

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 283/2008

Reserved on 13.4.2016

Pronounced on 07/05/16

Hon'ble Sri Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Wasi Ahmad aged about 47 years S/o Sri Mohd Yusuf R/o 62-69/III,
Akansha Parisar, Jankipuram Lucknow.

Applicant

By Advocate : Sri A. Moin.

Versus

1. Union of India through Secretary Ministry of Finance,
Department of Financial Services (Banking Division) Parliament
Street, New Delhi.
2. Debt Recovery Tribunal, University Road, Lucknow through its
Presiding Officer.
3. Registrar, Debt Recovery Tribunal, University Road, Lucknow.
4. Arun Kumar Dwivedi S/o Sri Ram Adhar Dwivedi R/o Langra
Khera Kharika, Telibagh Lucknow.

Respondents

**By Advocate : Sri K. K. Shukla (Respondent No. 1,2 and 3)
Sri Prashant Kumar (Respondent No. 4)**

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present O.A. is preferred by the applicant u/s 19 of the AT
Act, with the following reliefs:-

- a) to quash the impugned seniority list dated 19.6.2008 issued on
behalf of respondent No. 2 as contained in Annexure No. 1 to the O.A.
- b) to quash the impugned memorandum dated 4.6.2008 passed on
behalf of respondent No. 2 as contained in Annexure No. A-2 to the
O.A.
- bb) to quash the impugned order dated 23.12.2011 passed on behalf
of respondents No.1 as contained in Annexure No. A-10 to the O.A.
- c) to direct the respondents to fix the seniority of the applicant
over and above the respondent No. 4 on the post of Steno Grade C by
treating the applicant's seniority w.e.f. 30th January, 2000 i.e. date of
regular promotion of the applicant as Personal Assistant in his parent

department in the pay scale of Rs. 5000-8000/- with all consequential benefits.

- d) to pay the cost of this original application.
- e) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The brief facts of the case are that the applicant was initially appointed as Steno Typist Grade Rs. 470-760 in the U.P. State Industrial Development Corporation, Kanpur (hereinafter referred to as UPSIDC). The applicant was subsequently promoted as Personal Assistant and in pursuance thereof, applicant also joined to the promoted post. In 2002, , the respondents No. 2 and 3 issued an advertisement for filling up various posts in Debuts Recovery Tribunal(hereinafter referredto as DRT) at Lucknow on deputation basis.

3. The applicant applied for the post of Steno Grade C in the pay scale of Rs. 5500-9000/- and was selected for the same. The applicant claims himself to be eligible and suitable for the post of Private Secretary in grade Rs. 6500-10500/- submitted an application for the said post but he was informed in case he is interested for the said post, he may appear for an interaction and after due process, the applicant was selected.

4. After being selected on the said post, an order was issued for repatriation of the applicant to the parent department. Feeling aggrieved by the same, the applicant preferred an O.A. No. 260/2004 before this Tribunal and this Tribunal vide order dated 30.6.2004 allowed the O.A., whereby the orders so passed for repatriation was quashed and the respondents were directed to allow the applicant to continue in service with the DRT as Steno Grade C and it is also directed to convene a DPC for assessing the suitability of the applicant for absorption in DRT as Stenographer Grade C and if he is found suitable for absorption in DRT, he shall also be considered for

absorption in DRT, Lucknow in terms of the recruitment rules of DRT for Group A and B (Gazetted) and Group B (Non-gazetted) Posts Recruitment Rules, 2003. Apart from this, it is also observed by the Tribunal that the respondent No.2 will be free to repatriate the applicant to the parent Department in case he is not found suitable by the DPC.

5. Accordingly, the applicant was absorbed as Steno Grade C w.e.f. 17.4.2007 in accordance with the relevant rules and the applicant continued as Steno Grade C in Grade pay Rs. 5500-9000/- in DRT, Lucknow. The applicant claims that he is senior to respondent No. 4 as he has rendered long years of service both in UPSIDC and in the DRT. Accordingly, he is entitled for counting of his previous service in his erstwhile parent department for the purposes of seniority in the present Department i.e. DRT.

6. The respondents issued an tentative seniority list in which the applicant is placed at Sl. No. 2 below respondent no. 4 who has been assigned seniority w.e.f. 1.8.2001 vis-a-vis, the applicant has been assigned seniority w.e.f. 31.1.2003. The applicant submitted his objection and has indicated that nature, duties and responsibilities of the post of Personal Assistant in the UPSIDC are one and the same as that of Steno Grade C in the DRT. Both the posts of personal assistant and Steno Grade C are within the ambit of being the same or equivalent post as defined under the rules.

7. Learned counsel for the applicant also vehemently argued and indicated that the applicant joined DRT on 30.1.2003 earlier to respondent no. 4 who was taken on deputation in DRT after a test being conducted and the applicant is placed at Sl. No. 1 amongst the four candidates who had appeared for the post along with the respondent No. 4.

8. Respondent No. 4 also preferred an O.A. vide O.A. No. 436/2007 claiming promotion for the post of Private secretary grade

Rs. 6500-10500/- having completed six years of service as Steno grade C. The applicant preferred an impleadment application and soon thereafter, respondent No. 2 rejected the representation of the applicant by means of memo dated 4.6.2008 and issued the final seniority list dated 19.6.2008, in which the name of applicant finds place at Sl. No. 2 and respondent No. 4 is placed at Sl. No. 1.

9. The O.A. No. 436/2007 preferred by respondent No. 4 was dismissed as not pressed vide order dated 21.5.2009. The learned counsel for the applicant indicated that the perusal of the impugned memo dated 4.6.2008 indicated that the respondents have rejected the claim for counting the previous service rendered in UPSIDC Kanpur on the ground that he was not holding the same or equivalent post of Steno Grade C on regular basis, as the post of Steno Grade C is a Group B post in the pay scale of Rs. 5500-9000/- in the DRT whereas Personal Assistant is a sectioned Group C post pertaining to an autonomous organization under the UPSIDC in the pay scale of Rs. 5000-8000/-, as such the applicant's seniority cannot be determined from the date of his regular appointment in the UPSIDC as Personal Assistant.

10. Learned counsel for applicant relied upon Govt. of India's instruction dated 7.3.1984 wherein criteria for determining an analogous post is being considered and in case of any doubt, the clarification should have been sought from the UPSIDC as well as from the applicant but the same was not resorted to and without taking any consideration, the Govt. of India's order dated 7.3.1984, the post of the applicant in his parent department was not considered equivalent to which is patently illegal and arbitrary.

11. It is also vehemently argued by the learned counsel for the applicant that in terms of number of decisions of the Hon'ble Apex Court as well as Govt. of India's order in this regard, the applicant is fully entitled for counting of his seniority w.e.f. 30.1.2000 i.e. date

when he was promoted as Personal Assistant grade Rs. 5000-8000/-. It is also argued by the learned counsel for the applicant that keeping in view the rule position and also having considered that the applicant was promoted as Personal Assistant in his parent Department on 30.1.2000 and on the date of his absorption i.e. 17.4.2007, he is already holding the same or equivalent grade on regular basis in his parent department. Therefore, he is fully entitled for counting of his seniority as Steno Grade C w.e.f. 30.1.2000.

12. During the pendency of the O.A., the respondents have again issued an order on 23.12.2011 indicating therein that the employees of Public Sector Undertaking absorbed in the DRAT/ DRT, their seniority shall count only from the date of their absorption in DRAT/DRT.

13. Learned counsel for the applicant argued that there was no reason has been assigned by the respondent No. 1 to arrive at this conclusion or decision that the seniority of such employees of Public Sector shall only count w.e.f. the date of their absorption and as such the impugned order dated 23.12.2011 lacks merit and is liable to be quashed on this ground itself. It is indicated that in case the order dated 23.12.2011 is tested, the entire previous service period of the applicant is sought to be negated which is legally impermissible in the eyes of law.

14. Learned counsel for the applicant taken certain grounds and indicated that the impugned order so passed by the respondents is patently non-application of mind and passed without taking into consideration the Govt. of India's orders pertaining to equivalence of post in State Govt/undertaking in this regard and it is also indicated that the nature, duties and responsibilities of the post of Personal Assistant in the UPSIDC are one and the same as that of Steno Grade C in the DRT and accordingly both the posts of Personal Assistant and

Steno Grade C are within the ambit of being the same or equivalent post as defined under the Rules.

15. Not only this, it is also argued that the applicant joined the DRT on 30.1.2003 i.e. 3 days prior to respondent No. 4. It is also indicated in the ground that equivalence of the post has already been considered and dealt with by the Govt. of India itself vide memo dated 7.3.1984 as such, the applicant is fully entitled for counting of his seniority w.e.f. 30.1.2000 i.e. the date when he was promoted as personal Assistant grade Rs. 5000-8000/- particularly keeping in view the Govt. of India's order in this regard. Apart from this, it is also indicated that the impugned order dated 23.12.2011 lacks merit outrightly as no specific reason has been assigned in the said order before passing the same.

16. Learned counsel for applicant has also relied upon the following decisions of the Hon'ble Apex Court:-

- i) **Union of India and others Vs. P.K.Roy and others reported in AIR 1968 Supreme Court 850;**
- ii) **Sub Inspector Rooplal and another Vs. Lt. Governor through Chief Secretary Delhi and others reported in (2000) 1 Supreme Court Cases 644;**
- iii) **Attar Singh Kaushik Vs. Secretary /Commissioner Transport Department and another reported in (2008) 1 Supreme Court Cases 400;**
- iv) **K. Anjaiah and others Vs. K. Chandraiah and others reported in (1998) 3 Supreme Court Cases 218;**
- v) **R.S. Makashi and others Vs. I.M. Menon and others reported in (1982) 1 Supreme Court Cases 379;**
- vi) **M. Ramachandran Vs. Govind Ballabh and others reported in (1999) 8 Supreme Court Cases 592.**

17. Detailed counter reply is filed by the official respondents through which it is indicated that the applicant joined DRT Lucknow as

Steno Grade C on deputation basis w.e.f. 30.1.2003. Prior to which he was holding the post of Personal Assistant in the parent cadre i.e. UPSIDC, Kanpur. The applicant was absorbed in DRT in the capacity of Steno Grade C w.e.f. 17.4.2007 whereas Sri A.K. Dwivedi, respondent No. 4 joined the DRT as Steno grade C on deputation basis w.e.f. 3.2.2003. Prior to joining this post, he was posted as Steno Grade C at DRT, Allahabad since 1.8.2001 on regular basis in the pay scale of Rs. 5500-9000/- and the respondent No. 4 got absorbed in the DRT, Lucknow in the capacity of Steno Grade C w.e.f. 14.11.2005.

18. The learned counsel for the respondents also indicated the recruitment rules and as per the same, **“the seniority of the officers is to be determined with reference to the date of their regular appointment to the post concerned.”** The learned counsel for the respondents also relied upon the certain provisions as indicated in the Swamy's Complete Manual and argued that since he was not holding the same or equivalent grade on regular basis, Steno Grade C being a Group B post whereas P.A. being a non-Group B post pertaining to autonomous organization under U.P.Govt. hence his seniority after being absorbed as Steno Grade C in the DRT cannot be determined from the date of his regular appointment to the post of P.A. in his parent cadre which he was holding prior to joining the respondents organization.

19. The objection so submitted by the applicant was considered and after considering all the material available on record, the respondents issued the final seniority list/ circular vide notice dated 19.6.2008. Learned counsel for the respondents also relied upon the provision of Rule 7(2) of the Recruitment Rules which provides for determination of seniority. Apart from this, learned counsel for respondents also indicated the general rules pertaining to the seniority of absorbee as indicated in the Swamy's Complete Manual on Establishment and

Administration. Learned counsel for the respondents also relied upon the decision of the Hon'ble Apex Court in the case of **Sub Inspector Rooplal and another Vs. Lt. Governor through Chief Secretary Delhi and others (supra)** and **M. Ramachandran Vs. Govind Ballabh and others (supra)**.

20. Learned counsel for respondents No. 1,2 and 3 has also filed reply to the amended portion of the O.A. and through which it is indicated that after examining the issue of seniority of employees of Public Sector absorbed in DRAT/DRTs, in consultation with the department of Personnel and Training, the respondents have issued an order dated 23.12.2011 and as per the said order, and as per the clarification issued by the DOP&T, the seniority of the concerned employee is to be determined on the basis of their appointment on regular basis in DRAT/ DRT. As such there is no illegality in the same.

21. On behalf of the private respondents, i.e. respondent No. 4, the detailed counter reply is filed and through which it is indicated that the respondents No. 4 was initially appointed on the post of Stenographer in National Bureau of Fish Genetic Resources, Lucknow which is an institution of Indian Council of Agricultural Research and in August, 2001, he was appointed on the post of Stenographer Grade C in DRT, Allahabad on deputation basis and on 16.7.2002, the respondent No. 4 was absorbed on the post of Steno Grade C in DRT, Allahabad w.e.f. 15.7.2002 vide O.M. dated 16.7.2002 wherein it is specifically mentioned that service rendered by the respondent No. 4 in DRT, Allahabad before commencement of recruitment rules shall be taken into account of deciding the eligibility for promotion etc. in the next higher grade.

22. Private respondents has also annexed the copy of the aforesaid order. It is vehemently argued by the learned counsel for private respondents that the applicant was initially appointed as Steno Grade C on 30.2.2003 and subsequently vide order dated 6.1.2006, he was

absorbed on the post of Steno Grade C w.e.f. 14.11.2005. Subsequently, in 2003, the Debts Recovery Tribunal, Lucknow Group A and B (Gazetted) and Group B (Non-Gazette) Rules were framed.

23. Learned counsel for respondent No. 4 relied upon Rule 7(2) of the Recruitment Rules as relied upon by the official respondents. It is also argued by the learned counsel for the private respondents that the respondents issued the draft seniority list and also after considering the objections, so submitted, they have issued the final seniority list and also rejected the representation of the applicant after due consideration. The learned counsel for respondent No. 4 relied upon a decision of **Yogendra Prasad Mandal Vs. State of Bihar and others reported in (1998) 3 Supreme Court Cases 137.**

24. It is also argued that the post of Steno Grade C has been classified as General Central Group B Non Gazetted, non-Ministerial and the applicant was holding the post of Personal Assistant in the pay scale of Rs. 5000-8000/- in his parent Department i.e. UPSIDC w.e.f. 30.1.2000 which cannot be same or equal grade to the post of Steno Grade C of DRT which is in the pay scale of Rs. 5500-9000/- .

25. Learned counsel for the respondent No. 4 also relied upon the decision of **Sub Inspector Rooplal and another Vs. Lt. Governor through Chief Secretary Delhi and others (supra)** and has indicated that the Hon'ble Apex Court has been pleased to observe that **"equivalency of two post is not judged by the sole fact of equal pay. While determining the equation of two posts many facts other than pay will have to be taken into consideration, like the nature of duties, responsibilities , minimum qualification etc."**

26. Not only this, it is also argued that nature and duties of the post of Steno C which is a Group B post of DRT cannot be equal in any event to the post of Personal Assistant which is a non Group B post of UPSIDC as the nature of duties of Steno Grade C in the DRT is judicial

and the nature of duties of Personal Assistant in UPSIDC is non-judicial.

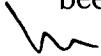
27. Learned counsel for private respondents has also filed Supple. Counter reply to the amended portion of the O.A. which is also perused. It is also indicated in the said Supple. Counter reply that the order dated 23.12.2011 is a speaking and reasoned order which was issued after consultation from the department of Personnel and Training which provides that the issue of seniority of employees of public sector employees absorbed in DRAT/DRTs was examined in consultation with the Department of Personnel and Training and the date of seniority in a post may be taken from the date of their absorption in DRAT/DRTs.

28. On behalf of the applicant, Rejoinder Reply as well Supple R.A. is filed and through R.A., mostly the averments made in the O.A. are reiterated and contents of the counter reply as well as Supple. Counter Reply filed by the respondents are denied.

29. Heard the learned counsel for the parties and perused the records.

30. The applicant is claiming seniority over and above the respondent No. 4 on the ground that the nature, duties and responsibilities of the post of Personal Assistant in UPSIDC are one and the same as that of Steno Grade C in the DRT and accordingly, the post of personal assistant and Steno Grade C are within the ambit of being the same or equivalent post as defined under the rules.

31. Apart from this, it is also argued by the learned counsel for the applicant that the applicant joined DRT on 30.1.2013 whereas respondent No. 4 was taken on deputation in DRT, Lucknow after 3 days than the applicant and a test was conducted in which four candidates appeared with respondent No. 4, and the applicant has been assigned seniority above to respondent No. 4.



32. The Govt. of India vide memo dated 7.3.1984 dealt with the matter of equivalence of post and has already been considered a criteria for determining an analogous post in which it has been indicated that so far as post under the State Govt. Public undertaking are concerned, it would be quite likely that the posts with identical designation may not have comparable scale of pay and accordingly the selecting authority would have to be guided more by the nature of duties performed by a candidate in their parent organization vis. a vis those in the post under selection and qualification and experience requires for the post under the scale for making selection for appointments by transfer/deputation from outside the Central Govt. services.

33. Learned counsel for the applicant also vehemently argued and indicated that the applicant is fully entitled for counting of his seniority w.e.f. 30.1.2000 i.e. the date when he was promoted as Personal Assistant in pay scale of Rs. 5000-8000/- keeping in view the Govt. of India order in this regard which categorically provides that ***"In case of a person who is initially taken on deputation and absorbed later, his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already on the date of absorption, the same or equivalent grade on regular basis in his parent department such regular service in the grade shall also be taken in the account of fixing his seniority subject to the condition that he will be given the seniority from the date he has been holding the post on deputation or the date from which he has been appointed on regular basis to the same or equivalent grade in his parent department, whichever is earlier."*** Apart from this, it is also to be indicated that the respondents have passed an order on 23.12.2011 and again clarified about the seniority of employees of

Public Sector Employees absorbed in DRATs/DRTs which reads as under:-

'2. Department of Personnel and Training has clarified that the concerned employees are considered to have been appointed on regular basis at a post only on their absorption to that post. Therefore, their date of seniority in a post may be taken from the date of their absorption in DRAT/DRT.'

34. It is indicated by the learned counsel for the applicant that as per the settled proposition of law, every order should stand on legs but in the order dated 23.12.2011, there is no reasoning or any ground on which it can stand. Not only this, it is also indicated by the learned counsel for the applicant that by virtue of order dated 23.12.2011, the entire period of service of the applicant is sought to be negated which is legally impermissible in the eyes of law.

35. It is to be categorically indicated here that the applicant namely Wasi Ahmed joined DRT, Lucknow as Steno Grade C on deputation basis w.e.f. 30.1.2003 and prior to joining this post, applicant was holding the post of Personal Assistant in the pay scale of Rs. 5000-8000/- in his parent cadre in UPSIDC an autonomous organization under the U.P.Govt.. The applicant was absorbed in DRT in the capacity of Steno Grade C w.e.f. 17.4.2007 whereas the respondent No. 4 Sri A.K. Dwivedi joined the DRT as Steno Grade C on deputation basis w.e.f. 3.2.2003 and prior to joining this post, the respondent No. 4 was posted as Steno Grade C in DRT Allahabad since 1.8.2001 on regular basis in the pay scale of Rs. 5500-9000/- The respondent No. 4, Sri A.K. Dwivedi was absorbed in the Tribunal in the capacity of Steno Grade C w.e.f. 14.11.2005.

36. The relevant Recruitment Rules provides as under:-

“The seniority of the officers is to be determined with reference to the date of their regular appointment to the post concerned.”

37. It is to be indicated that as per the Swamy's Complete Manual on Establishment and Administration, the seniority will be fixed as per chapter 40 S.N. 3.4.1 which reads as under:-

“3.4.1 In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant Recruitment Rules provide for ‘deputation/absorption’) his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from-

- The date he has been holding the post on deputation.

Or

- The date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department whichever is earlier.”

38. The seniority of the applicant is required to be determined with reference to their regular appointment to the post concerned i.e. Steno Grade C on which he was absorbed. Since prior to joining the DRT i.e. before 30.1.2003, he was not holding the same or equivalent post of Steno Grade C on regular basis. Apart from this, Steno Grade C being a Group B post in the pay scale of Rs. 5500-9000/- whereas Personnel Assistant being a non-Group B post pertaining to an autonomous

body under U.P. Govt. in the pay scale of Rs. 5000-8000/- , hence his seniority after being absorbed as Steno Grade C in DRT cannot be determined from the date of their regular appointment in his cadre in the parent Department which he was holding prior to joining of the DRT.

39. It is once again reiterated that the applicant was promoted to the post of P.A. w.e.f. 30.1.2000 as such it cannot be considered that he was holding the same or equivalent grade to the post of Steno Grade C in the pay scale of Rs. 5500-9000/- which is classified as General Central Service Group B Non-gazetted , Non-ministerial , in the DRT Lucknow Group A and B Gazetted and Group B Non-Gazetted posts Recruitment Rules 2003. The Relevant Rule 7(2) of the Recruitment Rules reads as under:-

“The seniority of officers mentioned in sub-Rule (1) shall be determined with reference to the dates of their regular appointment to the post concerned; provided that the seniority of the officers recruitment from the same source and in the posts held by them in the parent department shall not be disturbed.”

40. It is to be indicated that applicant joined DRT, Lucknow as Steno grade C on deputation basis on 30.1.2003 and prior to joining this post, he was holding the post of P.A. in the pay scale of Rs. 5000-8000/- and was absorbed in DRT as Steno grade C w.e.f. 17.4.2007 whereas the respondent No. 4 joined the DRT, Lucknow as Steno Grade C on deputation basis w.e.f. 3.2.2003. He was posted as Steno Grade C in DRT since 1.8.2001 on regular basis in the pay scale of Rs. 5500-9000/- and was absorbed in the DRT on 14.11.2005.

41. If we take the post of Steno Grade C, the applicant joined the DRT as Steno Grade C w.e.f. 30.1.2003 whereas the respondent No. 4 was working as Steno Grade C w.e.f. 1.8.2001 and the applicant was

absorbed as Steno Grade C on 17.4.2007 whereas respondent No. 4 was absorbed as Steno Grade C w.e.f. 14.11.2005.

42. This shows that the applicant was working as Steno Grade C since 30.1.2003 and was also absorbed in 17.4.2007 whereas respondent No. 4 was working as Steno Grade C earlier to that date and was also absorbed prior to the applicant. Therefore, seniority of the applicant is to be determined with reference to the date of their regular appointment on the post of Steno Grade C i.e. 30.1.2003 on which he was subsequently absorbed. It is also to be indicated that since prior to joining DRT before, 30.1.2003, applicant was not holding the post of P.A. whereas in comparison to this, respondent No. 4 was working as Steno Grade C w.e.f. 1.8.2001.

43. As indicated above, learned counsel for the applicant has also relied upon certain decisions of the Hon'ble Apex Court and in most of the cases, the Hon'ble Apex Court has been pleased to observe that those who are senior in the parent department in the equivalent post should continue to be senior in the deputed post unless there exists statutory rules to the contrary. Not only this, it is also observed that if an employee were not be given benefit rendered by them on equivalent post in their parent Department, they should have been informed of the same so that they can decide to seek or not to seek permanent absorption.

44. Learned counsel for private respondents also relied upon a decision of Hon'ble Apex Court in the case of **Yogendra Prasad Mandal Vs. State of Bihar and others (supra)** and has indicated that for the purpose of seniority and other benefits the service will count only from the date of his appointment under the Govt. It is also observed that *"The High Court, therefore was right in coming to the conclusion that the services of the appellant will count from the date of his appointment in the State Trading Wing of the Forest Department of the State of Bihar and*

the earlier services rendered by him with the Corporation will not be counted for the purpose of seniority and other benefits. The appeal is, therefore, dismissed. There will, however, be no order as to costs."

45. Learned counsel for official respondents relied upon a decision of the Hon'ble Apex Court in the case of **M.Ramachandran Vs. Govind Ballabh (supra)**. The Hon'ble Apex Court has been pleased to observe as under:-

"It is therefore, follows that total length of service is not relevant for determining the seniority but length of service to a particular class, category or class is relevant consideration for the purposes of counting the period with respect to length of service for the purposes of determining the seniority."

46. The provision as mentioned in para 3.4.1 of Chapter 40 of the Swamy's Manual on Establishment and Administration centers around the word "**whichever is later.**" It is contented that seniority must be determined from the date person is holding post on deputation or the date on which he had been appointed on regular basis to the same or equivalent grade in its parent department, which is later, meaning thereby if a person gets himself deputed earlier to the service, he would be entitled to seniority notwithstanding the length of service or earlier holding of the equivalent post or grade by a person who incidentally happens to be sent on deputation at a later date.

47. In the case of **Sub Inspector Roop lal and another Vs. Lt. Governor (supra)** it is observed by the Hon'ble Apex Court that *"the post of Sub Inspector in BSF was not equivalent to Sub Inspector of Delhi Police because pay scale of two posts were not the same. Hence the services in the parent Department cannot be counted for seniority in the present*

post. It is also observed that "the equal pay scales was not the sole determinative factor while determining the equivalency of the two posts."

48. It is undisputed that the applicant was working as P.A. in UPSIDC prior to his coming on deputation in DRT on the post of Steno Grade C whereas respondent No. 4 was working as Steno Grade C in DRT, Allahabad and came on deputation in the DRT, Lucknow on the same post. It is also undisputed that the pay scale of both the persons were different. It is also undisputed that the pay scale of the applicant was lesser than the respondent No. 4. Respondent No. 4 was also absorbed in the DRT, Lucknow earlier than the applicant.

49. Considering the observations made by the Hon'ble Apex Court and also on the basis of facts of the case, we do not find any reason to interfere in the present O.A. Accordingly, the present O.A. is liable to be dismissed and is dismissed. No order as to costs.

J. Chandra.
(Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

HLS/-