

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

....

Original Application No. 447 of 1991

this the 19 day of July, 1996

HON'BLE MR JUSTICE B.C.SAKSENA, VICE-CHAIRMAN
HON'BLE MR V.K. SETH, ADMN. MEMBER

Shresh Chandra Bhatnagar, S/o late Sri K.B. Bhatnagar,
R/o 18/E, Badshahnagar Railway Colony, Mahanagar,
Lucknow working in the office of the Commissioner
of Railway Safety, Northern Circle, Lucknow.

Applicant

By Advocate : Sri Sharad Bhatnagar

Versus

Union of the India through the Chief Commissioner of
Railway Safety, Ministry of Civil Aviation, D.R.M.
N.E. Rly, Office, Lucknow.

2. The Commissioner of Railway Safety, (Ministry
of Civil Aviation), Northern Circle, D.R.M. N. Rly.
Lucknow.

3. The Commissioner of Railway Safety, North Eastern
Circle, Gorakhpur.

Respondents

By Advocate : Sri A.K. Chaturvedi

O R D E R

V.K. SETH, MEMBER (A)

Vide this O.A., the applicant has prayed
for directions to the respondents to pay him arrears
of salary since 3.5.1973, the date of his initial
appointment in the payscale admissible to Stenographer
/P.A. and also to fix his pay in that payscale. He

has also prayed for quashing of the order of the respondents dated 20.8.90 vide which the applicant was informed that he was not eligible for the post of Stenographer/P.A.

2. The respondents have resisted the claim of the applicant and pleadings have been exchanged between the two sides. We have also taken note of the rival contentions of the learned counsel for the two sides.

3. In support of his claim, the applicant has cited the decision of Hon'ble Supreme Court in re. Smt. P. Grover Vs. State of Haryana & another (AIR 1983 SC 1060). In the said decision, the apex court has interalia held that no rule, was cited which provided that promotion on acting basis would not entitle promotee to pay of promotion post.

4. As per the O.A., the applicant was appointed as Stenographer on Daily Wages basis vide order of 2.5.1973. Subsequently, he was offered regular appointment on the Post of Junior Clerk vide O.M. dated 16.10.93, which post he joined on 17.10.73.

5. The applicant's contention is that he has been discharging the duties of the post of Stenographer/P.A. and, therefore, he is entitled for the benefit of "Equal pay of Equal work". On the other hand, the stand of the respondents is that the applicant is working and discharging his duties on the post of Lower Division Clerk and that he has not worked and discharged the duties of Stenographer. It is further stated by the respondents in

the Counter affidavit that the applicant was appointed as Lower Division Clerk in the office of Commissioner of Railway Safety, North Eastern Circle w.e.f. 18.10.73 and that the post of Stenographer in the said officer was filled-up by one V.K. Wadhawan in the year 1973 after regular selection. Also in the office at Lucknow by one Raja Ram is working as Stenographer since 1972, after regular selection.

6. In support of his claim, the applicant has filed a number of documents, which are as below :

(i) Order dated May 2, 1973 appointing the applicant as Stenographer on daily wages basis (Annexure-2 to the O.A.)

(ii) Order dated 8th October, 1975 issued by Additional Commissioner of Railway Safety, North Eastern Circle certifying the applicant's performance as Stenographer on daily wages basis from 3rd May, 1973 to 11th October, 1973.

(iii) certain letters on various dates have been cited starting with 20.2.78, 3.9.83, 24.7.90, & 26.3.90 addressed to Commissioner of Railway Safety, Lucknow praying for his appointment on the post of Stenographer of the applicant. The letter dated 24.7.90 addressed to Railway Safety, North Eastern Circle, Gorakhpur requests for appointment as Stenographer/P.A.

7. Before making any comment on the merits of the case, we note that the claim of the applicant is highly belated and suffers from latches. It is settled principle of service jurisprudence that claim regarding service matters should be preferred in time. The avoidable delay in such matters has to be deprecated as acceptance of highly belated claims settled may result in unsettling ~~the~~ positions causing administ-

rative complications. In the present case, the applicant should have approached the appropriate judicial forum at the time his grievance arose, which obviously he failed to do. On this ground alone, his claim for the past period is liable to be rejected.

8. Nevertheless, we may also briefly examine the merit of the case. In his letter of February 28, 1978 addressed to the Commissioner of Railway Safety, the applicant has interalia mentioned that he had worked as Stenographer/P.A. to Additional Commissioner for about 5 months in 1973 and he still performed such duties, whenever the Stenographer is on leave. In his letter dated 17.2.81 the applicant interalia mentions that he has been utilised as Stenographer/P.A. even in the presence of Stenographer/P.A. Again, in his letter dated 3.9.83, he mentions that he has been assisting the Commissioner of Railway Safety in stenography work. Still, however, in his letter of 26.3.90 addressed to the Chief Commissioner of Railway Safety, Northern Circle, Lucknow, the applicant states that he has been working as Stenographer with the Commissioner of Railway Safety, Northern Circle, Lucknow as and when required. These letters of the applicant himself only go to show that his services has been off and on utilised for performing of/ normally entrusted to Stenographer/P.A. These, however, do not substantiate the claim of the applicant that he has been continuously engaged as Stenographer. Also, the same has also been categorically denied by the respondents.

9. The applicant is claiming his pay as Stenographer on the principle of "equal pay for equal work." However, neither he nor his counsel has produced before us any rule or instructions to support his claim.

10. Nevertheless, we are of the opinion that principles of equity and justice do require that the applicant should be suitably compensated for the period, when he was entrusted with the duties of Stenographer atleast in respect of the period which is not barred by limitation i.e. falls within one year of the date of filing of this O.A. Since the facts in this regard are not clear from the records available in the case, We leave it ^{to} the respondents to inquire into the matter and so to decide the period during which the applicant's services have been utilised as Stenographer. For the purpose of such inquiry, the applicant shall be associated. Incase, it is found that the applicant has so worked, he shall be paid honorarium or any other monetary compensation as may be admissible in addition to his salary as L.D.C. This order shall be complied with within a period of 3 months from the date of communication of this order.

11. We also provide that if the applicant has been not allowed to join duty since ^{the} ~~August~~, 1993, he shall be allowed to join his duties as L.D.C. as and when he approaches the respondents, after communication of this order.

12. In view of the facts and circumstances of the case, there shall be no order as to costs.

MEMBER (A)

LUCKNOW: DATED: 19-7-96
GIRISH/-

VICE-CHAIRMAN

B.C. Saksena