

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.613/2000

THIS THE 25TH DAY OF JULY, 2003

CORAM: HON'BLE SHRI A.S. SANGHVI.
HON'BLE SHRI SHANKAR PRASAD

MEMBER (J)
MEMBER (A)

Smt. Lilly Kutty Joseph,
CA/Dy. C.E.E. (C.II)
Mumbai Central Divisional
Office, Mumbai Central,
Western Railway,
Mumbai-400 008.

.. Applicant

By Advocate Shri ~~ELA~~ Sawant.

Versus

1. Union of India
through the General Manager,
Western Railway,
Churchgate, Mumbai-20.
2. Chief Personnel Officer,
Western Railway,
Churchgate, Mumbai-20.
3. Senior Divisional Personnel Officer,
Western Railway,
Divisional Railway,
Mumbai Central, Manager's office,
Mumbai-400 008.
4. Shri Samson Stanley,
Steno, Mumbai Division,
Western Railway.
5. Smt. Shanta Rajan,
Steno, Mumbai Division,
Western Railway.
6. Smt. Sunita D'souza
Steno, Mumbai Division,
Western Railway.
7. Smt. B.J. demellow
Steno, Mumbai Division,
Western Railway.
8. Smt. Meenakshi S.
Steno, Mumbai Division,
Western Railway.

9. Smt. Ratna Mohan
Steno, Mumbai Division,
Western Railway. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R
Hon'ble Shri A.S. Sanghvi, Member (J)

The applicant who is working as CA is aggrieved by the depression of her seniority and is challenging the order dated 21.6.2000 issued by the respondents assigning seniority to Samson Stanley and five others over her. According to her, she was promoted as Steno with effect from 24.7.1981 vide DRM (E) BCT's letter No.E/D/1025/2/6. vol.II dated 25.9.1981 in the scale of Rs.330-560. She was posted as CA in the scale of Rs.425-700 vide order dated 14.8.1983 on adhoc basis. The applicant says that a suitability test for the scale of Rs.1400-2600 was held on 05.6.1993, but she could not attend the same as she was on maternity leave. She had appeared for the suitability test on 05.01.1994 and had cleared the same. Her name was therefore interpolated above Shri Samson Stanley vide DRM (E) BCT's letter dated 14/18.01.1994, in the seniority list of CA, Steno of the BCT Division, circulated on 31.10.95. She was shown senior to Samson Stanley and others. However, in the year 1994 Samson Stanley and 12 others had moved OA 750/94 before this Tribunal for the purpose of regularisation of their postings and seniority etc. She was not made party in that OA. The Tribunal while disposing of the OA directed the respondents therein to consider their adhoc services as regular service and to

assign them seniority at the appropriate places in the seniority list. The respondents have thereafter assigned seniority to the applicants of OA 750/94 above the applicant resulting into the depression of her seniority. According to the applicant this decision of the respondents in assigning seniority to some of the applicants of OA 750/94 is arbitrary, illegal and unreasonable. She has claimed that she was senior to all of them and she ought to have been continued to be shown as senior to them. She had preferred a representation against the seniority list published by the respondents but her representation had come to be rejected by the General Manager on 21.6.2000. She has therefore approached this Tribunal. She has prayed for setting aside the order dated 21.6.2000 issued by the DRM (E) and to assign her correct seniority in the seniority list of CA.

2. The respondents, in the reply, have contended that in view of the decision in OA 750/94 the applicants therein were given the benefit of adhoc service. They were directly recruited by the RRB, were not required to pass suitability test. They were considered to be appointed from the date earlier than the date of the applicants and as such they were given higher seniority. They have pointed out that the applicant was regularised as CA only from 13.7.1994 and prior to that, she was working on adhoc basis as CA. Since she was appointed

as CA on regular basis with effect from 13.7.1994 she was entitled to claim seniority in the grade of CA only from that date. The applicants of OA 750/94 have been appointed in the grade of CA prior to 1994. They have contended that the orders were passed revising the seniority in view of the direction given in OA 750/94 and hence the applicant cannot make any grievance about the same.

3. We have heard learned counsel for both the parties and have carefully considered the rival contentions.

4. So far as the factual position is concerned, it is an undisputed position that the applicant was appointed as Typist with effect from 25.7.1980 and had received promotion as Steno on 24.7.1981. She was thereafter promoted as Steno in the scale of Rs.1400-2600 with effect from 21.4.1983, but according to the respondents this promotion was on adhoc basis. She continued to serve on adhoc basis till her suitability test was conducted in the year 1994 and she cleared the same. She was therefore regularised as Steno Group-C in the scale of Rs.1400-2600 with effect from 13.7.1994. However, she was working as Steno Grade-C since 1983 and Shri Samson Stanley and others were recruited directly in the post of Steno Grade-C in

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the scale of Rs.1400-2600 with effect from 08.8.1994 and therefore, they were shown juniors to the applicant in the seniority list. Samson Stanley and 12 others had approached this Tribunal by filing OA 750/94 seeking direction against the respondents to count their adhoc service as regular service and for revision of their seniority. The Tribunal vide its order dated 21st July, 1998 gave the following direction:- " (1) Applicants 1 to 6 are deemed to have been regularised in the grade of Rs.1400-2600 from the date of their initial adhoc appointment. (2) The names of applicants 1 to 6 shall be interpolated in the seniority list dated 05.3.1993 in proper place on the basis of their initial adhoc appointment as mentioned in para 18 above. (3) Applicants 1 to 6 are also entitled to consequential benefits like promotion to next grade on the basis of now declared seniority and whatever consequential benefits that flow as per rules. (4) The claim of applicants 7 to 13 for retrospective regularisation and placement in the seniority list of 05.3.1993 is rejected."

5. The respondents of OA 750/94 had preferred a Revision Application No.50/98 but the review had come to be rejected by this Tribunal. The respondents had raised the question regarding seniority of the present applicant in the review and while disposing of the RA the Tribunal had observed that the question whether Smt.

Lilly Kutty Joseph (applicant herein) is senior or the applicants are senior was neither raised nor decided by the Tribunal, it has not even pleaded by either party. Therefore, such a point cannot be taken by review petition, which is not covered by review. It was also observed that if at all Smt. Lilly Kutty Joseph was aggrieved by the judgment of the Tribunal, it was for her to take appropriate steps. If the administration felt that Smt. Lilly Kutty Joseph was senior to applicants No.1 to 6, then they should consider the same as per rules.

6. It is therefore, quite obvious that the Tribunal had left it to the administration to decide the question of seniority of the applicant. It appears that pursuant to the direction of this Tribunal the administration had revised the seniority and assigned seniority to applicants 1 to 6 of OA 750/94 above the present applicant. The applicant had represented against the depression of her seniority, but the respondents have maintained that they have acted as per rules and regulations. Mr. Sawant, learned counsel appearing for the applicant had tried to submit that the whole exercise was carried out without considering the facts of the case of the applicant. According to him the applicant was also promoted in 1983 as Steno Grade-C and as such the respondents had only to consider that the applicants of OA 750/94 having joined the post of

Steno Grade-C after 1984 or so were junior to the applicant. They could not have been assigned seniority above the applicant and as such the whole exercise undertaken by the respondents was arbitrary, illegal and unreasonable.

7. Mr. V.S. Masurkar learned counsel for the respondents has however pointed out that the applicants of OA 750/94 were direct recruits and therefore ~~and~~ were not required to clear the selection for the post, were given the appointment to the post on regular basis. The applicant was promoted as she was recruited as a Typist in the year 1980 and came to be subsequently promoted as Steno in 1981. So far as her promotion to the post of Steno Grade-C in the year 1984 was concerned the same was on adhoc basis and therefore she was not entitled to claim regularisation in the post. She has passed the suitability test later. She had drawn our attention to para 215 of IREM and submitted that the eligibility prescribed for selection to the post of Steno Grade-C was completion of 2 years of service in the lower grade and since the applicant had not completed two years of service in the lower grade prior to 1985, she was not eligible to be considered for selection to the post of Steno prior to 1985. In fact she has cleared the selection only in the year 1994 and as such she was not entitled to claim the seniority in the post of Steno Grade-C prior to 1994. Samson Stanley and 5 other

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applicants of OA 750/94 had come to be appointed as CA in the year 84 and as such they were entitled to seniority over the applicant. According to him there was nothing illegal or unreasonable in the action of the respondents in pushing down the applicant while assigning seniority to respondents 4^{to}₉ pursuant to the direction of the Tribunal.

8. We have carefully examined the rival contentions and we agree with the contention of Mr. Masurkar for the respondents. There is no doubt that the applicant was promoted on adhoc basis as Steno Grade-C in the year 1983 but then her promotion was purely on adhoc basis. Further more she was holding the post without passing the suitability test and as such she cannot claim that her adhoc service should be considered as regular service. Para 176 of IREM Vol.I pertaining to recruitment of Stenographers provides as under:- The vacancies in the category of Stenographers in the scale of Rs.1200-2040 will be filled as under:(1) 25% by promotion by selection of Sorthand knowing clerks; (2) 50% by promotion by selection of Shorthand knowing typists and (3) 25% by direct recruitment through the agency of Railway Recruitment Boards.

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9. Para 215 pertaining to provision regarding filling up of selection post provided as under:- (a) Selection post shall be filled by a positive act of

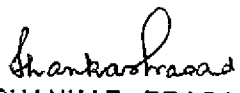
selection made with the help of Selection Boards from amongst the staff eligible for selection. The positive act of selection may consist of a written test and/or viva voce test; in every case viva-voce being a must. The staff in the immediate lower grade with a minimum of 2 years service in that grade will only be eligible for promotion. The service for this purpose will include service if any, rendered on ad hoc basis followed by regular service without break. The condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration.

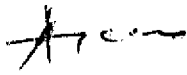
10. When both the para are read together, it becomes quite clear that even for promotion of a typist and steno selection was necessary. Even by promotion to the post in the scale of Rs.1200-2040 selection was necessary and eligibility for this selection was two years of service in the lower grade. The applicant having been appointed on adhoc basis as Steno Grade-C in the year 1983 would have become eligible to compete for the Steno Grade-C only in the year 1985. She had in fact taken the suitability test in the year 1994 as in the year 1993 she was on maternity leave. She had come to be regularised only on passing the suitability test only in the year 1994 and as such she can claim seniority in the grade of Steno-C only with effect from 1994. Applicants 1 to 6 of OA 750/94 Samson Stanley &

others were already recruited. in the year 1984 after they cleared the suitability test conducted by RRB. They were therefore not required to pass any suitability test and were given regular appointment in the grade of Steno-C. They were therefore entitled to claim seniority with effect from 1984. Obviously they were entitled to be placed above the applicant in the seniority list. We therefore do not find any error committed by the respondents in assigning seniority of applicants 1 to 6 of OA 750/94 above the applicant.

11. Mr. Sawant learned counsel for the applicant has cited several decisions of this Tribunal as well as Supreme Court but the in the facts and circumstances of the present case we find that those judgments have no applicability to the present case. He has cited the decision in the case of M.L. Trivedi & another Vs. UOI [1987] 4 ATC 69; Vikramaditya Vs. Ministry of Commerce & Supply & Ors [1992] 20 ATC 774; Umashankar Prasad Vs. UOI & Ors. [1993] 23 ATC 900 of Calcutta Bench; Shanmugaraj Vs. UOI & Ors [1995] 31 ATC 288 of Madras Bench; State of WB & Ors Vs. Aghorenath Dey & Ors [1993] 23 ATC 932 of Supreme Court. We have gone through these decisions but we find that the question of seniority of the applicant in the present case depend mainly on the facts of the case and no law point is involved. Since the applicant had come to be regularised as Steno Grade-C only on her passing suitability test in the year 1994 she had become

entitled to regularisation only in 1994. She therefore cannot claim seniority over applicants 1 to 6 of OA 750/94 who were directly recruited in 1984. We therefore, do not find any merit in the OA and the OA deserves to be rejected. In the result the OA is rejected. No order as to costs.


(SHANKAR PRASAD)
MEMBER (A)


(A.S. SANGHVI)
MEMBER (J)

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