

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
T. A. No.

381/90

199

DATE OF DECISION 15.3.91

B.Rema Soman

Applicant (s)

M/s.M.R.Rajendran Nair, P.V.Asha Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)

Secretary to Government,
Ministry of Home Affairs, New Delhi and 2 others

Mr.N.N.Sugunapalan,SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, 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? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

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

In this application dated 15.5.1990 the applicant who has been working as Junior Stenographer in the Directorate of Census Operations, Trivandrum under the Ministry of Home Affairs, Government of India, has challenged the impugned memo dated 30.4.1990 rejecting her representation dated 15.1.1990 in which she had claimed protection of pay drawn by her in the higher grade of Stenographer Gr.C. She has also prayed that the respondents be directed to fix her pay under F.R.22 with effect from 12.9.88. and to declare that she is entitled to the pay scale of Grade 'C' Stenographer from 22.1.87 to 12.9.88. In the alternative she has prayed that the respondents be directed to fix her pay in the post of Junior Stenographer by granting her increments in that scale by taking into account the service rendered by her in equivalent or higher grade. The material facts of the case can be summarised as follows.

2. The applicant was recruited as an L.D.C through the Staff Selection Commission in 1979. She was selected through ^{an internal} ~~test~~ for the post of Stenographer Grade D and took over as such ^{on an adhoc basis} in the pay scale of Rs.

330-560 in the Department of Economic Affairs on 5.11.1982. She qualified through a test held by the U.P.S.C for promotion to the next higher grade of Stenographer Grade 'C' and was appointed as Stenographer Gr.C in the scale of Rs.425-800 with effect from 21.2.85(Annexure-II). Her period of probation was indicated to be 2 years from the date of her appointment as Stenographer Gr.C. Her pay was fixed at the minimum of the pay scale at Rs.425/- As Stenographer Gr.C she was transferred to the Ministry of Home Affairs on 1.8.1985 and then to the Director of Finance on 13.9.85. On 31.3.86(Annexure-VI) she represented to the Joint Director, Census Operations, Trivandrum through proper channel for being posted as Stenographer ^{or Steno Gr. D or LDC} ~~Gr.C~~ there as she was getting engaged to a boy working under the State Government of Kerala. She, in the representation, also indicated as follows:-

"If I am offered to lower post than Grade 'C' Stenographer, viz. Stenographer Grade 'D' or LDC, I am willing to accept the same and would not have any claim for promotion on account of my having held the higher post in Delhi other than by way of normal promotion."

Thereafter the Registrar General in the Ministry of Home Affairs vide the letter dated 1st January 1987(Annexure-VII) conveyed his decision to appoint the applicant who was working as Stenographer Gr.C, to the post of Junior Stenographer i.e., Stenographer Grade 'D' in the Directorate of Census Operations, Kerala on deputation for one year in the first instance. It was also indicated that her pay would be fixed at the minimum of the pay scale of the post of Junior Stenographer viz. Rs.1200-2040. She was not to be paid any TA/DA for her journey to Kerala. The applicant accepted the offer of appointment and terms and conditions of Annexure-VII and vide the order dated 22nd January 1987(Annexure-VIII) she was appointed as Junior Stenographer on deputation for a period of one year in the first instance with effect from 22nd January, 1987. Immediately thereafter on 4th February, 1987 the applicant represented(Annexure-IX) stating that since she had been working in the higher scale of Stenographer Gr.C, i.e., Rs.1400-2600, her pay as Junior Stenographer in the lower scale of Rs.1200-2040 cannot be fixed at its minimum. She also indicated that being on deputation she is entitled to draw ^{either} ~~her~~ grade pay of Stenographer Gr.C plus deputation allowance or the pay of the post of Junior Stenographer to which she has been appointed.

She claimed that since her pay of Rs.1440/- in her parent grade of Stenographer Gr.C plus deputation allowance is less than the maximum of Rs.2040/- of the pay scale of the post of Junior Stenographer, she may be allowed to draw her grade pay plus deputation allowance. Her representation was rejected on 14th April, 1987(Annexure-X) on the ground that she was not holding the post of Stenographer Gr.'C' in her parent cadre in a substantive capacity . In spite of this rejection the applicant moved the Registrar General through her representation dated 28.6.1988(Annexure-XI) to be absorbed permanently in the vacancy of Junior Stenographer in the Census Directorate, Trivandrum. Based on her representation, orders were issued on 12.9.88(Annexure-XII) absorbing her as Junior Stenographer on a transfer basis in the pay scale of Rs.1200-2040 subject to the conditions that she would be the junior most amongst the Junior Stenographers and her seniority would be counted from the date of her permanent absorption and that she would have no claim to a regular post of Stenographer Grade 'C' in the Ministry of Home Affairs. The applicant was confirmed in the post of Junior Stenographer with effect from 26.6.89 and in accordance with another order dated 27.11.1989(Annexure-XIII) her pay on absorption with effect from 12.9.88 as Junior Stenographer was raised from Rs.1230/- to Rs.1260/- by considering her service in the higher post of Stenographer Grade C for the period from 21.2.1985 to 26.1.1987 in accordance with 'Annexure to FR 27.1(a).' Her pay was further increased to Rs.1290/- with effect from 1.9.1989 through periodical increment. Her grievance is that without giving her any option her salary has been fixed on the basis of the salary in the deputation post(instead of her parent cadre post)plus deputation allowance instead of salary as Grade 'C' Stenographer plus deputation allowance till 12.9.88. On ^{according to her} absorption ^{she} was to be entitled to draw her substantive pay ^{in Grade C} in her old parent post, but now it appears that even the deputation allowance ^{over Grade D} is being withdrawn. She submitted a representation to the Director of Census Operations on 15.1.90 praying that her pay of Rs.1440/- in her parent cadre of Stenographer Gr.'C' should be protected and her service as Stenographer Grade 'D' from 28.1.82 should be counted for increment. She also indicated that her appointment as Stenographer Gr.'C' was against a substantive post and she is entitled to get her pay fixed under FR 22(ii). To this she was informed vide the impugned order at Annexure-XV dated 30.4.90 that since her deputation to the Census Department was on compassionate grounds and on her request and not in public interest and since she was taken in a lower post after ^{her} giving an undertaking, she

cannot claim protection of her pay under the F.R. & S.Rs. which are available only when the deputation is in public interest or against an equal or higher post. Her pay has been fixed in accordance with FR 22(b). The applicant's contention is that even if she was appointed to the new post on her own request under FR 15(a) her pay should have been fixed in accordance with FR 22(iii) and since on 12.9.88 she would have drawn a pay of Rs.1520/- in the scale of Stenographer Gr.'C' while the maximum of the pay scale of the post of Junior Stenographer is Rs.2040/-, she was entitled to draw a basic pay of Rs.1520/- as on 12.9.88 in accordance with FR 22(ii). Her contention is that she did not request for a deputation. She requested only for a transfer and she did not undertake to forego the benefits to which she was entitled in accordance with the rules. She has further argued that she was holding a lien on a permanent post of Stenographer Grade 'C' and the lien is lost only when she was confirmed in the Census Department on 26.6.89. On 12.9.88 when she was absorbed in the Census Department she had already completed two years of probation as Stenographer Grade 'C' on 21.2.87 and thus her substantive pay was that of Stenographer Grade 'C'. In accordance with F.R.26 service in another post, whether substantive or officiating would count for increments in the post on which the Government servant holds lien and therefore the service rendered by her before her transfer on 12.9.88 cannot be ignored for increments etc.

3. The respondents have stated that in accordance with the letter at Annexure-VII she was offered a post of Junior Stenographer on the conditions that (a) her pay will be fixed at the minimum of the pay scale of the post of Junior Stenographer viz. Rs.1200/-, (b) that service rendered by her in the lower post will not be counted for the purpose of promotion to the next higher grade, (c) her service on deputation will not count for increments etc. in the cadre post and (d) she will not be paid any TA/DA. The applicant accepted these conditions in accordance with her undertaking dated 7.1.87 at Annexure R-III. Since there was no provision for recruitment to the post of Junior Stenographer by transfer or on deputation she could be appointed only as a direct recruit, but considering her representation for appointment on compassionate grounds, she was appointed on transfer basis in relaxation of the Recruitment Rules(Annexure R-V). It was also stipulated in that order

that she would be the juniormost, that she would have no claim to her regular post of Grade C Stenographer and that she was entitled to the minimum of the pay scale of the post held by her as she was not holding the post of Stenographer Grade 'C' in a substantive capacity. The respondents have conceded that she was absorbed in a lower post in the scale of Rs.1200-2040/- though she was working in a higher post in the scale of Rs.1400-2600 and her representation about protection of her pay in the higher post was in violation of the undertaking given by her at Annexure R-III. Since she was not confirmed in the Ministry at the time of her absorption in the Census Department on 12.9.88 she cannot get her pay in the parent cadre protected. They have stated that on her absorption on 12.9.88 she was given one advance increment ⁱⁿ ~~in~~ the scale of Junior Stenographer in lieu of her service with effect from 21.2.1985. This was objected to by the internal audit ^R (Annexure-R(IX)) and the matter has been taken up with the Registrar General. In view of her undertaking, the applicant was not entitled to draw deputation allowance as it is not in public interest and action is being taken to recover the amount. They have stated that F.R 15.a and 22 does not apply in her case as the applicant was appointed to a temporary post. They have also denied that the applicant was holding a substantive post when she was appointed as Junior Stenographer in the Census Department. In the rejoinder the applicant has stated that she was appointed as Stenographer Grade 'C' on probation for a period of two years, but before just one month prior to the completion of her probation, she was posted on deputation and the period of deputation should be deemed to be the period spent in the parent department and the parent cadre for the purpose of completing the probationary period. On that basis she should be deemed to have been holding a substantive post after 22.1.87. She referred to the O.M dated 28.3.1988 of the Department of Personnel in this connection. On that basis she is entitled to the benefits of FR 22(a)(ii) and in any case, her claim under Rule 26(b) cannot be denied to her. She claims that the service rendered by her as Stenographer Gr.'C' should be taken into account for fixing her basic pay as Junior Stenographer as also the next date of her increment. She argued that the undertaking given by her was regarding her pay on deputation and any undertaking or

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consent will not take away her rights in accordance with the statutory rules. In the additional counter affidavit the respondents have stated that the applicant had applied for the post of Junior Stenographer on the understanding that "she would not have any claim on account of her holding a higher post in Delhi" and that she was "prepared to resign the post of Stenographer Grade C". They have differentiated between completion of probation and confirmation and have stated that only if a person holds a substantive post her service in the higher post is counted for increment. In her appointment order dated 12.9.88(Annexure-XII) it was made clear that her seniority would be counted from the date of her appointment as Junior Stenographer in the Census Department. They have argued that because of her undertaking she is estopped from claiming additional benefits.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Let us for the time being ignore the contention of the respondents that since the applicant had herself volunteered to be posted to the lower grade of Junior Stenographer at Kerala and had given an undertaking that she would be the juniormost and would not claim the regular post of Stenographer Grade C and would accept the minimum of the pay scale of the post of Junior Stenographer ~~and therefore~~^A, she cannot claim either protection of her last pay drawn as Stenographer Grade C or count her previous service for purposes of increments in the scale of Junior Stenographer. Let us examine how far she is entitled to protection of her pay as Stenographer Grade C and counting her previous service for purposes of increments under the statutory rules. Her further contention ^{is} C that since she was transferred on deputation to the post of Junior Stenographer initially she would be entitled to her grade pay in the parent cadre as Stenographer Grade 'C' plus deputation allowance or the pay of the post of Junior Stenographer to which she was transferred. She has claimed the benefit of FR 22(a) (ii) and FR 22 (a)(iii) read with FR 15(a) in the matter of her initial pay fixation as Junior Stenographer in the Census Department. The relevant provisions of

F.R.15(a) and F.R.22(a) are quoted below:-

"F.R.15.(a) The President may transfer a Government servant from one post to another; provided that except-

- (1) on account of inefficiency or misbehaviour, or
- (2) on his written request,

a Government servant shall not be transferred substantively to, or, except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under Rule 14."

"F.R.22. The initial substantive pay of a Government servant who is appointed substantively to a post on a time-scale of pay is regulated as follows:-

- (a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended -
 - (i) when appointment to the new post involves the assumption of duties and responsibilities of greater importance (as interpreted for the purposes of Rule 30) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;
 - (ii) when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay, plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum pay of the time-scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay;
 - (iii) when appointment to the new post is made on his own request under Rule 15(a) and the maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay."

Both the aforesaid F.Rs apply to a case where a Government servant is transferred at his own request from a higher to a lower post when he is holding a lien in the higher post from where he was transferred. The applicant's contention is that the higher post which she was holding ^{substantively} /before transfer to Kerala was the post of Stenographer Grade 'C' in the revised scale of Rs.1400-2600/- from where she was transferred to the lower post of Junior Stenographer on deputation in the lower scale of Rs.1200-2040. It is an admitted fact that

she was appointed to the post of Stenographer Grade 'C' on 21.2.85 on probation for a period of two years and before she could complete the probation, on her own request she was transferred to the lower post of Junior Stenographer in the scale of Rs.1200-2040 on 22.1.87. At that time she was drawing a pay of Rs.1440/- as Stenographer Grade 'C'. Even if we for the sake of argument assume that the post of Stenographer Grade 'C' which she was holding was a permanent post, since she had not been confirmed in that post and had not even completed the period of probation before she was transferred on deputation to Kerala, it cannot be said that she was drawing a substantive pay of Rs.1440/- or had her lien on that post for the purposes of protection of her pay as Stenographer Grade 'C' ^{under F.R. 22} ₆ in the fixation of her initial pay in the lower grade of Junior Stenographer. Unless a probationer is confirmed, he cannot be said to have acquired a lien on that post temporary or permanent. The contention of the applicant that period of her deputation should be considered towards period of probation cannot be accepted because while she was on probation in the higher grade of Stenographer Grade 'C' her deputation was on her own request to the lower grade of Junior Stenographer. Service rendered ^{in private interest} ₅ against a lower post cannot be counted as service on probation in the higher post even on a notional basis.

5. As regards counting her previous service as Stenographer Grade 'D' and Stenographer Grade 'C' towards increments in the grade of Junior Stenographer, the applicant has relied upon F.R.26. The relevant provision of F.R. 26 applicable to her case is F.R.26(c)(i) which reads as follows:-

"F.R.26. The following provisions prescribe the conditions on which service counts for increments in a time-scale:-

- (a)
- (b)
- (c)(i) If a Government servant, while officiating in a post or holding a temporary post on a time-scale of pay, is appointed to officiate in a higher post or to hold a higher temporary post, his officiating or temporary service in the higher post shall, if he is reappointed to the lower post, or is appointed or re-appointed to a post on the same time-scale of pay, count for increments in the time-scale applicable to such lower post.

The period of officiating service in the higher post which counts for increment in the lower post is, however, restricted to the period during which the Government servant would have officiated in the lower post but for his appointment to the higher post. This clause applies also to a Government servant who is not actually officiating in the lower post at the time of his appointment to the higher post, but who would have so officiated in such lower post or in a post on the same time-scale of pay had he not been appointed to the higher post."

(emphasis added)

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It may be recalled that the applicant was promoted on an adhoc basis from the post of L.D.C to that of Stenographer Grade 'D' without appearing before the Staff Selection Commission, through a test conducted by the Department of Economic Affairs on 26.11.1982(Annexure-I). She was further promoted through the U.P.S.C as Stenographer Grade 'C' on 21.2.85 on probation and voluntarily came ~~down~~ to the lower grade of Junior Stenographer on deputation with effect from 22.1.87. Accordingly she is entitled to count her service in the higher grade of Stenographer Grade 'C' from 21.2.85 to 22.1.87 for the purposes of increment in the ~~grade~~ ^{lower} of Junior Stenographer.

6. As regards counting of her service as Stenographer Grade 'D' to which she had been appointed on an adhoc basis, Annexure to F.R.27 would be relevant. The provisions applicable to this are quoted below:-

"1. Fixation of pay of Government servants promoted/transferred from one officiating post to another or re-appointed after retrenchment,including fixation of pay of temporary Government servants on transfer from a higher to a lower post and from a lower to a higher post etc.(including transfer from one post to another post.) "

"(a)Temporary Government Servants transferred from a higher to a lower post:-

Completed years of service in the higher post will count for purposes of advance increments in the lower post to which he is appointed or reverted. But initial pay should not exceed pay last drawn in the higher post.

(b)Temporary Government Servant transferred from one post to another equivalent post:-

Benefit similar to (a) above completed years of service should be given."

Pay will be fixed under F.R.27 and personal pay, if any, will be allowed under F.R.9 (23)(b)%"

Since the aforesaid provision does not make any distinction between adhoc and temporary appointments , we feel that the entire service rendered by the applicant as Stenographer Grade 'D' and Stenographer Grade 'C' between 5.11.82 and 22.1.87 would count for increments in the scale of Junior Stenographer. The respondents themselves had granted one additional increment to the applicant as Junior Stenographer in lieu of her service as Stenographer Grade C from 21.2.85 to 26.1.1987 in their order dated 27.11.1989 (Annexure-XIII) on the basis of the Annexure to F.R 27 as quoted above. While granting the benefit under 1.(a) they ^{however} denied to her the benefit available to her under 1.(b) of the Annexure. Since the Junior Stenographer and Stenographer Grade 'D' are equivalent posts, the applicant cannot be denied the benefit of her service

as Stenographer Grade 'D' for the purposes of her pay fixation as Junior Stenographer.

7. As regards grant of deputation allowance over and above the pay of the post or the pay in the parent cadre para 3.1 giving Principles of Admissibility in Appendix-5 of Swamy's Comilation of F.R.S.R Part 1-General Rules, reads as follows:-

"3.1 For the purposes of drawing deputation(duty)allowance, the term 'deputation' will cover only appointments made by transfer on a temporary basis to other departments and State Governments provided the transfer is outside the normal field of deployment and is in the public interest." (emphasis added)

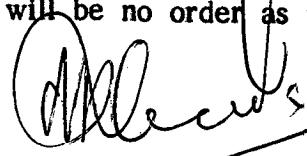
Since in the instant case the transfer of the applicant on deputation to the Census Department in Kerala was on her own request, she cannot be allowed the deputation allowance in addition to her basic pay.

7. We are not at all convinced by the argument of the learned counsel for the respondents that the benefits of F.R. & S.Rs to which the applicant is entitled cannot be given to her because of the undertaking given by her and the restricted terms and conditions of her transfer to Kerala which she had voluntarily accepted. The Government as a model and supreme employer cannot deny the statutory rights of its employees on the basis of a 'quid pro quo' arrangement with its employees. The applicant was under dire compulsion to be posted at Kerala where her would-be husband was working. With the present policy of the Government to encourage women employees and to keep husband and wife together, it does not lie in the mouth of the Government to say as at Annexure-XV that "pay protection is permissible under the F.R. & S.Rs. only when the deputation is in public interest". No rule has been shown to that effect by the respondents.

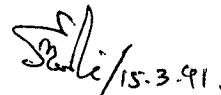
refers to the undertaking and to say as at Annexure-XV

8. In the facts and circumstances we allow this application in part to the extent of setting aside the impugned order dated 30.4.1990 at Annexure-XV and declaring that the applicant would be entitled to get her initial pay as Junior Stenographer in the Census Department fixed by taking into account her period of service rendered as Stenographer Grade 'D' and Stenographer Grade 'C' from 5.11.82 and 21.2.85 respectively, on her appointment as Junior

Stenographer in the Census Department in January 1987 for the purposes of increments in the scale of Junior Stenographer. She will not be entitled to any deputation allowance in the Census Department prior to her absorption as Junior Stenographer with effect from 12.9.88. In the circumstances of the case there will be no order as to costs.


(A.V.Haridasan)
Judicial Member

15/3/91


(S.P.Mukerji)
Vice Chairman

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