

Central Administrative Tribunal

MUMBAI BENCH

O.A. No. 529 of 1997

New Delhi, dated this the *26th March 2002*.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. S.L. JAIN, MEMBER (J)

P.V. Joseph,
Superintendent,
Office of General Manager,
Canteen Stores Department,
Ministry of Defence,
Adelphi, M.K.Road,
Bombay. Applicant

(By Advocate: Shri R.C. Kotianker)

Versus

1. Union of India,
through
The Govt. of India,
Ministry of Defence,
New Delhi.
2. Secretary,
Board of Control,
Canteen Stores Department,
Ministry of Defence,
New Delhi.
3. General Manager,
Canteen Stores Department,
Ministry of Defence,
Adelphi,
M.K.Road,
Bombay.
4. Shri A.K. John,
Stenographer Gr.III,
Canteen Stores Department,
CSD Area Depot,
Ministry of Defence,
Sewree,
Bombay. Respondents.

(By Advocate: Shri R.K. Shetty for R-1 to 3.
None for R-4)

ORDER

S.L. JAIN, M (J)

In this OA filed on 2.6.97 applicant impugns
respondents' order dated 8.12.95 (Exh.P-II) and is
aggrieved by

ASR

officiation from 17.1.77 to 7.6.82 by applicant as Steno for reckoning of seniority as Steno Gr. III;

He seeks extension of the benefits of the Tribunal's order dated 8.2.95 in OA No. 245/91 A.K. John Vs. UOT & Ors.

2. Heard both sides.

3. One Shri A.K. John who was appointed as LDC in Canteen Store Deptt. on 30.3.77 and was also a qualified Stenographer filed OA No. 245/91 prayed for consideration for promotion to the post of Steno Gr. III/Gr. II by holding a Departmental Examination from the date of his officiation i.e. 14.5.79. He also challenged respondents' order dated 22.3.91 denying him the right to appear in the Departmental Exam. and sought proforma promotion/pay fixation to the post of Steno Gr. II by counting his total service in the grade. It was also prayed that his previous reversion orders be held illegal.

4. That OA was disposed of by order dated 8.2.95 with a direction to respondents to subject that applicant to a test for the post of Steno Gr. III and in case he cleared the same, he was to be regularised as such by relating it back to 30.3.80 i.e. the date he had completed 3 years in Govt. service. Consequential benefits were also ordered to be given.

JPW

5. Applicant's case is that he was appointed as LDC in Canteen Stores Department on 17.1.77 and prior to that he had put in adhoc service as LDC intermittently during 1972-75. He was appointed as Steno Gr.III on adhoc basis on 1.9.79 and was eventually appointed as such on regular basis vide order dated 16.8.82 w.e.f. 8.6.82. In that order it was stated that the service rendered by applicant as Steno during the period 1.9.79 to 7.6.82 would be deemed adhoc and no benefit of the said adhoc service would be admissible in the matter of promotion or seniority, but the same would be taken into account for fixation of pay in the grade.

6. Applicant avers that Shri A.K. John who was junior to him in the department as LDC as well as Steno has now been given appointment as Steno Gr.III on regular basis w.e.f. 30.3.80 although he passed the stenography test on 2.6.95 i.e. much later than applicant, and he has been granted further promotion to the post of Steno Gr.II by counting his officiating service as Steno w.e.f. 14.4.79. As a consequence, Shri John who was hitherto junior to the applicant in LDC as well as Steno Gr.III cadre has superseded applicant.

7. Applicant contends that he had represented against the injustice on 22.4.96 but did not receive any reply, compelling him to file the present OA.

SJM:-

8. Respondents in their reply admit that applicant was senior to Shri A.K. John as LDC and started working as Steno on temporary basis prior to Shri John. They also concede that applicant lost his seniority as Steno on account of the implementation of the Tribunal's order in OA No.245/91 filed by Shri John. However, respondents assail the OA on grounds of limitation and lack of jurisdiction and asserting that applicant's cause of action arose in 1982 if not in 1977 itself, while the present OA has been filed in 1997.

9. There is merit in applicant's contention that prior to the implementation of the Tribunal's order dated 8.2.95 in OA No.245/91 by respondents, vide their order dated 8.12.95 applicant had no grievance because he was ranked senior to Shri A. John, and he was not even made a respondent in the OA filed by Shri John. Applicant's grievance arose with the issue of respondents order dated 8.12.95, against which he filed representation dated 22.4.96 (Exh.P III), and when he received no reply to the same, he filed the present OA on 2.6.97, within the period prescribed under Rule 21 (1)(b) A.T. Act. Hence the plea of limitation/lack of jurisdiction is rejected.

10. Coming to the merits of applicant's claim, respondents do not deny that he has worked as Steno Gr.II on ad hoc but continuous basis from 1977 onwards. Respondents themselves state that selection for making regular appointment as Steno Gr.III was held in Sept./Oct. 1979 in which applicant and other

SCM

candidates appeared. Indeed applicant secured first position in that selection. However, because of audit querries the results could not be declared for 26 another 2 years 10 months, till July '82 and meanwhile the service rendered by applicant as Steno Gr. III from 1979 to 1982 was treated as ad hoc for purpose of seniority etc.

11. The question for adjudication is whether applicant can be denied the extension of the benefits granted to Shri A.K. John vide Tribunal's order dated 8.2.95 in OA No.245/91 when admittedly applicant's claim is in no way inferior to that of Shri A.K. John, and in many ways is even superior, and nothing has been shown to us to establish that the aforesaid order dated 8.2.95 has been stayed, modified or set aside.

12. In our considered opinion, denial to applicant of the extension of the benefits granted to Shri A.K. John pursuant to the Tribunal's order dated 8.2.95 in OA No.245/91, when admittedly applicant's claim is in no way inferior to that of Shri A.K. John, and if any thing is even superior, would be subjecting him to hostile discrimination, in the absence of any material to show that the aforesaid order dated 8.2.95 has been stayed, modified or set aside.

13. In this connection applicant's counsel has invited our attention to the Hon'ble Supreme Court's ruling in State of West Bengal & Ors. Vs.

Alpna

Aghore Nath Dey & Ors. and connected cases (1993) 3 SCC 371 which only supports us in our aforementioned opinion.

14. Under the circumstances we hold that applicant is entitled to the benefits contained in the Tribunal's order dated 8.2.95 in OA No.245/91 A.K. John Vs. UOI & Ors. Official respondents should redetermine applicant's seniority as Steno Gr.III accordingly and extend consequential benefits to him including consideration for promotion to higher posts in accordance with rules and instructions on the subject, within a period of 6 months from the date of receipt of a copy of this order. While implementing these directions, if anyone is likely to be adversely affected, he should be given a reasonable opportunity of being heard before the directions are implemented.

15. The OA succeeds and is allowed to the extent stated in para 14 above. No costs.

P.(S)
(S.L.Jain)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

/ug/

19/4/02
Order/Judgement despatched
to Appellant/Respondent(s)
on 19/4/02

WB