

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH.

ORIGINAL APPLICATION NO. 913/95.

Dated : 7-7-2006

Manohar R. Amesur ... Applicants

Shri G.K. Masand ... Advocate for
Applicant.

v.

Union of India & Ors.. ... Respondents.

Shri R.K. Shetty ... Advocate for
Respondents

Coram : Hon'ble Shri A.K. Agarwal, Vice-Chairman,
Hon'ble Shri Muzaffar Husain, Member (J)

- (i) To be referred to the Reporter or not?
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal?
- (iii) Library?


(A.K. AGARWAL)
VICE-CHAIRMAN

B.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 913/95

Friday the 7th day of JULY 2006

CORAM: Hon'ble Shri A.K. Agarwal - Vice Chairman

Hon'ble Shri Muzaffar Husain - Member(J)

Manohar R. Amesur
Station Headquarters,
No.25, Equipment Deopt,
Air Force Station, Devlali.Applicant.

By Advocate Shri G.K. Masand.

Union of India through
Secretary,
Ministry of Defence,
South Block, New Delhi.

The Chief of Air Staff,
Air Headquarters,
Vayu Bhavan, New Delhi.

Air Officer Commanding-in-Chief
HQ Maintenance Command, IAF
Vayusena Nagar, Nagpur.

Air Officer Commanding,
No.25 Equipment Depot,
Air Force Station,
Devlali. Respondents.

By Shri R.K. Shetty.



O R D E R

{Per A.K.Agarwal, Vice Chairman}

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, seeking a direction to the respondents for considering his promotion to Grade II Stenographer with effect from 6.1.1977 and also that he is entitled for promotion as Grade I Stenographer as per his turn in the seniority list.

2. The applicant submitted that he was appointed as Stenographer Grade III on 11.10.1973 and as per the decision given by Ernakulam Bench of CAT in its order dated 9.9.1991 while disposing of OA 539/90, the officers who are drawing the pay in the pre-revised scale of Rs.1500-2000 were entitled to Stenographer Grade - II in the pre-revised scale of Rs.425-700 with effect from 6.1.1977. The applicant has been working for Commanding Officer who are in the rank of Wing Commander in the pay scale having a minimum of Rs.1650/-. The applicant has therefore claimed entitlement for the pay scale of Stenographer Grade II w.e.f. 06.01.1977.

3. The applicant has further submitted that as per Ministry of Defence O.M. dated 6.2.1989 he is entitled for promotion to Stenographer Grade I, since he was working for Air Commodore who has the basic pay of Rs.5100/- plus a Rank pay of Rs.1200/- right from March, 1986. According to the applicant the Air Commodore is entitled for a Senior PA in the pay scale of Rs.2000-3200 as per entitlement of officers drawing the scale of Rs.5900-6700.

4. The learned counsel for the applicant submitted that after a favourable decision of Ernakulam Bench of the Tribunal in September, 1991, Bombay Bench also while disposing of 3 OAs vide order dt. 8.8.1995 upheld the entitlement of persons similarly placed to the applicant for the pay scales as mentioned in DOPT O.M. dated 6.2.1989. The respondents had filed an SLP in the Apex Court against this order which was dismissed. However, in some other cases viz. OA 673/91, 1101/93 and 1102/93 whereby similar reliefs were granted by the Tribunal vide order dated 30.10.1996 an SLP was admitted by the Apex Court and relief granted in those OAs were stayed vide order dt. 2.2.1998. In view of this, on 17.10.2000 the present OA was adjourned sine die. The learned counsel stated that upto now he is not aware whether the SLP has been finally disposed of by the Apex Court or not. The present OA was therefore

heard on merits for appropriate decision.

5. The learned counsel for the applicant stated that the Ernakulam Bench of CAT has clearly held that Stenographers Grade-III working under the Southern Naval Command are entitled for the pay scales as mentioned in DOPT O.M. dated 6.1.1977. It was further held that such order is applicable to all the three wings of Armed Forces and their regional formations. The learned counsel mentioned that an M.P. was moved praying for early hearing and grant of relief on the ground that the applicant is a similarly placed person vis-a-vis the applicants in OA 729/92 and 102/93, especially in view of the fact that the SLP filed against the order of the Tribunal was dismissed by Hon'ble Supreme Court vide its order dated 2.4.1996. Thereafter, the Ministry of Defence has also implemented the orders of the Tribunal vide their letter dated 13.9.1996.

6. The learned counsel for the applicant submitted that a representation made by the applicant on 1.7.1994 for fixation in the higher scale was rejected by the respondents vide order dated 3.9.1994 on the ground that as per communication received from Headquarters vide letter dated 23.3.1990, the provisions contained in O.M. dated 6.2.1989 are not applicable for Stenographer attached with Air Force Officers.

7. The learned counsel for the applicant contended that the matter relating to entitlement of pay scales for Stenographers has been decided by Ernakulam Bench vide order dt. 9.9.1991. The Government has not filed any Appeal against this order. Further, there are number of orders of CAT confirming the decision given by Ernakulam Bench. The learned counsel reiterated that in the case of applicants in O.A. Nos.729/92 and 1023/93. The S.L.P. filed by the Government was dismissed by the Hon'ble Supreme Court vide order dt. 2.4.1996 and thereafter the Ministry of Defence has also issued O.M. dt. 13.9.1996 in compliance of Tribunal's order. The learned counsel for applicant drawing our attention to this O.M. dt. 13.9.1996 stated that three posts of Stenographer Gr. III were upgraded to Stenographer Gr.II and 31 posts of Stenographer Gr.II were upgraded to Stenographer Gr.I. The applicant is similarly placed and for him also the post of Stenographer should be upgraded as per his entitlement according to the guidelines mentioned in DOPT O.M. dt. 6.2.1989.

8. The learned counsel for respondents Shri

R.K.Shetty stated that no specific prayer as such has been made in the O.A. and the relief clause only mentions "the applicant submit that relief as brought out at para 5.1 to 5.6 may kindly be provided". The learned counsel contended that the relief sought by the applicant is quite vague. Moreover, a glance at para 5.1 to 5.6, which are grounds for relief, indicates that the applicant is seeking multiple reliefs. In para 5.2 he is seeking promotion to Gr.II w.e.f. 6.1.1977. Thereafter, in para 5.4 he is seeking promotion to Gr.I after taking into consideration his seniority in Gr.II. Further it is mentioned that the applicant be promoted as Sr. P.A. w.e.f. March, 1986 on account of upgradation of the post of Station Commander (Group Captain) to Air Commodore. The learned counsel contended that such multiple reliefs cannot be granted and the O.A. deserves to be dismissed on this count alone.

9. The learned counsel for the respondents continuing his submissions stated that the order of Ernakulam Bench given on 9.9.1991 while disposing of O.A. No.531/90 does not cover the attachment of Stenographers to Senior Officers. The learned counsel contended that the DOPT OM dt. 6.1.1977 considered by Ernakulam Bench was relating to revised pay scales of Stenographers in view of the recommendations made by the IIIrd Pay Commission.

Moreover, the DOPT O.Ms. relied upon by the applicant only lay down the principle relating to entitlement of Stenographers for different grades. There is nothing from the applicant's side to show that even if some posts were upgraded from Grade III to Grade II, he was senior enough to be in the zone of consideration.

10. The learned counsel for respondents contended that DOPT O.M. dt. 6.1.77 and 6.2.89 lay down the norms for Civilian Officers. As far as officers working in three Wings of Defence are concerned their entitlement will be as per MOD O.M. dt. 19.11.1993. The learned counsel contended that the basic difference in the instructions issued by DOPT and the Ministry of Defence is that while in the former the entitlement has to be determined on the basis of pay scales, in the latter it is to be worked out on the basis of rank of officers. He stated that as per O.M. dt. 19.11.1993 only officers of the rank of Brigadier and equivalent are entitled for Stenographer Gr.II. The officers having rank upto Colonel are entitled only for Stenographer Gr.III. The learned counsel stated that 16 applicants who were applicants in O.A. No.539/90 before Ernakulam Bench had filed another O.A. challenging the interpretation of the judgment by the government. However, it was dismissed by the Tribunal vide its order dt. 4.7.1994 upholding

the decision of the Ministry of Defence for providing Stenographic Assistance in accordance with the rank of the officer and not in accordance with their pay scales. The learned counsel contended that DOPT O.M. laying down entitlement on the basis of pay scales is only for Civilian Officers and as far as Army/Air Force/ Naval Officers are concerned their entitlement will be worked out on the basis of O.M. dt. 19.11.1993.

11. The learned counsel for respondents submitted that the post of Group Captain was upgraded to that of Air Commodore in 1985. However, the applicant's attachment with such officers will not suo moto lead to his promotion as Stenographer Gr.II. The matter was taken up with the higher authorities for the upgradation of post of Stenographer Gr.III to Gr.II to meet the requirements of Air Commodore and sanction for upgradation of 21 posts was issued vide order dt. 9.5.1996. Thereafter, necessary promotion orders were issued by Air Headquarters vide their letter dt. 30.5.1996 and the applicant was one among the beneficiaries. The applicant was posted to H.Q. MC (U), Nagpur, but he did not accept promotion and continued as Stenographer Gr.III at 25 ED, AF Station, Deolali. The contention of the applicant that his post at Deolali itself should be upgraded and he should be promoted on that post cannot be

accepted. The learned counsel stated that the O.A. deserves to be dismissed.

12. We have heard both the learned counsel and have perused the material placed on record. One point for adjudication is whether the entitlement of Officers for stenographers of various grades is to be determined in accordance with DOPT O.M. dt. 6.2.1989 or Ministry of Defence O.M. dt. 19.11.1993. The DOPT had issued the O.M. based on the recommendations of Fourth Pay Commission for higher pay scales to Stenographers and clubbing them into three different grades. We find that a copy of this O.M. was circulated by the MOD vide endorsement dt. 23.2.1989 to all its formations for information and necessary action. On the other hand, MOD O.M. dt. 19.11.1993 has been issued with the concurrence of the Ministry of Defence (Finance/AG). Besides this, the Ernakulam Bench in its order dt. 9.9.1991 while disposing of O.A. No.531/90 also issued directions to implement the MOD order dt. 23.2.1989 in respect of upgrading the post of Civilian Stenographers. The same view was taken by the Tribunal in its order dt. 8.8.95 while disposing of O.A. No.1023/93. Furthermore, the Govt. of India, Ministry of Defence vide O.M. dt. 13.9.96 implemented the order of Tribunal dt. 8.8.95. In the background of such facts we have no hesitation in coming to the conclusion that the

entitlement for Stenographers of various grades has to be worked out on the basis of DOPT OM dt. 6.2.1989.

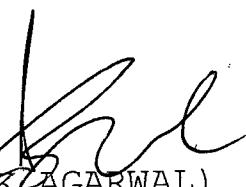
13. It was mentioned from the respondents side that an order for upgradation of 21 posts of Stenographers Gr.III to Gr. II was issued on 9.5.1996. Thereafter, Air HQ vide letter dt. 30.5.1996 issued promotion orders of applicant and 16 other stenographers. The applicant who was posted as Steno Gr.II at H.Q. MC(U), Nagpur did not accept the promotion granted to him and continued as Stenographer Gr.III at 25 ED, AF Station, Deolali. As stated above, DOPT OM dt. 6.2.1989 only lays down principles for working out the number of entitled posts in different grades of Stenographers. It is not the intention of the OM to give the higher scale to a person working with the senior officer, irrespective of his place in the seniority list of stenographers. It is the post which is upgraded and not the incumbent. After upgradation of posts, the Government has to make selection in accordance with the Recruitment Rules and thereafter post the selected candidates against available vacancies. From the facts of the case, it is apparent that the applicant was selected for promotion and was also given a posting. However, he did not join. His contention that he should be given upgradation merely on the basis of his

attachment with a senior officer has no force and cannot be accepted.

14. In view of the facts of the case, we do not find any merit in the O.A. The O.A. is therefore dismissed with no order as to costs.


(MUZAFFAR HUSAIN)

MEMBER (J)


(A.K. AGARWAL)
VICE-CHAIRMAN

B.