribed within 40 minutes only. Thus the examination was not conducted in accordance with the prescribed standard as per Annexure -XVIII and

is vitiated. The second examination was conducted for the failed candidates by the respondents when it was revealed that the first examination was not conducted in accordance with the syllabus and standard prescribed. The candidate's appearing in the first examination does not preclude him representing against the irregularities in the conduct of the first examination. According to respondent 5 who passed the test held on 17.10.71 in which the applicant failed, the applicant did not challenge the legality of the test held on 17.10.71 and 26 officials passed in the test. None other than the applicant complained about the inadequacy of transcription. According to him the second test was not in accordance with the norms as 55 minutes were granted for 560 words transcription, instead of 28 minutes. In his counter affidavit respondent 6 has accepted that in D.G., P&T's letter dated 20.5.71 steno-typists are allowed only one test for promotion to the converted posts of Stenographers and that test was conducted on 17.10.71. The applicant should not have been given a chance to appear in the second test and only because sufficient number of officials had not been successful, the second test was held by a relaxed standard. In the additional affidavit respondents 1 to 4 have referred to Annexure-28 to the P&T Manual Vol.IV, according to which a speed of 100 words per minute is prescribed for dictation for 10 minutes

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and 1000 words thus dictated have to be transcribed in 50 minutes. It also speaks of an examination of reduced speed of 80 word per minute. Accordingly prescribing that 800 words be transcribed in 40 minutes, as was done in the first examination was in accordance with the statutory rules. The applicant ^{however} has produced at ^{^a} Annexure -XXII a circular issued by the Chief Post-master General, Kerala Circle in December 1989 for recruitment to the post of Stenographer Grade I in which again dictation of 560 words in 7 minutes to be transcribed in 55 minutes has been advertised. He has thus argued that the test of 1971 was not in accordance with the prescribed norms.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The first question to be decided is whether there was any departure from the prescribed standard in the stenographic test held on 17.10.71. It is true as indicated by respondents 1 to 4 in the ^{Annexure R-3 to} additional counter ^{dated 15.2.1990} affidavit ^{^a} that in accordance with Annexure-28 to the P&T Manual Vol.IV , 1000 words dictated at the rate of 100 words per minute in 10 minutes have to be transcribed within 50 minutes which gives a transcribing speed of 20 words per minute. However the same annexure also indicates as follows:-

"Where the candidates are to be examined at a reduced speed of 80 words per minute after getting prior permission of the Director General they will be given a piece of dictation

consisting of 560 words at a speed of 80 words per minute. The passage has to be typed on the typewriter in 55 minutes. A maximum of 5% mistakes may be allowed."

The above makes it clear that in certain circumstances a transcription speed of 560 words in 55 minutes , i.e, 10.2 words per minute can also be prescribed. Annexure -XVIII is a letter issued by the D.G.,P&T specifically to clear doubts about the norm of dictation and transcription to be adopted for filling up the posts involved in this case. The clarification given is as follows:-

" Candidates are to be given a piece of dictation in English consisting of 560 words at a speed of 80 words per minute. The dictation will thus last for 7 minutes. The passage has to be transcribed on the typewriters in 55 minutes. A maximum of 5% mistakes may be allowed."

The same is repeated against point No.2 in Annexure-XXI.

It is, therefore clear that the prescribed standard of dictation and transcription is 560 words dictated in 7 minutes and transcribed in 55 minutes. As against this norm, it is admitted that in the test held on 17.10.71 800 words were dictated in 10 minutes to be transcribed in 40 minutes. Thus there has been ^{considerable} departure from the prescribed norm. It is perhaps in recognition of this departure that the respondents held a supplementary test on 2.5.72 where those who had failed in the first test only were allowed to appear. The second test was in accordance with the aforesaid standard. The learned counsel for the respondents indicated that in the second test no outsiders or candidates who had not

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appeared in the first test had been allowed to appear. Thus it is clear that the 1972 test was an extension of the 1971 test and the failure of the applicant in the first test which was not held in accordance with the prescribed standard, cannot be held against him for the purposes of seniority as he had passed the supplementary test of 1972. We are confirmed in this view because the respondents have conceded that the steno-typists were to be only given one chance to appear in the test. The fact that the applicant was allowed to appear in the 1972 test after having appeared in the 1971 test shows that his appearing in the 1971 test was not recognised as a valid appearance, as the test itself was not in accordance with the prescribed standard. All the three candidates who had failed in the 1971 test were allowed to appear in the supplementary test of 1972 and all of them passed. Thus the principle that one who qualifies in an earlier examination would be enbloc senior to those who appear in a subsequent examination, on the basis of which the applicant's seniority was downgraded five years later by the order at Annexure-V, cannot be upheld even on merits.

5. It is admitted that the applicant's seniority in the gradation list as on 1.1.74 (Annexure-IV) was at Sl.No.25 which was downgraded five years later at Annexure-V to Sl.No.37(c) without hearing or notice

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to the applicant. The impugned order was passed at the instance of two examinees who passed in the 1971 test and who represented against the seniority list three years after the same was published. In accordance with Rule 32(D) of the P&T Manual (Ext.R2) no appeal against alteration of seniority would lie beyond one year from the date of issue of the gradation list. It seems to us that the applicant's seniority should not have been revised unilaterally on the basis of time barred representations when for five years he had been allowed to enjoy the seniority assigned to him and for good reasons. When his seniority was so downgraded the applicant assiduously has been protesting through representations, appeals and reminders right from 11.9.80. His representation to the D.G. dated 4.4.81 (Annexure-IX) was rejected eight years later by the impugned order dated 17th February 1989 at Annexure-XVII.

6. In the facts and circumstances we allow this application, set aside the impugned order dated 14th August 1979 at Annexure-V and direct that the applicant's seniority should be restored to the position as on 1.1.1974 as at Annexure-IV and also in the subsequent gradation lists on that basis. All consequential benefits including consideration for promotion to the next higher grades

should also be accorded to him. We also direct respondents 1 to 4 to consider the applicant for promotion to the grade of Senior P.A. to the P.M.G as and when respondents 5 and 6 or any official junior to the applicant in the cadre is so considered. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

14.12.90


(S.P. MUKERJI)
VICE CHAIRMAN

14.12.90

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