

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Friday the 8th March, 2002

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.J.K.Kaushik - Member (J)

O.A.791 of 1998

Shri Madhusudhanan K.Menon
Shri Dhano M.Kanjan
Smt.Sonam R.Bhojwani
Smt.Shobha Ravindran
Smt.B.R.Melwani
Shri Vishnu K.Pahuja
Shri V.K.Satheeshkumar
Smt.Indira Narayanan
Shri Hari G.Chettiar
Shri K.P.Venugopalan
Shri P.Kesavan
(By Advocate Shri Suresh Kumar) - Applicants

Versus

1. Union of India
through the Secretary,
Ministry of Commerce,
Udyog Bhavan, Maulana Azad Road,
New Delhi - 110 001.
2. The Director General of Foreign Trade,
Udyog Bhavan, Maulana Azad Road,
New Delhi - 110 001.
3. The Joint Director General of Foreign
Trade, New CGO Building,
New Marine Lines, Bombay.
(By Advocate Shri R.K.Shetty) - Respondents

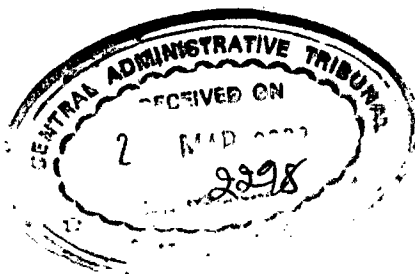
ORAL ORDER

By Hon'ble Mr.B..N.Bahadur, Member (A) -

This is an application made by eleven applicant seeking the following relief from this Tribunal:

- (a) The Hon'ble Tribunal may please to call for the record pertaining to the promotion orders dated order dated 3.4.1996, 17.5.1996, 1.11.1996 and 31.1.1997 and after examining

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the legality and validity of the same be pleased to quash and set aside the order dated 3.4.1996, 17.5.1996, 1.11.1996 and 31.1.1997 being Exhibit - A-2 to the extent it relates to the promotion of UDC to the grade of Licensing Assistants.

(b) The Hon'ble Tribunal be pleased to direct the respondents to promote the applicant to the Grade of Licensing Assistants in accordance with the rules, by convening review DPC, for considering the applicants for promotion along with the UDCs on the basis of seniority to be drawn in accordance with the length of service.

(c) The applicants be granted the consequential benefits arising therefrom such as seniority, fixation of pay, arrears of payments as the applicants were deliberately kept out of the promotional post without there being any fault on their part.

In alternative to prayer (a) to (c) above, in the event regular DPC had not taken place, for regularising the UDC promoted to the grade of Licensing Assistant as per Exhibit A-2 herein, the respondents be directed to convene DPC for regular

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promotion to the grade of Licensing Assistant on the basis of entry to the grade, among UDC and Stenographer within a period of four months from the date of filing of this OA or with such period as this Court may deem fit in the facts and circumstances of the case.

(d) To hold and declare the action of the respondents in staying the promotion order dated 26.2.1997 vide order dated 27.2.1997 is illegal and arbitrary, and respondent be directed to give effect to the order dated 26.2.1997 forthwith.

(e) This Hon'ble Tribunal may be pleased to grant such other relief to which the applicant may be found entitled in this respect, and may pass any such order or direction or suitable wirt as deem fit.

(f) The applicants be allowed to file joint application as their cause of action is same and similar and all are seeking the same relief.

2. The facts of the case as presented by the applicants is that they were recruited as Stenographers on various dates as shown in the seniority list dated 24.2.1997 and have been working under respondent no.3 who is the Cadre Controlling Authority for promotions to the post of Licensing Assistant. The applicants come up with the grievance that the Stenographers have not been



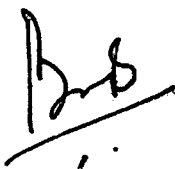
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considered for promotion in accordance with the Recruitment Rules notified vide order dated 6.12.1988 (Annexure-A-5). According to these Recruitment Rules, 25% posts of Licensing Assistants are to be filled by direct recruitment and 75% by promotions. The Licensing Assistants post is a non-selection post. The Recruitment Rules states that promotion shall be made from amongst Upper Division Clerks and Stenographers having three years continuous regular service in their respective grade. Importantly it is also noted as follows -

The promotion of Upper Division Clerks and Stenographers having at least three years regular service in their respective grade will be made on the basis of joint seniority to be drawn in accordance with the length of service in the grade as well as service in equivalent grade, irrespective of the date of confirmation (s) in the respective grades of Upper Division Clerks and Stenographers.

3. The applicants then state that the respondents have in fact promoted the Upper Division Clerks vide orders dated 3.4.1996, 17.5.1996 and 1.11.1996 as also 31.1.1997 (Exhibit A-2). These promotions, it is alleged were in utter disregard of rules and Stenographers eligible as per seniority vis-a-vis UDCs have not been promoted. It is alleged that many junior UDCs have been promoted and details are indicated in the OA. The grounds taken in the OA were argued inter alia by the learned counsel for the applicant. The applicants have attached certain annexures to their OA which have been seen.

4. The respondents have filed a written statement of reply, where the facts are first set out, and a reference is drawn to one Smt. Shobha Ravindran, who although 91st in the merit list of



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joined service late i.e. only on 11.1.1984 as against Stenographers much lower to her who had joined in time. It was clarified on question by learned counsel for Respondents that she joined late with permission. This fact that she joined later seems to have created certain confusion in the determination of seniority vis-a-vis UDCs and other Stenographers and we will come to this point later. It is stated that the respondents have made out a seniority list in a way such as UDCs who were promoted in a grade between 17.2.1983 and 11.1.1984 are placed en bloc senior to Smt. Shobha Ravindran as well as applicants herein. This is in fact the stand taken. The legality of this action will be discussed ahead. It is contended by the respondents that their action in determining seniority is correct and that they deny that they are following different sets of rules.

5. It is further stated by the respondents in their written statement that inadvertently the Office Order dated 26.2.1997 had promoted the said applicants of Stenographers Grade on ad-hoc basis as Licensing Assistants which was rectified and kept in abeyance vide order dated 27.2.1997. The keeping in abeyance vide the latter order is merely stated as being due to "administrative reason". It is further stated that respondents made reference to Government for clarification of guidelines vis-a-vis the rules and that according to the directives of government the ranking of Stenographers is the same as per recommendation of the Staff Selection Commission, in that the

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the UDCs who have entered the grade will rank higher to the applicants. Importantly Para 7 of the written statement reads as under:-

"7. With reference to para 4.7 of the OA, the Respondents submit that the seniority of the UDCs and Stenographers is to be settled on the basis of the principles as laid down in Para 1 of the written statement. In that the UDCs who have entered in the grade before January, 1984 will rank en bloc senior to Smt.Shobha Ravindran and the other applicants herein. This is being done on the basis of the principles laid down for the purpose of determination of seniority of direct recruitments which has to be done on the basis of their merit in the selection not withstanding the date of their joining."

The remaining part of the detailed written statement seeks to bring out para-wise replies to the averments made in the OA. Restressing at various points that UDCs who entered the grade before applicant no.4 i.e. Smt.Shobha Ravindran who joined on 11.1.1984 are bound to be given seniority on top of Smt.Shobha Ravindran and since remaining applicants were lower in merit in 1982 to Smt.Shobha Ravindran the question of their being granted promotion before Smt.Shobha Ravindran does not arise.

6. We have seen all papers in the case including the Annexures filed, and the case law cited, and have heard the learned counsel on both sides. The learned counsel for the applicant, Shri Suresh Kumar, took us over the facts of the case and first tried to show, as utterly unsustainable, the stand that applicants who joined earlier to Smt.Shobha Ravindran are to suffer in view of her late joining. He quoted the relevant instructions/rules in this regard, and stated that as per these, Smt.Shobha Ravindran could be provided seniority if she joined with permission but he

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emphasised that even if she was not to be provided with seniority, the others could not suffer in the manner as described in the written statement since the Recruitment Rules here clearly stated that the basis of seniority was the length of service i.e. date of joining inter-se between Stenographers and UDCs. It was strenuously argued that Stenographers as a class had been overlooked barring a stray incident for promotion in all the four orders impugned and that this was a gross violation of the Recruitment Rules, which envisaged the date and period of regular promotion as the basis of inter-se seniority.

7. A number of arguments were made on the factual aspects of the seniority list where we were handicapped by the fact that joint seniority list was not available on record. We, therefore, adjourned the case allowing time especially to the Respondents to produce the list etc., and have heard the matter again today at considerable length. Today the learned counsel for respondents has produced a joint seniority list dated 25.5.1988, which we are taking on record, in the interest of justice. We shall come to this list later. The learned counsel Shri Suresh Kumar stated that non-consideration of the Stenographers including the applicants had meant total disregard of the Recruitment Rules, which are statutory rules having being finalised under Article 309 of the Constitution. He did say that the date etc. in respect of the individual applicants should certainly be verified vis-a-vis the dates of promotion and individual eligibility checked in case of different applicants.

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8. The learned counsel for the respondents, Shri Shetty, depended on the written statement of reply making the point about Smt. Shobha Ravindran. He also made the point that the matter regarding seniority of Licensing Assistants and other cadres had come up for interpretation and decision in a batch of OAs decided by this Bench on 30.3.2001 in OAs 489/99 etc. We had the benefit of perusing a copy of the said judgment. The contention of the learned counsel was that any benefit provided to the applicant herein may create chaos and problems vis-a-vis the decision settled by this judgment.

9. Learned counsel Shri Shetty also alleged that the entire OA was vague, especially the reliefs being sought and that the seniority list of the UDCs could not be upset and unsettled after this length of time. Two legal objections taken by Shri Shetty related to (a) the aspect of limitation, delay and laches and (b) non-joinder of necessary parties. This was argued at some length by him to state that it was an old matter and that the seniority list were well known to the applicants in 1988 after which admittedly no joint seniority list was issued by the respondents. Only separate seniority lists of UDCs and Stenographers was made. Shri Shetty reiterated further that it was absolutely incumbent upon the applicants to have arrayed in the party line those allegedly junior UDCs who have superseded the Stenographers and that non joinder of such necessary parties was fatal to the case of the applicants. It was his point that the Hon'ble Apex Court has decided that Courts and Tribunal should not decide such matters in the absence of necessary parties being arrayed.

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10. The learned counsel for the applicant argued against both the points resisting them strenuously. It was pointed out by him that the matter does not suffer from delay nor is it hit by law of limitation. He drew our attention to the various representations on record stating that the cause of action arose only by issue of four impugned orders of promotion. Soon thereafter the applicants have made representations and interim replies have been received as available on page 77 which is a letter from the Joint Director General of Foreign Trade dated 22.2.1997 informing applicants that the matter had been referred to the Headquarters for clarification of certain points. He depended strenuously on this letter. He stated that in view of this, filing of the OA on 19.8.1998 was well within time.

11. On the point of non joinder of necessary parties as well as the point of limitation, the one argument of Shri Suresh Kumar was that all promotions in any case were ad-hoc and in that the UDC had acquired no rights. Further he made the point that the applicants were not seeking any particular relief against any particular UDC but were questioning the non following of statutory rules. In this context arraying of parties was not necessary. In this regard he cited the decision in the case of A. Janardhana Vs. Union of India & others, (AIR 1983 SC 769).

12. We first come to the preliminary/legal objections. In regard to limitation, we find that the orders being impugned are between the period 3.4.1996 and 31.1.1997. It is true, as seen



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from record, and admittedly so, that representations have been made. In this regard, we importantly consider the relevance of the letter at page 77 from the Joint Director dated 22.10.1997. This letter is written by Respondents with reference to representations of three of the applicants who are Stenographers and importantly it is informed to them that the matter has been referred to Headquarters for clarifications of doubt on certain points and that a reply is awaited. In fact it is stated that "the Headquarters reply is awaited and on receipt of the same, promotion will be granted accordingly."

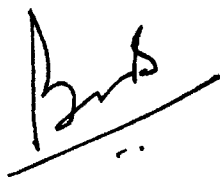
13. What is important is that the matter is clearly stated to be pending. This letter is dated 22.2.1997 and OA is filed in August, 1998. Where is then delay and laches? We therefore reject the arguments of limitation made by the learned counsel for the respondents.

14. In regard to the non joinder of parties, we have also gone through the various case laws cited. In this OA, what is being assailed is the non-following of the statutory rules and, therefore, in accordance with the settled law, it is not essential that the UDCs as mentioned should have been made necessary parties. This objection is also therefore not sustainable. In any case the matter regarding the UDCs rights shall be kept in mind by us as and where necessary.

15. On merits, one stand relates to date of joining of Smt. Shobha Ravindran in service. We have reproduced in the gist the argument taken with reference to her date of joining and have

quoted relevant paragraphs above. It will not need much of argument to conclude that the stand taken by the respondents is totally unsustainable and cannot stand on any legal basis. Even assuming that applicant no.4 has to suffer for late joining, does it mean that all persons in the seniority list of Stenographers who are below her will also suffer because of her late joining. This will be totally unjust and contrary to any rule. Whether Smt.Shobha Ravindran is to suffer or not will have to be looked into, whether she was allowed to join late and what the rules on the subject were. Para 7 of the written statement that UDCs who have entered before January, 1984 will rank senior to other applicants is preposterous, to say the least. Even while the learned counsel was arguing, no justification could be provided. This contention deserves to be rejected and is hereby rejected.

16. The second point that comes to our notice is that no Stenographer barring one was considered at all. Unfortunately the first mistake that has been made is that after 1988 or so the respondents have failed to draw up joint seniority lists. A very reading of the Recruitment Rules insists on this and if not for any other purpose for the purpose of promotion to the post of Licensing Assistant based on this joint seniority should have been drawn up. An old list was produced before us today where we took only one example to ascertain the legality of the action or otherwise. This was with regard to promotion with Smt. D.P.Pandya made vide order dated 3.4.1996. Here clearly from the joint list



it is seen that one of the applicants in our OA viz. Shri Dhano M. Kanjan is seniority to Smt. Pandya. Even admittedly similar position is of some other applicants. Now it is not at all explained despite query as to why Shri Kanjan was left out from promotion when the order dated 3.4.1996 was issued. This was not explained even during arguments nor from any of the papers even though time was provided. A similar position would arise in some of the other cases and this would need be gone into. The learned counsel for the applicant states that in most of the cases supersession has indeed occurred. The overlooking of the senior Stenographers therefore has clearly taken place and is clearly a violation of the Recruitment Rules.

17. We are well aware of the settled law in regard to promotions. No where it is stated (even on our checking up during arguments) that any/some of applicant/s were found unfit after consideration. It is a case of lack of consideration, and consideration for promotion is a right as per well established and settled law. In fact the point about the seniority list is also relevant. We are also conscious of the law settled about the change in seniorities but it is not change of seniorities that we are checking here. We are only trying to ascertain as to what are the rights of the present applicants vis-a-vis the seniority as per recruitment rules. It is only to this extent that the relief will be available. Thus the apprehension shown by the learned counsel for the respondents



that seniority will be unsettled is not relevant. Even a perusal of the judgment in the order dated 30.3.2001 referred to shows that Stenographers are nowhere in the picture and the issue therein is somewhat different. We do not therefore see how any "chaos" as alleged will be caused vis-a-vis that judgment.

18. The learned counsel for the respondents had made the point that in 1999 Recruitment Rules were changed and separate channels of promotion made available to Stenographers Grade - III. What we are looking for is the period before the amended rules came in. The Government does have the right to change the recruitment rules at any change and this Tribunal will not come into that right or its propriety but the rights as accrued to the applicants before that date of change i.e. May, 1999 which is in question here and since the recruitment rules as operated before have clearly been violated, relief will have to be made available to the applicants. We do note that most of the applicants have been provided with promotions subsequent to the new rules. We are also told that two among the applicants refused promotion. They will be governed as per rules and we would not grant them any additional benefit. These are matters to be looked at with reference to fact by respondents, in individual cases, since we do not have these facts before us. But the point is that the relief will be entitled to the extent of the period from the date of issue of promotion orders impugned to the date to which promotions was made/date of eligibility to the other channel on a case to case basis.



19. We are also conscious that the UDCs who have been promoted have been working on the post of Licensing Assistants etc. and we would not like to disturb those arrangements by quashing orders. But certainly the rights of the applicants that have been infringed will need to be provided to them. We cannot turn the clock back and give appointment, but the benefit will have to be through notional promotion certainly and arrears wherever applicable. It must be stated that promotion even notionally will be subject to suitability and DPCs could be held for the purpose.

20. As regards the grant of arrears of pay and allowances in the higher post, this will have to be provided (subject of course to suitability at DPC etc. and three years of conditions of service being satisfied). Arrears will need to be provided from the month of the filing of the OA i.e. from 1.8.1998. The arrears are provided in view of the judgments to the effect that when the person has been wrongly prevented from working on a higher post even though he was willing, the principle of 'no work no pay' will not apply.

21. In the consequence of the above discussions, this OA is allowed to the extent and in terms of the following order:

O R D E R

The action of non-consideration of applicants - Stenographers in violation of the Recruitment Rules is held to be bad in law. The respondents are directed to reconsider the case of each of the applicants in this OA with reference to

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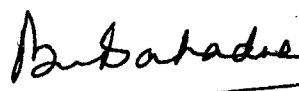
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conclusions arrived at in the judgment above. A review DPC, shall be reconvened if necessary and subject to fitness, the applicants - Stenographers who are senior to UDCs promoted in any of the impugned orders shall be provided promotion to the higher grade as per the recruitment rules from the date of promotion of his junior (UDC). The promotion shall be given on notional basis from such date. Fixation of pay on notional basis will be made. The arrears of pay and allowances shall be made available from 1.8.1998. No interest on dues is being ordered.

The above directions shall be complied with, within a period of 3 (three) months from the date of communication of this order.

Parties shall bear their own costs.


(J.K. Kaushik)
Member (J)


(B.N. Bahadur)
Member (A)

mb

dt 8/3/02
to Applicant (s)
on 15/4/02
M