

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW, BENCH LUCKNOW

Original Application No. 377 of 1991

A. Sundaran . . . . . Applicant

Versus

Union of India & Others . . . . . Respondents

Hon'ble Mr. Justice U.C. Drivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

( By Hon'ble Mr. Justice U.C. Drivastava, VC)

The applicant was appointed as Stenographer Grade II on 5.9.74 by the Director, Intelligence Bureau (Ministry of Home Affairs), Govt. of India, New Delhi and he joined at Tezpur and after intervening transfer, he was transferred to Lucknow in the year 1987. The Union Public Service Commission issued an advertisement for the post of SDOs/Stenographer (Grade 3/Grade I) Limited Departmental Competitive Examination, 1990, and the conditions of the notification that persons who are employed as Assistants/Stenographers grade C/Grade II in the services are eligible to apply for the examination, and <sup>in</sup> the instruction attached with the application <sup>form</sup> it was provided that only the persons having five years continuous service as Stenographer Grade C or Assistant are eligible for admission to the said examination. As the applicant fulfilled the eligibility criteria, he also applied for the same and appeared in written examination and was declared successful and the second part which was to be considered was the service records and according to him, his service record was neat and clean. Before appearing in the S.O. Examination, the applicant submitted an application on 12.12.90 to the Joint Director, S.I.B., Lucknow to clarify whether the applicant would be eligible to be

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appointed to the post of Section Officer in the event of qualifying the SOs examination, in case he takes up the post of Steno Grade B before appearing in the said examination, but no clarification was received, the applicant joined on promotion as Grade B Stenographer on 1.1.91 i.e. after appearing in the examination ~~on~~ <sup>and</sup> which promotion was in an officiating capacity. The applicant who was seeking the clarification and he did not avail the promotion earlier and availed the same only after S.O.s examination as there were no rules in existence which prevented the applicant to avail the promotion as S.O., and there were precedents offering such appointments to grade B Stenographers, if they appeared in the examination as Grade 'C' Stenographers. Vide Memo dated 4.3.91, the applicant was promoted to the post of Stenographer Grade-I giving effect <sup>from</sup> 1.1.1991 in an officiating capacity till further orders. According to the applicant, the applicant has no right to claim his confirmation on the post. On 3.9.1991, he received a letter to the effect that as he is holding the post of regular Stenographer grade B in the Ministry, the candidature of the applicant for the post of S.O. is cancelled. The applicant filing the representation <sup>is</sup> has approached this tribunal against this order which ~~the~~ <sup>is</sup> subject matter of challenge.

2. According to the respondents, when the applicant applied, he was holding the post of stenographer 'C' (P.A. Grade-II) and as such he was eligible to appear for the said examination. In the meantime, he was promoted on regular basis after holding the D.P.C. as prescribed in the relevant Recruitment Rules and the order for his promotion was issued in December, 1990 whereas he was promoted w.e.f. 1.1.1991. The relevant rules for the

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combined section Officers/Stenographers (Grade 'B'/Grade-I) Limited Departmental Examination to be held by the Union Public Service Commission in 1990 were issued by the department of personnel and Training on 14.7.90. Rule 3 of the category provides the eligibility of the candidates. Note 4 of Rule 3 mentions that "Regular Grade 'B'/Grade I Stenographers are not eligible for this examination." While Rule 5 stipulates that "the decision of the Commission as to the eligibility or otherwise of a candidate for admission to the examination shall be final." Rule 10 stipulates that "Success in the examination confers no right in selection unless Government are satisfied after such enquiry as may be considered necessary that the candidate, having regard to his conduct in service, is eligible and suitable in all respects for selection." The Rule 11 provides that "for appointment on the results of this examination." A clarification was sought by the applicant on December 12, 1990 regarding his eligibility to appear in the examination. I.B. Headquarters informed that the applicant can appear in the examination. A clarification was taken by the Union Public Service Commission and this reply was communicated to the applicant vide letter dated 8.8.1991. According to the respondents, the applicant appeared for the above examination held in December, 1990 and thereafter he also availed his promotion as Grade 'B' w.e.f. 1.1.1991 and his candidature has rightly been cancelled.

3. There is no denial of the fact that the grade of the two is the same and according to the applicant, the avenue of promotion on this side is more and that's <sup>why</sup> he has claimed for this particular post and not the other one. According to the applicant, when he ~~was~~ applied, he was

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fully eligible and the Union Public Service Commission has rightly accepted his application whereafter, it could not have cancelled it as it has no right to cancel it subsequently. After the examination, the applicant accepted the promotion in an officiating capacity which was till further order and the rules debar only a regular stenographer in grade-B and this promotion of the applicant was not a regular promotion and the very language in the promotion order indicates the same. According to the respondents, the applicant has been appointed as Gr.'B' steno after following the prescribed procedure, his appointment is treated as regular for all purposes though the word officiating has been used in the appointment orders, as is the usual practice and as per existing conventions, every govt. servant is initially promoted to the next higher post in an officiating capacity only. There is difference between a regular promotion and officiating promotion in case, it is a promotion an officiating capacity the substantive post of the person is the post from which he has been promoted while if it is a case of regular promotion in accordance with rules, after promotion he becomes the substantive holder of that substantive post on regular basis. The officiating service in a post for all practical purposes of seniority is as good as service on regular basis. There may not be any difference between an officiating appointment and a regular appointment for the purposes of seniority in case, the officiating appointment ripens into a regular appointment and the benefits of the continuous service is given for the purposes of confirmation or seniority, but the officiating appointment -----


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and the regular appointment are not synonymous with each other. After following all the process of rules and regulations a regular appointment is made, but in the officiating appointment, it may be that a procedure may be followed completely or may not be followed. But the officiating appointment because of certain other circumstances can be put to an end by the employer himself and the employee cannot raise objection against the same.

4. As the applicant was not a regularly promoted stenographer grade B and when he applied, he was fully eligible, the application could not be cancelled on the ground that he was a regular promotee and as such was ineligible. He not being a regular promotee his candidature could not have been cancelled. As the applicant in the meantime had become officiating which it could be said to be regular promotee subsequently, the only way was to seek his option as to whether he would like to stay or he likes to join the other side and in case there was refusal to accept any option by him, the necessary order could have been passed otherwise, his option was to be accepted. Without asking for his option where his promotion was not a regular basis, the candidature of the applicant could not have been cancelled and accordingly, this application deserves to be allowed and the cancellation order dated 3.9.1991 is quashed and it will be open to the applicant to give an option for a particular side which have got to be accepted by the respondents. With these observation, the application is disposed of finally. No order as to costs.

  
Member (A)

  
Vice-Chairman

Lucknow Dated: 16-8-1993

(RKA)