

AG

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW

O.A. No. 402/1990(L)

I.S. Kamthan & 7 others

Applicants

versus

Union of India & others

Respondents.

Shri Pankaj Nath

Counsel for Applicants.

Shri Anil Srivastava

Counsel for Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

Y
Amendment in the R.D.S.O. (Gazetted Ministerial Posts) Recruitment Rules, 1968, by which particular percentage of posts have been allowed to the Stenographers Grade 'C' with five years regular service to be eligible to appear and compete in the Limited Departmental Competitive Examination to fill up 50% posts of Section Officer (Ministerial) and also making 33 1/3% of vacancies for Stenographers is the subject matter of challenge in this application.

2. The Ministerial cadre of the R.D.S.O is known as Class III/Group 'B' Non gazetted Service consisting of Assistants, Upper Division Clerks and Lower Division Clerks. The pay scale of Stenographers is Rs 1640-2900,

Assistants in the pay scale of Rs 425-800 (revised to Rs 1640-2900), U.D.Cs in the scale of Rs 1200-2040 and L.D.Cs in the scale of Rs 950-1500. Although the R.D.S.O. and R.L.O. both are attached offices of the Railway Board but the seniority of R.D.S.O staff is maintained separately and has nothing to do with the seniority of the staff of Railway Board and R.L.O. and other on the contrary in the Ministries there is a common seniority. From R.D.S.O. (non Gazetted Ministerial posts) Recruitment Rules, 1979 it is obvious that the posts of U.D.C, L.D.C./ Assistants, Stenographer Grade II and Grade III are non gazetted Ministerial posts and each category of post have their own and separate mode of recruitment and further promotion and there is no interchangeability in the same, nor any category can claim appointment by promotion by virtue of his seniority in any category of posts. The LDCs have been made eligible to compete in the Limited Departmental Competitive Examination for Stenographer Grade III and their appointment is only by direct recruitment and not by promotion. L.D.Cs can be promoted to the post of U.D.C and U.D.C. to Assistants and not to Stenographers. So far as the Stenographers are concerned, promotional post is Senior Personal Assistant i.e. Group B (Non Technical post) Gazetted posts recruited from amongst Stenographers. The next promotion for the post of Section Officer which is in the scale of Rs 650-1200 (old scale) and belongs to Group B Gazetted. In the promotion rules, 1962

50% posts were to be filled by promotion and 50% by selection having five years service in the Assistant grade. Thus it was confined only to the Ministerial cadre. In the year 1963, for the first time the Railway Board decided ^{to} amend the 1962 Rules prior to which there appears to be no doubt that there was no promotional avenues for Stenographers. In the 1968 Rules it was provided that 50% of the posts were to be filled by Departmental test and 50% posts on the basis of seniority/fitness from Assistants of five years of service. Thus, for the 50% posts, Stenographers were eligible. Again amendment was made. In the 1968 Rules no substantial amendment were made and they were same as in 1964. In the year 1976, 23 posts of Stenographers belonging to Class III service in the scale of Rs 425-800 were upgraded and designated as Senior Personal Assistant and in addition to above one post of ~~so~~ (Steno) and one post of P.S. to Director General R.D.SO in the pay scale of Rs 650-1200 (Gazetted class II) were also sanctioned. In the year 1979 the rules were amended and RDSO(Group-B) (Non Technical Posts) Recruitment Rules, 1979 and the posts of SPAs to be filled on the basis of seniority cum fitness from amongst the Stenographers Grade 'C' with 8 years approved service and 50% from amongst Stenographers grade 'C' with 5 years service in the grade on the basis of Limited Departmental Competitive Examination to be held by

by R.D.S.O. and thus the recruitment to the class II Group 'B' posts of SPAs is 100% from amongst the Stenographers only.

3. The grievance of the applicants is that the promotional avenues for the Stenographers were gradually widened and extra benefits have been given to the Stenographers which have been denied to those of other Ministerial cadre despite the fact that the Director General recommended separate channel of promotion for Assistants and Stenographers keeping in view the SPAs and SO had been allotted a common grade of Rs 2000-3200 by the IV th Pay commission as compared to their earlier grade of Rs 650-1200 and 650-1040 and another amendment which is now under challenge was made in the year 1990. In this amendment 50% of the posts of S.O. Ministerial were to go on the basis of seniority subject to rejection of unfit from amongst the Assistant by a D.P.C. and 50% on the basis of selection through Departmental Competitive Examination for which both Assistants and Stenographers Grade 'C' with 5 years regular service in their respective grade would be eligible to compete. The maximum number of posts for Stenographers Grade C have been restricted to 33 1/3% earmarked for the Limited Departmental Examination.

4. According to the applicant total benefit has been given to the Stenographers' cadre and the chances of promotion for Assistants have been curtailed. Against 289 posts of LDC/UDC/Assistants only 23 posts of S.O. are available while against 187 posts of Stenographers

in all 24 posts in class II Service are available.

The approximate reasons for challenge came to be the issuance of notice dated 6.9.90 by ~~which~~ which the respondents invited applications for the post of S.O. (Ministerial) in accordance with 1990 Rules.

5. The respondents have opposed the claim of the applicant and it has been pointed that only a limited posts have been given to the Stenographers Grade 'C'. For instance, if there are 18 vacancies, 9 may be filled from the Assistants and out of 9 not more than 3 posts can be filled by Stenographers even if the Stenographers have qualified and selected in the Limited Departmental Competitive Examination. Thus, their percentage comes only to about 16 2/3 in promotion to the post of Section Officer, whereas in the earlier rules of 1968 Stenographers could have been appointed against all the 9 vacancies. Thus, according to the respondents, when more posts were available to the Stenographers, the applicant did not challenge it and when only 16 2/3 posts are to go to them, they are challenging it. It has been pointed out that in the Ministry of Railways, even though R.D.S.O. is a separate department, the post of Section Officer is filled up by direct recruitment through the Civil Services Examination to the extent of 20% and the remaining by promotion from Assistants and by Limited Competitive Examination in which both Assistants and Stenographers are eligible to appear, whereas in the instant case,

restrictions are there. According to the respondents, these rules have been framed under Article 309 of the Constitution of India after consultation with the Union Public Service Commission and there is no arbitrariness or discrimination in the provisions of Article 309 of the Constitution of India. The result of the Limited Departmental Competitive Examination was conducted in the month of February, 1991, were announced and 8 candidates (5 Assistants and 3 Stenographers) have been made, who are not party to this application. According to the respondents they have framed the recruitment rules having regard to the administrative needs. They denied that the Stenographers were made eligible to appear in the Limited Departmental Competitive Examination alongwith Assistants solely because they were not having avenues of promotion. Stenographers are also a part of Ministerial cadre and, therefore, it was considered that they should also have a right for consideration for the post of Section Officer (Ministerial) and aspire for higher grade posts. The system of Limited Departmental Competitive Examination was to protect the best interests of the Administration by being able to secure the services of younger and energetic persons not only from the cadre of Assistants but also from the category of Stenographers on competitive quality basis and therefore, they were eligible to appear in the Limited Departmental Competitive Examination as back as in 1964/68 and according to the respondents it is no longer possible for the applicants to challenge their inclusion. Earlier Stenographers

could come against all the 50% vacancies to be filled through the Limited Departmental Competitive Examination, the Recruitment Rules of 1990 provided that they can come only to the extent of 33 1/3% of the vacancies, yet the applicants have not challenged the earlier rules and they are challenging it.

6. Thus, it is evident that although when Stenographers were made to compete for all the 50% posts the same was not challenged and challenged was made only when 33 1/3% i.e. 65% of the posts have been reserved for Stenographers though the earlier rules the Stenographers were entitled for all the posts. It is not possible for the applicant to challenge that 33 1/3% of the posts have been reserved for the Stenographers, the rules/amendments were made under Article 309 of the Constitution of India which can be challenged on a limited ground and none of the / showing that the rules are arbitrary, or invalid and in the said case the amendment cannot be said to be arbitrary. It is not for the first time that the promotional avenues have been made for Stenographers. As a matter of fact, notwithstanding the fact that in their own line certain promotional avenues were open but they have also made drift to other side. It is always open for the rule making authority for providing feeder channel and no one can by way of right claim that such a feeder channel

should have been provided. In the case of State of Andhra Pradesh vs. Sadanandam and others (AIR 1989 Supreme Court, 2060) it was observed that mode of recruitment and the category from which the recruitment of service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment.

7. In Lovind Duttatray Kalker vs. Chief Controller of Posts (A.I.R. 1967 S.C. 859), it was held that in the matter of recruitment to posts from different services what ratio should be adequate depends on facts of each case and requirements and needs of particular post and unless ratio is so unreasonable, courts cannot strike down or suggest different one. In our opinion, the ratio so fixed by the amendment requiring which rule making authority has always power to amend Rules framed under Article 309 of the Constitution of India provided it does not affect vested rights or unsettles the settled state of affairs, the giving of a particular percentage to Stenographers which could have been given, is neither unreasonable nor unfair and accordingly not open for judicial review, more so when ceiling on same has been put. When 50% posts are to go by reservation and out of 50% 2/3 is to go to Assistants and remaining only 1/3 is to go to the Stenographers, even if they are in the list, there cannot be said to be any arbitrariness. There is no ground for challenging the rules. Application deserves to be dismissed and it is dismissed with no order as to costs.

Adm. Member.

Lucknow: Dated: 23/6/92

W

v.c.

S. Keel/