

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1005/98

DATE OF DECISION: ¹⁵/4/2000

Shri S.K.Pillai Applicant.

Shri S.P.Saxena

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri R.K.Shetty

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.
Hon'ble Shri B.N.Bahadur, Member(A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? Yes
3. Library. Yes.


2574/2000
(B.N.BAHADUR)
MEMBER(A)

abp.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.1005/98

Dated this Tuesday the 25th Day of April, 2000.

Coram : Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman
Hon'ble Shri B.N. Bahadur, Member (A)

S.K. Pillai,
Stenographer Grade-II,
Office of Chief Engineer,
Southern Command,
Pune - 411 001.
(By Advcoate Shri S.P. Saxena)

.. Applicant.

Vs.

1. Union of India, through
the Secretary,
Ministry of Defence,
DHQ PO, New Delhi - 110 011.

2. The Engineer-in-Chief
Army Headquarters,
New Delhi - 110 011.

3. The Chief Engineer,
Southern Command,
Pune - 411 001.
(By Advocate Shri R.K. Shetty)

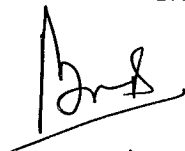
.. Respondents.

ORDER

{ Per : Shri B.N. Bahadur, Member (A) }

This is an application made by Shri S.K. Pillai, Stenographer Gr.II working in the office of Chief Engineer, Southern Command, Pune. The applicant seeks the relief from the Tribunal as under:-

- (a) To direct the Respondents to consider to upgrade/promote the Applicant to the post of Stenographer Grade II with effect from 1.1.1986, when his juniors were promoted to the above post.



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- (b) To direct the Respondents to include the Applicant's name at appropriate place and above that of Mrs. Reshma Ahmed in the seniority list of Stenographer Grade II after the Respondent upgrade the Applicant to that post, and to further consider the Applicant to the promotion to the post of Stenographer Grade I with effect from the date Mrs. Reshma Ahmed has been promoted to the post of Stenographer Grade I in 1991.
- (c) To grant all the consequential reliefs, including the monetary benefits.

2. The facts of the case, as brought by the applicant are that after his initial appointment on 22.6.1974 as Stenographer Gr. III under the Central Command, the applicant was transferred to Hyderabad, which comes under the Southern Command. Applicant avers that this transfer was made in the interest of the State. Thereafter, subsequent to a few other postings, he was posted to the present office on 31.5.1993. The applicant avers that seniority list of Stenographer Gr. III is prepared separately for each Command. The applicant's seniority was first reckoned correctly. But later, in February, 1997 the Applicant came to be served with a notice asking him to show cause why he should not be reverted, since his seniority can only be covered from 13.2.1983 i.e. when he came under the Southern Command.

3. An O.A. (No. 344/97) filed by him was decided on 20/10/1997 by this Tribunal, through which this show cause notice was quashed as a result of which, the applicant states, that he continues to work in Gr. II with his seniority restored w.e.f. 22/6/1974. Subsequent developments, specially regarding a decision in O.A.

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1023/93 have been described and applicant avers that the benefit of the orders on this O.A., where he was an applicant, alongwith others, has not been provided to him, although the benefit has been made available to others. Thus his grievance is that he has not been upgraded in Gr.II with effect from 1.1.1986. He is also aggrieved because of the promotion of his juniors as alleged by him in para 4.8 of the application, and is thus, seeking the relief as described above.

4. The Respondents have filed a written statement, in reply, and state that the judgment dtd. 20.10.1987 in O.A.344/97 has been implemented by the Respondents, and that the Applicant stands at Sl.No.18(a) in the seniority list of Stenographers Gr.III.

5. In their statement, the Respondents further state [that the applicant probably refers to one Smt.Reshmi Ilahi (and not Mrs.Reshma Ahmed) and that the said Smt.Ilhai stands at Sl.No.15 in the all India seniority list of Stenographer Gr.II for the purpose of being considered for promotion to Stenographer Gr.I. The applicant stands at sl.No.43(a) in the said list Respondents aver that there is no case for considering applicant's case on par with the case of Smt. Ilahi, and that the applicant has to be also shown below one Shri A.K.Sharma, who is at Sl.No.42.

Respondents state that the seniority list of Gr.III is at Command level for promotion from Gr.III to Gr.II, whereas the seniority list of Gr.II is on an All India level for promotion to Gr.I.

6. Respondents aver that Smt.Ilahi was appointed as a Gr.II Stenographer on 14.3.1987 as per Central Command Seniority List whereas applicant was promoted to Gr.II with effect from

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25.3.1994. Both were antedated on 1.1.1986. Similarly relevant dates for Sh.S.K. Sharma was also antedated and it is argued that the applicant has been correctly placed at Sl.No.43(a). 8 persons are above the applicant in Southern Command and have not been made parties, these 8 persons are yet to be promoted in Gr.I at that stage. The Respondents thus argued that the O.A. is devoid of merits. It is seen from para 2 of written statement of Respondents that Respondents also aver that the applicant has in fact been provided seniority as Stenographer Gr.II with effect from 1.1.1986 (Exhibit R-3) and that to this extent the O.A. does not survive. It is also stated that the benefit of services put in by applicant under the Central Command has thus been provided to him.

7. We have heard learned Counsels on both sides. Learned Counsel for the applicant, Shri S.P. Saxena argued the case in detail first taking us over the facts of the case, with relevant dates etc. Shri Saxena also took us over the copies of the judgements took us over the copies of the judgments in the OAs referred to and made the point that when 2 persons got promotion on the same date, then the length of service in the feeder grade has to be the basis of seniority.

8. Learned Counsel for the applicant, agitated the applicant's case with special reference to the case of Smt.R. Elahi and argued that Smt.Elahi's length of service was less compared to that of the applicant, since his initial service in feeder cadre was more.

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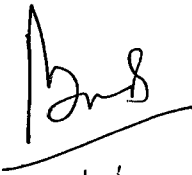
9. Arguing the case on behalf of the Respondent, their Learned Counsel, Shri R.K. Shetty recapitulated the facts and stated that Smt. Elahi was working in Gr.II since 1987 and in Gr.I since 1991. He stated that different Commands have different promotion seniorities and took support of the case of S.K. Saha vs. B.K. Agarwal (1994 SCC L&S 574) to argue that the applicant had no case. Shri Shetty also strenuously asserted the point that 8 officials are senior to the applicant in Southern Command and also pointed out the flaw in the claim of Applicant that neither these persons nor Smr.Elahi had been made party in the O.A. This was a legal flaw and would create legal problems if the present OA was allowed.

10. We have considered the arguments made by Learned Counsels on both sides and have seen the papers in the case, including the case law cited.

11. On the relevant dates of service career of the applicant we see no controversy. He joined in Grade III in Central Command on 22-6-1974, and was transferred to Southern Command on 13-2-1983, in the same grade in administrative interest. He was promoted to Grade II on 22-06-74 with the benefit of seniority date being reckoned ultimately as 22-6-1974, after appropriate relief was provided by this Tribunal, admittedly.

12. In regard to the prayer made at para 8(a) of the application i.e. the prayer to direct the respondents to provide that seniority in Grade II w.e.f. 1.1.1986, it has been categorically stated by the respondents in their reply, that this

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has been provided in view of the decision taken by DPC held on 31.12.1998 and the appellant has been promoted as Senior Grade II w.e.f 1.1.1986 and that this has been notified in the panel dated 30.1.1999. This prayer in this regard made at para 8 (a) does not survive.

13. A further analysis of the facts and circumstances and the rules cited show that the point that is crucial is that Command Seniority becomes relevant in promoting Stenographer in Grade III to Grade II positions. Thus in the very scheme of things, it could transpire that in different commands Stenographers will get promoted to Grade II after varying number of years of service. Such a situation is not unknown in cadres where seniority at junior levels is based Regionwise and at higher levels comes to be based on all India level. This aspect is not controverted in that applicant does not challenge, nor ever challenged his kposting to Southern Command in 1983 even though the applicant has been posted from one Command to another not on his request, but in public interest. Thereafter insofar as his promotion in the Southern Command is concerned, he is provided, ultimately, the benefit of his seniority in Central Command. Now admittedly, during this period, Mrs.R.Elahi had been promoted in Grade II in Central Command, w.e.f.14/3/1987. The implication of the applicant's prayer, when he seeks seniority above the said Mrs.Elahi, is that he seeks protection of his seniority against any promotion made in Central Command, even when he is in another (Southern) Command. This cannot be provided, as a matter of right.

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15. When an officer is transferred from one seniority unit to another seniority unit, he does not have any lien on the previous place. The question of lien arises only when an officer is sent on deputation. Since in this case the applicant has been transferred in public interest from Central Command to Southern Command, he does not have any lien in Central Command and infact, the applicant does not say in the O.A. that he has such a lien. If once he has no lien in Central Command to see whether his junior has been promoted or not. He has to look only to Southern Command for purposes of his further promotion but the only advantage that he gets is his past service in Central Command for purpose of fixing seniority in Southern Command, which has already been done in this case. Therefore, now the applicant cannot complain about promotion of his erstwhile junior Smt.Elahi of Central Command.

16. Then there is one more legal impediment if the applicant's request for promotion on par with Smt.Elahi is granted. If that is granted, he will jump over 8 others who are admittedly senior to him in Southern Command. Any order of ours granting such a relief to applicant will affect these persons, who are above him in Southern Command. Those persons are not party-respondents in this case either. Therefore, any such order by us will adversely affect them, and we cannot pass such an order without hearing them. Even on this ground, we cannot grant relief to the applicant, since he has not impleaded those persons as party-respondents in this case.

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17. As mentioned above, this is not a case where the applicant is aggrieved by the order of transfer. The order of transfer was in 1983, and the present O.A. is filed in 1998, and the applicant is not challenging the legality of the order of transfer. If once the order of transfer stands and it is not challenged, then applicant cannot look towards Central Command for the purpose of his next promotion in Southern Command.

Thus, we cannot hold the action of the Government to be illegal, since no Rule is cited to show that inter-Command transfer cannot be made till a Stenographer reaches a common seniority level. Perhaps, it would be an ideal situation, and it might have been unfortunate that the applicant happened to get the transfer to a Command where promotions were perhaps not as fast. But this is a problem for which only the Administration can go into for administrative solutions for the future, perhaps.

18. In consequence of the above discussions, this OA is hereby dismissed, with no orders as to costs.

B. N. Bahadur

(B.N. BAHADUR)
MEMBER(A)

25/4/2000

R. G. Vaidyanatha

(R.G. VAIDYANATHA)
VICE CHAIRMAN

25-4-2000