

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 382 OF 2008

THURSDAY....., this the 24th day of September, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

**P. Venu, Court Master,
Debt Recovery Tribunal,
Ernakulam.**

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Applicant

(By Advocate Mr. S. Radhakrishnan)

versus

1. **Union of India rep. by the Secretary,
Department of Personnel and Training,
Ministry of Personnel, Public
Grievances and Pension, New Delhi.**
2. **The Secretary, Ministry of Finance,
Department of Financial Services,
(Banking Division), Jeevan Deep,
Parliament Street, New Delhi.**
3. **The Debt Recovery Tribunal (Kerala &
Lakshadweep), Ernakulam rep. by the
Registrar in charge, Debt Recovery
Tribunal, 5th Floor, KSHB Building,
Panampilly Nagar, Cochin-36.**
4. **The Presiding Officer,
Debt Recovery Tribunal, 5th Floor,
KSHB Building, Panampilly Nagar,
Cochin-36.**
5. **A. Usha Kumari, UDC,
(Deputy Commissioner's Office,
Lohit District, Tezu, Arunachal Pradesh),
Now Recovery Inspector, Debt
Recovery Tribunal, Ernakulam,
Residing at Kanjirapparambu Madam,
Near Government Hospital,
Chalakkudi, Trichur District.**

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Respondents

**(By Advocate Mr. P.S. Biju, ACGSC (R1-4)
Advocate Mr. T.C.G. Swamy (R5))**

The application having been heard on 11.09.2009, the Tribunal on 24-09-09 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The question involved in this case is as to whether, for the purpose of promotion to the post of Recovery Inspector in the Respondents' organization, the extent of experience of eight years of regular service should be in the very same organization or service in an analogous post in the parent department prior to deputation/absorption in the respondents' organization also qualifies.

2. The capsulated facts of the case with terse sufficiency are as under:-

(a) The applicant, who commenced his career in the All India Radio as LDC in August 1993, was appointed as Stenographer Grade D of the Central Secretariat Stenographers Services Cadre of Ministry of Information and Broadcasting in August 1998 (Annexure A-1). The Debt Recovery Tribunal, Ernakulam Group C & D (Non-Gazetted) Recruitment Rules, 2002 were notified in March 2002. Applications were invited to fill up the vacancy of Court Masters on deputation basis from persons holding analogous post vide Annexure A-3. The applicant aspired for the same (Annexure A-4) and was appointed as Court Master on deputation basis in September 2002 (Annexure A-5). Within about 9 months he was also absorbed in the said

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post w.e.f. 27th June 2003, vide Annexure A-6.

(b) The post, next higher to that of Court Master is Recovery Inspector, for which the qualifications, as contained in the Recruitment Rules are as under:-

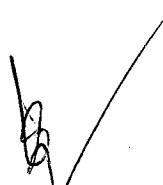
"From amongst Court Masters of Debts Recovery Tribunal with eight years' regular service."

(c) Taking into account his services in the parent department in the analogous post, the applicant preferred Annexure A-7 representation dated 3rd October 2007 to the third respondent to consider him for promotion to the post of Recovery Inspector. This was recommended by the second respondent, vide Annexure A-9. A precedent in this regard occurred in Hyderabad DRT has also been cited. However, for the post of Recovery inspector, the 2nd respondent had invited application for filling up the said post on deputation basis, vide notification dated 11th January 2008 vide Annexure A-8. By the impugned Annexure A-10 order dated 21st April 2008, the 2nd respondent informed the applicant that the 1st respondent had clarified that for promotion, the service of the applicant from the date of his absorption in the post of Court Master alone will be counted for promotion to the post of Recovery Inspector. Hence this O.A. is filed by the applicant citing the decisions in the case of K. Madhavan vs Union of India, S.I. Rooplal vs L. Governor Delhi and Union of India vs K.B.Rajoria in support of his case and

seeking inter alia the following reliefs:

- (a) Call for the records connected with the case;
- (b) declare that Annexure A10 order is patently illegal, wrong and unjust;
- (c) declare that the service rendered by the applicant as Stenographer Grade 'D' w.e.f. 08.06.1998 is to be reckoned as regular qualifying service for promotion to the post of Recovery Inspector since the post of Steno Grade 'D' and Court Master are admittedly analogous or equivalent.;
- (d) declare that the service rendered by the applicant as Court Master w.e.f. 2.9.2002 on deputation basis at DRT, Ernakulam is to be reckoned as regular qualifying service for promotion to the post of Recovery Inspector;
- (e) declare that the total service rendered by the applicant with effect from 08.06.1998 in the grade of Court Master is to be counted for considering the eligibility for promotion to the post of Recovery Inspector;
- (f) direct the respondents to consider the candidature of the applicant for promotion to the existing vacancy of Recovery Inspector in DRT, Ernakulam;
- (g) direct the respondents to grant promotion to the applicant w.e.f. 08.06.2006 to the post of Recovery Inspector with all consequential benefits.

(d) The private respondent moved an application for impleadment in the OA as she had been selected in the wake of the notification for deputation. Further, as at the initial date for admission of OA an interim order was passed not to fill up the post, a Miscellaneous Application for vacation of stay was also filed. Considering the circumstances of the case, both the M.As were allowed and the party respondent impleaded and liberty granted to the official respondents to fill up the vacancy.



3. Both the official respondents as well as party respondent filed their counter, resisting the O.A. Their contentions are as under:-

(a) **Contention by the official respondents:** As per the Recruitment Rules, eight years' regular service in the grade of Court Master is absolutely necessary for considering him for promotion to the post of Recovery Inspector. The applicant joined as Court Master on deputation basis in this Tribunal on 02-09-2002 and was absorbed in that post only on 27-06-2003. Thus, his service from the date of absorption has been taken as regular service of Court Master and thus, he will be completing eight years of regular service in the post of Court Master only on 27-06-2011. Of course, the DRT Ernakulam did recommend the case of the applicant but the Ministry took the view that these posts cannot be equated. Applicant was not working as Court Master in the parent organization. Duties and responsibilities of Court Master and Stenographers are not comparable.

(b) **Contention by the party respondent:** The decisions cited by the applicant relate to counting of past services in the parent department for the purpose of seniority in the borrowing department. What is to be seen is whether the past service could be construed to meet the eligibility condition for promotion. The case of Union of India vs G.R.K. Sharma



(1998) 6 SCC 186 deals with this particular aspect, by interpreting an identical phraseology "regular service of eight years in the grade" and holding that the said term connotes "rendering eight years of service in the organization to which he has been appointed." Again, the decision in Rooplal has been distinguished in the case of Indu Shekhar Singh & Ors vs State of UP & Ors (2006) SCC (L & S) 1916.

4. The applicant has filed his rejoinder to the reply statements in which he has narrated to show as to how the decisions in K. Madhavan, S.I. Rooplal and K.B. Rajoria apply to his case and how the decision in the case of Indu Shekhar Singh could be distinguished. Decision of the Kerala High Court reported in 1987 (1) KLT 84 – K.K. Marakkar vs Kerala Public Service Commission and CAT Madras decision in the case of V.D. Rajasekhran vs Union of India and another (OA No. 974/2005) have also been referred to, to highlight, respectively, that the rules are to be interpreted without prefixing any word not contained therein and that executive instructions not in conformity with the statutory provisions are to be ignored.

5. Counsel for the applicant argued that the fact that the post of stenographer is an analogous post of Court Master has been established by virtue of the fact that his very deputation as Court Master in 2002 was on the said basis. For, there are two alternative conditions for deputation, one "holding analogous posts in Central Government/State Government or in High Court/Tribunals" and the other "Lower Division Clerk with 8 years

regular service in the scale of Rs 3050 – 4590". Admittedly, the applicant's case does not fall under the latter category and he fulfills the former condition. As regards the recruitment rules for the post of Recovery Inspector, the requirement is Court Master with eight years of regular service. There is no specific condition that the said 8 years of service should be in the very same organization and as such the contention of the private respondent or for that matter of the official respondents in this regard has to be thoroughly ignored. As regards the decision of K.Madhavan, S.I. Rooplal and K.B.Rajoria, the judgments are specific that service rendered in the parent department could well be reckoned for the purpose of seniority and it is trite that seniority would mean length of service which is reckoned for promotion purposes. Hence, all the three decisions apply in toto to the facts of the case of the applicant. The decision in G.R.K. Sharma, relied upon by the Private Respondent focuses only on the phraseology "service in the grade" which term is conspicuously missing in the case of Recovery Inspector and hence the said decision is of least assistance to the private respondent. Again, a precedent existing in this regard viz. Promotion granted in DRT, Hyderabad, denial to consider the case of the applicant would violate the Fundamental Rights to equality in matters of employment.

6. Counsel for the official respondents stated that the department is clear that eight years of service means eight years of service as Court Master in the DRT. There cannot be any deviation from the said view.

7. Counsel for the private respondent first made an attempt to state

that the very absorption of the applicant is violative of rules, as the said absorption has taken place on the strength of Rule 7 of the Recruitment Rules, whereas the said Rule provides for such absorption in respect of those who were in service of DRT on the date of commencement of the Recruitment Rules, which is March 2002, while the applicant surfaced in the DRT only in September 2002. As regards the non eligibility of the applicant, the counsel argued that the decision of G.R.K. Sharma clearly shows that the type of experience should be only in the very same department and not the one in the parent department. As such the applicant cannot claim that his past services in the parent department, which again are not in the post of Court Master, but only as Stenographer should be taken into account to work out the requisite experience of 8 years of regular service. Counsel further argued that there is a specific purpose behind insisting that the experience should be in the same organization, and equivalence of post may not be sufficient as the functional responsibilities may call for work in the same post.

8. Arguments were heard and documents perused. The issue revolves round only interpretation of the provisions of Recruitment rules, with particular reference to column No. 12 at Serial No. 8 of the Schedule to the Recruitment Rules, vide Annexure A-13. Of course, when another individual similarly situated has been afforded the promotion, non consideration of the case of the applicant would entail infringement of Art. 16 of the Constitution.

9. The Recruitment Rules, called "the Debts Recovery

Tribunal, Ernakulam Group 'A' and 'B' (Gazetted) and Group 'B' (Non-Gazetted) posts Recruitment Rules, 2001" came into force on 15th November 2001. It comprises of rules for recruitment to all the posts of Group A, Group B and non Gazetted Post of Group B, under which the post of Recovery Inspector comes.

10. In all there are 13 posts right from Secretary to Accounts Assistant. Of these, it is only the post of Recovery Inspector that is tenable by promotion/deputation, while for the rest of the posts deputation is the only mode..

11. Filling up of the post by promotion is from amongst Court Masters with eight years of regular service. If it is to be construed that the said eight years service should be in the very same organization, that too on regular basis, perhaps there would not be any one available to fill the bill for quite a few years. The respondents have been fully aware of the situation. In that event, as in the case of other posts, this post too would have been thrown open only for deputation, instead of promotion/deputation. Perhaps this would have weighed the Respondents while considering promotion of a Court Master in Hyderabad D.R.T. vide Annexure A-15. It is not the case of the official respondents that promotion granted to the Court Master of DRT Hyderabad is by mistake, in which event, the same need not be perpetuated. It has been indicated in para 18 that the Ministry of Finance has advised the DRT Hyderabad to re-examine the matter. The decision is not made known to this Tribunal by the respondents.



12. If the promotion of the Court Master of DRT Hyderabad as Recovery Inspector is held by the Respondents as legally valid, then there is no reason not to afford the same treatment in the case of the applicant, as otherwise, hostile discrimination meted to the applicant would infringe upon the constitutionally guaranteed fundamental right under Art. 16 available to the applicant. This is one aspect to be considered by the official respondents.

13. Independent of the above, the decisions cited by the parties may be considered to ascertain as to whether the past services in the parent department could be counted for the purpose of promotion to the grade of Recovery Inspector.

14. Counsel for party respondent referred to the decision of **G.R.K. Sharma**, (1998) 6 SCC 186, wherein the Apex Court has held as under:-

"2. Mr V.C. Mahajan, the learned Senior Counsel appearing for the Union of India, contends that in view of the statutory rule clearly indicating that regular service of eight years in the grade would make a Lower Division Clerk eligible for being considered for promotion to the Upper Division Clerk, the Tribunal committed error in taking into account the past service rendered by the respondent and directing the Union Government to consider the case of the respondent for promotion to the Upper Division Clerk. The learned counsel appearing for the respondent on the other hand contended that in the absence of any embargo in the appointment order or in any other provision, the past experience was required to be counted for the purpose of deciding the eligibility for promotion of the respondent to Upper Division Clerk and consequently the Tribunal has not committed any error. Having considered the rival contentions as well as the relevant recruitment rules governing the question of promotion, we are of the considered opinion that a redeployed employee who has been posted in the Printing Press



must render eight years of service as a Lower Division Clerk in the Printing Press so as to be eligible for being considered for promotion to Upper Division Clerk. The expression "regular service of eight years in the grade" would connote rendering eight years of service in the organisation to which he has been appointed. In a somewhat similar situation, this Court has considered similar expression in the case of Union of India v. K. Savitri (1998) 4 SCC 358 where it has been held that the past service of redeployed surplus employee cannot be counted for his seniority in the new organisation and equally, the past experience also would not count as the so-called past service rendered will not be service in the grade. The aforesaid decision interpreting the similar expression "service in the grade" would equally apply in the present case where the statutory rule also uses the expression "regular service of eight years in the grade".

3. In this view of the matter, the Tribunal committed serious error in counting of past service of the respondent and directing the Union Government to consider his case for promotion to Upper Division Clerk. The impugned order of the Tribunal is set aside and OA No. 247 of 1991 is dismissed. The appeal is allowed but in the circumstances, no order as to costs."

15. Again, support was sought to be taken from the decision of the Apex Court in the case of Indu Shekhar Singh & Ors vs State of UP. which distinguished the case of S.I.Rooplal, Madhavan and Makashi, (which were relied upon by the counsel for the applicants in the present O.A) The decision therein as as under:-

"47. The decisions referred to hereinbefore, therefore, lay down a law that past services would only be directed to be counted towards seniority in two situations: (1) when there exists a rule directing consideration of seniority; and (2) where recruitments are made from various sources, it would be reasonable to frame a rule considering the past services of the employees concerned.

48. The said decisions, in our considered view, have no application in this case, having regard to the provisions of Section 5-A of the Act, in terms whereof no provision exists for recruitment of deputationists. Recruitment of deputationists, in fact, is excluded therefrom."

16. The counsel for the party respondent emphasized that in the instant case, there being specific rule as to how seniority has to count vide proviso to para 7 of the Recruitment Rules which does not provide for counting of service rendered in analogous post in the parent Department, the same has to be followed. And according to the counsel, the above judgments especially, of G.R.K. Sharma, would go to show that eight years regular service in the grade would mean in the very same organization.

17. It would be seen from the judgment of G.R.K. Sharma that there the emphasis and focus have been to "in the grade" which term is conspicuously absent in the Recruitment Rules in question. In other words, for having that interpretation, there must be the phraseology "in the grade" in the Recruitment Rules, and the same cannot be inserted either overtly or covertly without proper amendment to the Rules framed under the proviso to Art. 309 of the Constitution. See **Sonia Bhatia v. State of U.P., (1981) 2 SCC 585**, wherein the Apex Court inter alia observed as under:-

"This Court observed in S. Narayanaswami v. G. Pannerseiyam (1972) 3 CC 717 that where the statute's meaning is clear and explicit, words cannot be interpolated. . . ."

18. In interpretation of the provisions of the recruitment rules, "Court Masters with eight years of regular service" it cannot be stated that unless the term "in the grade" is added the provisions cannot be interpreted.

19. Now, the next contention of the party respondent to be

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considered is that the decision cited by the applicant's counsel would not be of help to the applicant, as these relate to seniority, while, what is spinal in the matter is only eligibility condition and not seniority, as there is only one individual and none has any dispute over seniority. The following are the decisions relied upon by the counsel for the applicant:-

" (a) Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644,

15. We will now take up the question whether the appellants are entitled to count their service rendered by them as Sub-Inspectors in BSF for the purpose of their seniority after absorption as Sub-Inspectors (Executive) in the Delhi Police or not. We have already noticed the fact that it is pursuant to the needs of the Delhi Police that these officials were deputed to the Delhi Police from BSF following the procedure laid down in Rule 5(h) of the rules and subsequently absorbed as contemplated under the said rules. It is also not in dispute that at some point of time in BSF, the appellants' services were regularised in the post of Sub-Inspector and they were transferred as regularly appointed Sub-Inspectors to the Delhi Police Force. Therefore, on being absorbed in an equivalent cadre in the transferred post, we find no reason why these transferred officials should not be permitted to count their service in the parent department. At any rate, this question is not res integra and is squarely covered by the ratio of judgments of this Court in more than one case. Since the earlier Bench of the Tribunal relied upon Madhavan case to give relief to the deputationists, we will first consider the law laid down by this Court in Madhavan case. This Court in that case while considering a similar question, came to the following conclusion:

"21. We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his



seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See *R.S. Makashi v. I.M. Menon; Wing Commander J. Kumar v. Union of India* ." (emphasis supplied)

16. Similar is the view taken by this Court in the cases of *R.S. Makashi* and *Wing Commander J. Kumar* which judgments have been followed by this Court in *Madhavan case*¹. Hence, we do not think it is necessary for us to deal in detail with the view taken by this Court in those judgments. Applying the principles laid down in the above-referred cases, we hold the appellants are entitled to count the substantive service rendered by them in the post of Sub-Inspector in BSF while counting their service in the post of Sub-Inspector (Executive) in the Delhi Police Force.

(b) *Union of India v. K.B. Rajoria*, (2000) 3 SCC 562 , wherein the Apex Court has held as under:-

Third, the High Court erred in construing the words "regular service in the grade" as actual physical service. If that were so, then an ad hoc appointee who actually serves in the post could also claim to be qualified to be considered for the post of Director General. The High Court itself held that "ad hoc service rendered by any of the parties would not count towards eligibility".

(c) *K. Madhavan v. Union of India*, (1987) 4 SCC 566,

The expression "on a regular basis" in the 1975 Rules cannot, in our opinion, be interpreted to mean as on absorption in the CBI as SP. The general principle is that in the absence of any specific provision to the contrary, the length of service from the date of appointment to a post should be taken into consideration for the purpose of either seniority in that post or eligibility for the higher post. As no explanation has been given in the 1975 Rules of the said expression, we do not think it desirable to deviate from the established principle of computing the length of service for the purpose of seniority or eligibility for the

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higher post from the date of appointment. In our view, therefore, the expression "on a regular basis" would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis."

20. The above decisions centre around entitlement to seniority. Though seniority would be a factor for promotion, the same is with reference to zone of consideration, while for eligibility of possessing requisite service, seniority is not that important. The counsel for the party respondent is right when he states that eligibility be not confused with seniority. In this regard, the decisions of the Apex Court in *Union of India v. Deo Narain*, (2008) 10 SCC 84, would be relevant:-

"32. What was held in Ponnappan by this Court was that if an employee is transferred from one department to another department on compassionate ground, he would be placed at the bottom of the seniority in the transferee department. Hence, at the time of his transfer in the transferee department, all employees in the same cadre who were very much serving at that time would be shown above such transferee employee and in such combined seniority list, the transferred employee would be shown as junior most. The only thing which this Court said and with respect, rightly, is that such an employee who had already worked in a particular cadre and gained experience, will not lose past service and experience for the purpose of considering eligibility when his case comes up for consideration for further promotion.

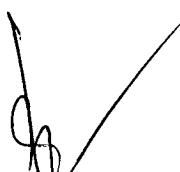
33. In our judgment, the ratio laid down by this Court in Ponnappan clearly lays down the principle formulated in the Government of India's Letter dated 20-5-1980 as also in a subsequent communication dated 23-5-1997 issued by the Ministry of Finance, Department of Revenue. Even otherwise, in our considered opinion, the two concepts viz. (i) eligibility, and (ii) seniority are quite distinct, different and independent of each other. A person may be eligible, fit or qualified to be considered for promotion. It does not, however, necessarily mean that he must be treated as having requisite "seniority" for entry in the zone of consideration. Even if he fulfils the first requirement, but does not come within the zone of consideration in the light of his position and placement in "seniority", and the second condition is not fulfilled,

he cannot claim consideration merely on the basis of his eligibility or qualification. It is only at the time when "seniority" cases of other employees similarly placed are considered that his case must also be considered. CAT, in our view, therefore, was not right in applying Ponnappan and in granting relief to the applicants. There is no doubt in our mind that it says to the contrary. (Underlining supplied)".

2.1. It is pertinent to mention here that in the very same judgment, the Apex Court held that service in parent Department which may not count for seniority could well be counted for determining eligibility of promotion; vide para 36 of the said judgment, wherein the Apex Court has held as under :-

"36. Finally, in Scientific Advisor to Raksha Mantri v. V.M. Joseph again, a similar view has been taken by this Court. It was held that if the eligibility condition requires certain length of service, service rendered in another organisation before unilateral transfer at own request cannot be counted for the purpose of seniority. But it must be counted for determining eligibility for promotion. Referring to and relying on Ponnappan, this Court stated:

"6. From the facts set out above, it will be seen that promotion was denied to the respondent on the post of Senior Storekeeper on the ground that he had completed three years of regular service as Storekeeper on 7-6-1980 and, therefore, he could not be promoted earlier than 1980. In coming to this conclusion, the appellants excluded the period of service rendered by the respondent in the Central Ordnance Depot, Pune, as a Storekeeper for the period from 27-4-1971 to 6-6-1977. The appellants contended that, since the respondent had been transferred on compassionate grounds on his own request to the post of Storekeeper at Cochin and was placed at the bottom of the seniority list, the period of three years of regular service can be treated to commence only from the date on which he was transferred to Cochin. This is obviously fallacious inasmuch as the respondent had already acquired the status of a permanent employee at Pune where he had rendered more than three years of service as a Storekeeper. Even if an employee is transferred at his own request, from one place to another, on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may



have been placed at the bottom of the seniority list at the transferred place. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors."

22. Arguments were advanced over the analogous nature of the post of Stenographer and Court Master. The guidelines in this regard have been laid down in the DOPT O.M. No. AB14017/71/89-Estt., dated 3-10-1989 in cases where the appointment is to be made by transfer or transfer on deputation basis. The consolidated instructions indicated in para 5 of "Analogous Posts" and items (i) to (iv) indicated thereunder read as under:-

" Whenever the recruitment rules for a post prescribe 'transfer on deputation/transfer' as a method of filling up the post, they generally contain an entry in column 12 of the standard form of schedule stating inter alia that the 'transfer on deputation/transfer' shall be made from amongst the officers holding analogous posts on regular basis under the Central/State Governments. This Department has been receiving references from various Ministries/Departments asking for the definition of 'analogous posts'. It has, therefore, been considered appropriate to lay down the following criteria for determining whether a post could be treated as analogous to a post under the Central Government:

- (i) Though the scale of pay of the two posts which are being compared may not be identical, they should be such as to be an extension or a segment of each other, e.g., for a post carrying the pay scale of Rs 3000-5000, persons holding posts in the pay scale of Rs 3000-4500 will be eligible.
- (ii) Both the posts should be falling in the same group of posts as defined in the Department of Personnel and Administrative Reforms Notification No. 13012/2/87-Estt. (D), dated the 30th June, 1987, viz., Group 'A', Group 'B' etc.
- (iii) The levels of responsibility and the duties of the two posts should also be comparable.
- (iv) Where specific qualifications for transfer on deputation/transfer have not been prescribed, the qualifications and experience of the officers to be selected should be comparable to those prescribed for direct recruits to the 'post where direct recruitment has also been prescribed as one of the methods of appointment in the recruitment rules'.



Where promotion is the method of filling up such posts, only those persons from other Departments may be brought on transfer on deputation whose qualifications and experience are comparable to those prescribed for direct recruitment for the feeder grade/post from which the promotion has been made."

(The above has been referred to by the Apex Court in the case of *M. Hara Bhupal v. Union of India, (1997) 3 SCC 561*)

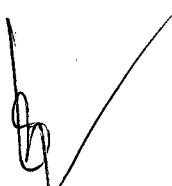
23. Counsel for the applicant is right when he argued that the selection of the applicant as Court Master on deputation is by virtue of the fact that he was holding an analogous post in the parent department. When for deputation, the post of Stenographer could be treated as analogous to the post of Court Master, there is no reason to have a different interpretation in relation to promotion. However, the rules being silent, and direct authority on the subject not being available, the applicant cannot, as a matter of right claim the same. Even Ponnappan's case may not be of any assistance to the applicant as in that case, experience in the parent Department which was counted for determining eligibility condition was in the same post 'Storekeeper'. In the instant case, the past service was only in analogous post. The decision by the Department in this regard may have to be accepted. Hence, we are of the considered view that the period that could count for the purpose of promotion is the period spent as Court Master including deputation. The decision of the respondents depends upon the final view to be taken in the case of applicant's counterpart at Hyderabad DRT who stood promoted taking in view his past services. It is to be noted here that in the case of the other individual promoted as Recovery Inspector in the Hyderabad DRT, the said individual had come on deputation to DRT on 29th October 2001 followed

by absorption w.e.f. 01-07-2002 and was promoted as Recovery Inspector on 31st October 2004. His service as Court Master in the organization is just three years, while the rules stipulate a period of 8 years. Compared to the same the case of the applicant stands in a stronger footing.

24. It is to be kept in mind that it is not the case that the applicant is not having much experience as Court Master and is banking upon his past service as Stenographer alone. He has been in the DRT by now for over 7 years including the period of deputation. The deficiency, if any, is only a year. The period of deputation, when followed by regular absorption cannot be ignored as the same falls within the term "regular service". Since, in the case of DRT, Hyderabad, the incumbent has been afforded the relaxation (presumably), by the Central Government, the case of the applicant could be considered for relaxation of rules, under the provisions of Rule 8 of the Rules, as he has by now put in substantial period of service in the DRT itself. Such a relaxation for only one person may not be treated as favouritism as the post in the feeder grade is only one and the applicant cannot be blamed for the same. In this regard support could be had from the decision of the Apex Court in the case of **Sandeep Kumar Sharma v. State of Punjab, (1997) 10 SCC 298**, wherein the Apex Court had considered an identical rule as of Rule 8 and the same is as under:-

"9. Rule 14 contains the general power of Government to relax the rules. It reads thus:

"14. General power to relax rules.—Where the Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons."



10. It is clear that while Rule 14 permits relaxation for a class or a category of persons, Rule 7 preserves the Government's power to relax the physical standard in individual cases. In the present case Rule 7 is the appropriate rule and it was not necessary to embark on Rule 14 at all. Anyway since the appellant has referred to Rule 7 as the relevant rule we are not disposed to consider the amplitude of Rule 14 in the case.

11. The High Court seems to have taken the view that the only beneficiary of the aforesaid relaxation is the appellant and hence considered it an act of favouritism shown to him.

12. The appellant cannot be blamed for being the only candidate available at present seeking relaxation of physical standards. The same benefit could also have inured to anyone else situated in the same position as the appellant had there been any."

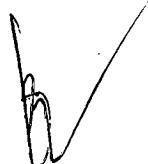
25. In so far as the Private respondent's right is concerned, the same should be strictly on the basis of the terms of deputation. No other right could be available to the said respondent. Earlier, in our order dated 08-08-2008, it has been observed, "Since said respondent has come from North East, a sense of security of tenure for a reasonable period may have to be given. This part would have to be considered by the official respondents." The said respondent having reported for duty sometimes in August/September 2008, reasonable tenure is already given. The said respondent cannot, as a matter of right, claim to continue as the tenure of deputation as notified itself is only for one year.

26. Taking into account the entire conspectus of the case, and also of the fact that in an identical situation, the DRT, Hyderabad, has already afforded promotion to a Court Master, interest of justice would be



adequately met, if this OA is disposed of with the following direction to the respondents:-

- (a) The respondents shall ascertain from the DRT Hyderabad as to continuance or otherwise of the individual who had been promoted to the post of Recovery Inspector (referred to in para 18 of the reply by the official respondents). If the DRT, Hyderabad, on re-examination as advised by the Ministry of Finance reaffirms the promotion and the same endorsed by the Ministry of Finance, then the case of the applicant for promotion should be considered, if need be by reference to the Central Government for their decision to relax the rules to the extent of one year service and by holding due DPC.
- (b) If the promotion of the individual at DRT Hyderabad has not continued for any reason, including that the said individual had been functioning as Court Master in the DRT only for a period of just three years then independent of the same the respondents should consider whether the case of the applicant deserves relaxation of the rules, in as much as the shortage of service is just one year.
- (c) If delay is anticipated in arriving at a decision by the Ministry of Finance in respect of (a) above, then the case of the applicant for relaxation of rule, as suggested vide (b) above be considered and further action on the basis of the decision in this regard, be taken.
- (d) In so far as the private respondent is concerned, the continuance on deputation be restricted to the tenure as notified and if the same has crossed, her continuance may be till a particular period as may be specified by the authorities, or till the decision as in (a)/(b) above is arrived at, whichever

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is earlier. In any event, in the event of repatriation of the party respondent, there shall be a reasonable time (say, a month) available to the party for making arrangements for the same. Recourse to deputation shall be only when the other mode of filling up of the vacancy i.e. Promotion fails.

27. With the above directions, the OA is disposed of. Time limit calendared for implementation of the order is four months from the date of communication of this order.

(Dated, the 24th September, 2009)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K.B.S. RAJAN
JUDICIAL MEMBER

CVR.