

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE THIRD DAY OF SEPTEMBER 1986

President : Hon'ble Justice K.S. Puttaswamy  
Hon'ble Shri P. Srinivasan

... Vice-Chairman

... Member

Transferred Application No.235 to 237/86

1. Sri Soman Pillai S/o  
Sri T.S.Narayana Pillai,  
Stenographer (R.D.D.)  
Electronics and Radar  
Development Establishment,  
High Grounds, Bangalore-1.

2. Sri K. Chandrasekharan S/o  
Sri N. Krishna Pillai,  
Stenographer  
Trials & Evaluation Division,  
Electronics and Radar  
Development Establishment,  
High Grounds, Bangalore-1.

3. Sri Rajamani Selvaraj,  
S/o Sri P. Rajamani  
Stenographer (R.D.D.)  
Electronics and Radar  
Development Establishment,  
High Grounds, Bangalore

...

Applicants

(Shri M.K. Ramesh .. Advocate)

Vs.

1. Union of India,  
Ministry of Defence represented  
by its Secretary, South Block,  
New Delhi - 11
2. Scientific Adviser to Raksha Mantri  
and Director General (R&D)  
South Block, New Delhi - 110 001.
3. Shri K. Radhakrishnan, Stenographer
4. Kum. A. Kannagiappal, Stenographer
5. Sri K.R. Navaneetham, Stenographer.
6. Sri Govindappa, Stenographer.
7. Sri H.R. Rameshkumar, Stenographer.
8. Sri B.M.C. Kumar, Stenographer.
9. Sri H.P. Murali, Stenographer.
10. Smt. K. Lakshmi, Stenographer.

11. Sri G. Jagadeesan, Stenographer.
  12. Sri T. Desikan, Stenographer.
  13. Smt. K.K. Leelamma, Stenographer.
  14. Smt. G. Girijakumari, Stenographer.
  15. Sri S. Ramajayam, Stenographer. ... Respondents
- (Shri M. Vasudeva Rao .. Advocate for respondents 1 and 2)

The application has come up for hearing before Court today, Vice Chairman made the following:

O R D E R

These are transferred applications from the High Court of Karnataka.

The Research and Development Organisation (RDO) of the Ministry of Defence, Government of India, is a Department of the Government and the Director General Research and Development (DG) is its head. The RDO has its units or offices situated at various places or centres of the country. The recruitment to the posts of Stenographers and Personal Assistants in the organization was regulated by the RDO, Ministry of Defence Group 3 (Non-gazetted) Ministerial posts recruitment Rules 1968 (1968 Rules)(Annexure A).

Prior to 9.11.1978 there were posts of Stenographers and Personal Assistants in the various units of the country, which carried the pay scales of Rs.330-560 and Rs.425-700 respectively. The posts of Personal Assistants were filled by promotion from the cadre of Stenographers.

On 9.11.1978 Government of India sanctioned the conversion or up gradation of 220 posts of Stenographers of the Department existing in the various units of the country from the time scale of Rs.330-560 to the time scale of Rs.425-700 (Annexure B). That order which is material reads thus:

"I am directed to refer to Cabinet Secretariat (Department of Pers) O.M. No.1/8/72-Estt (D) dated the 6th January 1977 on the above subject and to convey the sanction of

the President to the authorisation of 220 (two hundred and twenty) posts of Stenographers in the pay scale of Rs.425-15-500-EB-15-560-20-700 in lieu of 220 existing posts of Stenographers in the pay scale of Rs.330-10-380-EB-12-500-EB-15-560 in various R&D Estts/Labs as in the Annexure. The PE of the labs/Estts will stand amended accordingly.

2. The expenditure involved will be debited to Major Head 269, Minor Head 7 Defence R&D Organisation.

3. This issues with the concurrence of the Finance Branch vide their UO No.2717/D(fin/R&D) dated 8.11.78."

The annexure to this order (Annexure D) sets out the allocation of the 220 posts to the various Units of the Department.

4. On the very next day i.e., on 10.11.1978 the Director General addressed a communication to the Directors of the Units indicating the manner of filling up of the aforesaid 220 posts in the upgraded scale of Stenographers. That letter which is material and has given rise to these proceedings, reads thus:

"Sub: Authorisation of stenographers in the pay scale of Rs.425-700 in DRDO

Ref: R&D Orgn. Letter No.96478/ST/RD-27 dated 10.11.78.

Reference Government of India, Ministry of Defence letter No.96478/ST-RD-27/8776/D(R&D) dated the 9th November, 1978.

2. Orders with regard to the authorisation of Stenographers in the pay scale of Rs.425-700 in DRDO have been issued under Government of India, Ministry of Defence, letter No.96478/ST/RD-27/8776/D(R&D) dated the 9th Nov. 1978 2 copies of which are forwarded herewith. Allocation of such Stenographers to the various R&D Estts/Labs has also been shown in the annexure to the above Government letter.

3. These Stenographers will be found from within the existing Stenographers authorised for your Establishment in the scale of Rs.330-560 in each Establishment. The posts of Stenographers in the higher grade viz., Rs.425-700 will be filled strictly on the basis of unit seniority subject to rejection of unfit, if any, and their pay fixed accordingly from the date they are placed in the higher pay scale.

4. Government of India, Ministry of Defence letter No.96478/ST/RD-27/8776/D(R&D) dated 9th Nov. 1978 will be effective from 9th Nov. 1978.

5. The scheme of reservation for candidates belonging to scheduled caste and scheduled tribes will also apply in filling the above posts of Stenographers in 425-700 scale. The percentage of reservation and other principles to be followed will be the same as applicable to cases of promotion by Selection to Groups 'C' and 'D' posts as per the orders contained in paragraph 2(8)(b) of the M.H.A. OM No.1/12/67-Estt C dated 11th Jul 78 as amended from time to time.

6. Any further clarifications or difficulty envisaged by you on the implementation of these orders may be referred to this HQ.

Please acknowledge."

On the basis of these directions, the Directors of the units in the country one of whom is the Director of LRDE in whose office the applicants are working from about 1975 and 1977, have extended the benefits of higher time scale of Rs.425-700 to various stenographers working in their respective units on the basis of their "unitwise seniority". On that basis, respondents 3 to 15 working in one of the units of Bangalore, though they are all juniors to the applicants in the All India seniority of Stenographers of the Department, have been allowed the higher time scale of Rs.425-700 from 9.11.1978. We are informed that all other unit heads in the country had allowed similar benefits to all those working in their units on the same basis.

The applicants have urged that there was only one 'All India Seniority' in the cadre of Stenographers of the Department and that on Government converting or upgrading 220 posts of Stenographers (allowing) to the higher time scale of Rs.425-700, fitment in the said higher grade of Rs.425-700 should have been done only on the basis of All India Seniority of Stenographers of the Department and not on the basis of their 'unitwise seniority'. On this basis, the applicants have urged that the action of the DG was wholly unauthorised, contrary to the 1968 Rules, that were then in force or the new Rules called the Defence Research and Development Organisation Ministry of Defence Group C Non-Gazetted Ministerial posts of Recruitment Rules, 1980 ('1980 Rules') that replaced them and in any event had subjected



them to hostile and discriminatory treatment against their juniors who, in the name of unitwise seniority, had been accorded favourable treatment offending Articles 14 and 16 of the Constitution of India. Lastly, the applicants have urged that the action of the DG, was whimsical, arbitrary and was violative of the new dimension of Article 14 of the Constitution of India. On these grounds the applicants have sought for appropriate reliefs.

In justification of the action of the Director General implemented by the unit Heads of the country called Directors, respondents 1 and 2 have filed their statement of objections before the High Court of Karnataka, which must now be treated as their reply before this Tribunal.

In their reply, respondents 1 and 2 have asserted that Government had sanctioned 220 posts of Stenographers in the scale of Rs.425-700 in lieu of 220 posts that existed in the several units of the country as set out in Annexure D of its order (Annexure B). On this basis it is claimed that unitwise seniority of stenographers and not their All India seniority was required to be considered in implementing the order of Government and the same had been rightly enunciated and implemented by the DG and the Directors. On this basis, these respondents claim that their actions do not violate Articles 14 and 16 of the Constitution either of their traditional requirements or their new dimension also. At the hearing, it was also urged for these respondents that all the 220 persons to whom the benefit had been extended, were necessary parties and that in their absence this Tribunal was incompetent to grant the relief sought by the applicants.

Respondents 3 to 15 who have been duly served have remained absent and are unrepresented.

Shri M.K. Ramesh learned counsel for the applicants contends that the directions issued by the Director General on 10.11.1978 (Exhibit C) were contrary to the 1968 Rules and had resulted in favourable treatment to those who were holding the posts in other units though they were

juniors to his clients, who had been picked up for a hostile and discriminatory treatment without rhyme or reason and arbitrarily in plain contravention of Articles 14 and 16 of the Constitution. In support of his contention Sri Ramesh strongly relies on the ruling of the Supreme Court in E.P.Royappa V. State of Tamil Nadu (AIR 1974 Supreme Court 555), Maneka Gandhi V. Union of India and another (AIR 1978 SC 597).

Sri M. Vasudeva Rao, learned Central Government Standing Counsel appearing for respondents 1 and 2 refuting the contention of Sri Ramesh, contends that the directions of DG, implemented by the Directors of the units were legal, valid and were not violative of Articles 14 and 16 of the Constitution.

In the very nature of things it is necessary to first deal with the preliminary objection urged by Sri Vasudeva Rao.

In their reply respondents 1 and 2 have not urged that the unit heads and 220 Stenographers who were actually selected for the upgraded posts were necessary parties and that, in their absence this Tribunal cannot properly adjudicate the matter and grant effective reliefs to the applicants. On this short ground itself this objection urged by Sri Vasudeva Rao at the hearing, is liable to be rejected.

Even otherwise, what is really under challenge is the direction by the DG issued on 10.11.1978 and that authority which is subordinate to Government of India to whom that and all other unit heads called Directors are subordinates are before us as Respondents 1 and 2. We are of the view that for the effective determination of the questions that arise before us, they are the only necessary parties. Any directions that may be issued to these respondents are bound to be implemented by them by issuing appropriate directions to their subordinates. We are, therefore, of the view that the unit heads and all the 220 stenographers are not necessary parties to these proceedings. If all of them are not necessary parties, then these applications

pending from 6.12.1979 before the High Court and then before this Tribunal, call for adjudication on merits only. We see no merit in this objection of respondents 1 and 2 and we reject the same.

The order of Government dated 9.11.1978 accords sanction for conversion or upgradation of only 220 posts of Stenographers to the pay scale of Rs.425-700. If Government had accorded its sanction for conversion of all the posts of Stenographers in the Department, which it did not do, then the question of construing the same in any particular manner or understanding its true and real effect by us would not have arisen. But, since that had not been done and Government had limited its sanction to a smaller number of posts, we are now compelled to ascertain its true and real effect. The new scale redesignated as Stenographer Grade II which is definitely higher becomes after conversion an intermediate scale between the old scale of Rs.330-560 (redesignated as Stenographer Grade III) and the scale of Personal Assistants which was also revised to Rs.550-900 (redesignated as Grade I). Promotions to Grade I are made only from Grade II. On all these facts and circumstances, the distribution or allocation of posts to the various units was only for the purposes of work in the respective units and the same had nothing to do with the seniority of the Stenographers of the departments at all. We must necessarily hold that the converted posts were really promotional posts and they should only be filled by promotion of Stenographers of the Department who were drawing the time scale of Rs.330-560. We accordingly hold so.

The 1968 Rules promulgated by the President of India under the proviso to Article 309 of the Constitution were in force when Government made its order and the DG issued his directions. Under these rules the cadre of stenographers in the Department, notwithstanding their necessity to work in the Head Office and various units in the country were



treated as belonging to only one cadre and there was only one All India seniority list is the admitted case of all the parties. The 1980 Rules promulgated by the President also under the proviso to Article 309 of the Constitution in July 1980 in supersession of the 1968 Rules divided the cadre of Stenographers into three grades namely I, II and III carrying the time scales of Rs.550-900, Rs.425-700 and Rs.330-560 respectively. The amendment made in 1981 to the 1980 Rules required a minimum of 5 years for promoting a Grade III Stenographer as Grade II Stenographer. Except for those modifications the 1980 Rules preserved and continued the principles of All India seniority in the cadre of Stenographers of the Department. What emerges from this analysis is that the Rules made under Article 309 of the Constitution at all stages only recognised 'all India Seniority' in the cadre of Stenographers of the Department, which necessarily means in all the Grades of that cadre.

The 1968 and 1980 Rules only recognise all India Seniority in the cadre of Stenographers of the Department and not 'unitwise seniority' at all. The units where the Stenographers were working at the particular time were not independent, separate and distinct units at any rate for purposes of inter-se seniority of Stenographers at all. The inter-se seniority of stenographers of the Department at all times and more so under the 1968 Rules, was the All India Seniority of all the Stenographers of the department irrespective of where they were stationed or were working on that date or even later also. While this is the position that emerges under the Rules, the direction of the DG issued on 10.11.1978 introduced an unknown concept or principle of 'unitwise seniority' to the serious detriment of the seniors. The direction had undone what had been done by the Rules framed by the President under the proviso to Article 309 of the Constitution and that it was not open to the DG to do. From this it follows that what had been done by the DG was plainly contrary to the Rules, illegal and



impermissible. If the direction of the DG was illegal, its implementations by the unit heads who were of course bound to implement and act according to his directions, was also illegal. On this short ground itself the actions of the DG and the unit heads calls for our interference.

The true scope and ambit of Article 14 has been explained by the Supreme Court in a large number of cases. In *Shri Ramakrishna Dalmia and Others V. Justice S.B. Tendolkar and others* (AIR 1958 SC 538) and in *Re: The Special Courts Bill, 1978* (AIR 1979 SC 478) the Supreme Court reviewing all the earlier cases had re-stated the scope and ambit of Article 14 of the Constitution exhaustively. On the new dimension of Article 14 of the Constitution namely that arbitrariness was the very antithesis of rule of law enshrined in Article 14 of the Constitution first evolved in *E.P. Royappa V. State of Tamil Nadu* (AIR 1974 SC 555) elaborated in *Smt. Maneka Gandhi v. Union of India and Another* (AIR 1978 SC 597), *Ajay Hasia etc. V. Khalid Mujib Sehravardi and Others Etc.* (AIR 1981 SC 487) is now firmly settled. Articles 16 of the Constitution that guarantees equality of opportunity to all citizens in public employment is only an emanation of Article 14 of the Constitution and the principles that bear on Article 14 of the Constitution, equally bear on Article 16 also. Bearing the principles enunciated in all these cases we must now examine the challenge of the petitioners based on Articles 14 and 16 of the Constitution.

The direction of the DG had picked up juniors for a favourable treatment and at the same time subjected their seniors for an unfavourable, hostile and discriminatory treatment. Equals had become unequals by one stroke. We are clearly of the view that the action of the DG is plainly violative of Articles 14 and 16 of the Constitution even without reference to the new dimension of the former Article evolved by the Supreme Court in *Royappa's* case and elaborated in *Maneka Gandhi's* case.

When the 220 posts were upgraded in the Department by allocating them to the various units it was the plain duty of the DG to have so modulated his action as to ensure fitment or promotion on the basis of the All India Seniority of Stenographers that existed as on that day. But, instead of that, the innovation introduced by the DG clearly introduced absolute arbitrariness in extending the benefit granted by the Government to the Stenographers of the Department. The direction by one stroke as it were made many juniors as seniors of their seniors without any rhyme or reason. This aspect is highlighted by the fact respondent 15 who had only joined service a few months ago, and who had not even completed his probation on 10-11-1978 was also allowed the higher time scale on the ground that he was working on that day in a particular unit. The indiscreet and arbitrary action of the DG had arbitrarily denied benefits of higher scale or promotion without any consideration and their effect on the seniority of stenographers of the Department. Whoever is fitted to Grade II Stenographers they naturally steal a march over others and they alone are eligible for promotion to Grade I Stenographers that carries a pay scale of Rs.550-900. If we were to uphold the action of the Director General, then the applicants and many others who are seniors would irretrievably suffer hardship and injustice till they retire from service. For all these reasons, we are clearly of the view that the action of the DG was plainly arbitrary, whimsical and is liable to be struck down as violative of Article 14 of the Constitution.


In the light of our above discussion, we make the following orders and directions:

- (a) We quash the communication dated 10.11.1978 (Annexure C) of the Director General Research and Development. We direct him to withdraw the said illegal communication and issue appropriate directions to the unit heads of his department and regulate the matter in conformity with law and our order.

(b) We direct the respondents 1 and 2 to consider the case of the applicants and all others for fitment or promotion to the higher grade of Rs.425-700 sanctioned by the Government in its order dated 9.11.1978 on the basis of the All India Seniority of Stenographers of the Department that was in force on that date and issue all orders that become necessary in that behalf to all such persons working in the Department as on that day. We further direct respondents 1 and 2 to further regulate all promotions in the cadre of Stenographers of the Department on the basis of these orders by making all such further orders that become necessary in that behalf.

Applications are disposed of in the above terms. But, in the circumstances of the cases we direct the parties to bear their own costs.

  
VICE CHAIRMAN

  
MEMBER (A)