

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 766/98

Date of Decision : 13th November 2002

DQA Stenographers' Assn.	Applicant
Shri A.I. Bhatkar	Advocate for the Applicant.

VERSUS

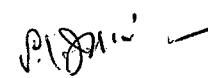
Union of India & Ors.	Respondents
Shri R.R. Shetty for Shri R.K. Shetty	Advocate for the Respondents

CORAM :

The Hon'ble Shri B.N. Bahadur, Member (A)

The Hon'ble Shri S.L. Jain, Member (J)

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library yes


(S.L. JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.766/98

Dated this the 13th day of November 2002.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

1. Directorate Quality Assurance (N)/
Directorate Quality Assurance (WP)
Stenographers' Association
Represented by its General
Secretary Mr.K.M.Mohandas.
2. B.G.Shinge
3. Smt.Molly Pillai
4. Smt.P.P.Mayekar
5. Kum.M.Fernandes

...Applicants

All working as Steno Gr.III
at Chief Quality Assurance
Establishment, Naval Dockyard,
Mumbai.

By Advocate Shri A.I.Bhatkar

vs.

1. Union of India
through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi.
2. The Director General
Quality Assurance,
Dept. of Defence Production,
Ministry of Defence,
DHQ PO. New Delhi.
3. The Director
Directorate of Quality Assurance
(Navy), West Block No.5,
R.K.Puram, New Delhi.
4. The Chief Quality Assurance
(Establishment), Machinery
Spares, NMRL/DQA (N) Complex,
Naval Dockyard, Tiger Gate,
Mumbai.

...Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

R.K.Shetty

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for direction to the respondents to implement the decision of the Government of India as communicated under O.M.s dated 6.2.1989 and 30.1.1991, to ascertain the number of officers drawing the various pay scales, Stenographers who were presently posted and after doing so upgrade the post of Stenographers on the basis of the orders issued by the Government under O.Ms. referred above, consider all the Stenographer working under Respondent No.3 for promotion to the higher posts with consequential benefits including payment of arrears and allowances on such promotion.

2. The Respondent No.1 is the Ministry under whom the applicants are working, the Respondent No.2 is Incharge of the Directorate of the Quality Assurance under whom all the two wings, i.e. Navy and Army of the Ministry of Defence comes, While Respondent No.3 is the Head who is the incharge of Naval Wing of the Ministry of Defence as far as the Director of Quality Assurance is concerned and Respondent No.4 is the local authority under whom number of the applicants are working.

3. Applicant No.1 is the Association of the Stenographers working under the Respondent No.3 all over India. The applicants have given a list of Members of the Stenographers to whom the Association represents (Ex.1). The Applicant No.2 to 5 claims that they being Stenographers Gr.III, they are the most affected because of the non implementation of the Government orders issued way back in 1977, 1989 and 1991.

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4. The applicants stated that as per the recommendations of the 3rd Pay Commission, the Government has taken a specific decision to upgrade the post of Stenographer Gr.III to Gr.II vide Government of India, Ministry of Personnel O.M. dated 6.1.1977 (Ex.2). Thereafter, Government of India, Ministry of Personnel under O.M. dated 6.2.1989 reiterated the decision taken by the department as communicated under O.M.dated 6.1.1977. Thereafter, the entitlement of officers for Stenographic assistance as given therein while O.M.dated 6.2.1989 (Ex.3). The Government further reiterated its decision vide O.M. dated 30.1.1991 (Ex.4).

5. Para 2 (c) and 3 of O.M. dated 30.1.1991 are extracted below :-

"2 (c) Stenographic assistance at the level of Rs.1640-2900 (Gr.I) may also be provided to functional posts in the scale of Rs.4500-5700 and 25% of JAG posts in the scale of Rs.3700-5000 after identifying the posts on the basis of stenographic workload."

3. The Scheme indicated above may result in the upgradation of certain posts from the level of Rs.1200-2040 to the level of Rs.1400-2600 and also from the level of Rs.1400-2660 to the level of Rs.1640-2900 and abolition of a few posts in the scale of Rs.1200-2040. It is not necessary to obtain the approval of the Cabinet in the matter and the individual Ministry/Department may take further necessary action in consultation with the FAs."

6. The applicants have stated that in OA.NO.539/90 which was decided on 9.1.1991 by CAT Ernakulam Bench, the said two O.M.s dated 6.1.1977, 6.2.1989 came for consideration and the respondents were directed to upgrade the post of Stenographer accordingly. The said order was implemented by the respondents.

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Again the similar point came for consideration before the same Bench in OA.No.336/92 (G.Chako & Ors.) decided on 23.4.1993 following the principle laid down in OA.No.539/98. In the meeting held on 25.4.1991 in the Office of A.S.(R), it was agreed to that service officers in subordinate formation of the Defence Ministry will be entitled to Stenographer assistance as per DOPT orders dated 6.4.1980 provided the officers already provided the stenographic assistance. Based on it, the respondents were directed to finalise the issue within a period of six months as stated in case of G.Chako & Ors.

7. In OA.No.729/92, 1023/93 decided by CAT, Mumbai on 8.8.1995 also directed the respondents to upgrade the post of Stenographers following G.Chako's case, the respondents preferred SLP before the Apex Court against the said order dated 8.8.1995 which was dismissed vide order dated 2.4.1996 confirming the order dated 8.8.1995 passed by the CAT, Mumbai and the orders were implemented by the respondents.

8. OA.673/91, 1101/92 and 1102/92 CAT, Mumbai while deciding the said OAs. on 30.10.1996 directed the respondents to upgrade the post of Stenographer on the basis of O.M. dated 6.2.1989 and 30.1.1989. The other departments like DRDO have already implemented the recommendations of the IVth Pay Commission as accepted by the Government whereas the Naval Wing of the Ministry of Defence has not yet implemented.

9. OA.No.673/91 was between the applicants therein and the Respondents No.1 & 2.

P. V. Rao

10. The General Secretary of the Applicant No. 1 preferred a representation to Respondent No.3 on 15.1.1998 followed by further representation dated 10.3.1998 which was replied vide reply dated 21.4.1998 whereby it is informed that the matter was referred to higher authorities and the same was under consideration. The Respondent No.3 has issued a letter dated 23.1.1998 stating that in the light of the letter dated 6.3.1981 and 30.1.1991 and the Precedents - orders of the Tribunals, cadre review was undertaken and orders were issued (Ex.13).

11. The applicants claimed that no further promotion orders have been issued in view of order dated 12.7.1997. They further represented the matter and received reply dated 16.7.1998 that a promotion list of eligible candidates will be completed as early as possible. (Ex.14) but nothing has been done so far with regard to issuing of promotion order of the Stenographers working under Respondent No.3 who are represented by Applicant No.1. The Applicants claimed the relief based on equality before law and O.Ms. referred above.

12. The claim of the applicants is being resisted by the respondents on an averment that they have already implemented the policy decision with regard to upgradation of Stenographers as set out by the DOPT in its Office Memo. dated 6.2.1989 read with DOPT Office Memo. dated 30.1.1991 and Govt. of India, Ministry of Defence O.M. dated 19.11.1993. In keeping with the policies laid down from time to time, the respondents have already upgraded the three post of Stenographers Gr.II to Stenographers Gr.I and 3 posts of Stenographers Gr.III to Stenographers Gr.II (Ex.R-4). The actual promotion orders for the same is contained in order dated 17.7.1998 (Ex.R-5). As such, no cause of action whatsoever survives, hence OA. deserves to be dismissed as infructuous.

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13. Without prejudice to what is stated, the respondents alleged that no Stenographers' Association exists so far and recently an application for recognition of Stenographers' Association was received in Mumbai office. As such, the OA. is not maintainable as having been filed by the said Association.

14. Before upgradation of stenographers in keeping with the DOPT instructions read with Ministry of Defence Circular of 1993 the sanction strength of Stenographers cadre was :-

Stenographers Gr.III : 31

Stenographers Gr.II : 11

whereas after the implementation of the policy decision of upgrading the stenographers the strength of Stenographers Gr.II. 28, Stenographers Gr.II 11 and Stenographers Gr.I - 3. Hence, the demand of the applicants 28 posts of Stenographers Gr.II is absolutely baseless and it is in fact a demand for cadre review which is beyond the purview of this Tribunal being policy matter. Hence, prayed for dismissal of OA. along with costs.

15. The applicants have filed the rejoinder denying the fact of implementation of the policy decision with regard to upgradation of Stenographers posts as stated in DOPT O.M. dated 6.2.1989 and 30.1.1991. It seems that the respondents have given effect to O.M. dated 19.11.1993 upto certain extent. The O.M. dated 19.11.1993 is claimed by the respondents applicable to service officers and not O.M. dated 6.2.1989 and 30.1.1991, though not specifically prayed for. The applicants have stated in para 4 the cadre strength of officers and as per the applicants there are 9 officers in the cadre of commodore/ Capt.

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35 officers in the cadre Commander and 5 officers in the cadre of PSCO as per Govt. of India, Ministry of Defence letter dated 14.10.1993 with its Annexures and strength as on 31.12.1995 department respectively. The respondents are required to upgrade 7 posts of Stenographers Gr.II to Stenographers Gr.I and 24 posts of Stenographers Gr.III to Stenographers Gr.II. O.M. dated 19.11.1993 is not at all applicable as this is not based on the recommendations of the expert body like Pay Commission. The said O.M. is applicable to those organisation who have followed the pattern given under Ministry of Defence letter dated 1.5.1981 and not based on the recommendations of the expert body/pay commission. O.M. dated 6.2.1989 and 30.1.1991 are based on the recommendations of the IVth Pay Commission which has been accepted by the Government.

16. OA.NO.539/90, 336/92 were decided by CAT, Ernakulam Bench vide order dated 9.1.1991 and 23.4.1993 respectively before the issue of O.M. dated 19.11.1993 under which the respondents are now taking shelter. As such, the said authorities do not help the applicants.

17. OA.No.729/92, 1023/93 were decided vide order dated 8.8.1995, SLP against the same was dismissed on 2.4.1996. We have carefully perused the pleadings of the parties in respect of the said OAs. and we are of the opinion that there was no defence raised by the respondents with reference to O.M. dated 19.11.1993.

18. OA.No.673/91, 1101/92, 1102/92 which were decided by a common order dated 30.10.1996 by CAT, Mumbai Bench, there was no defence raised with reference to O.M. dated 19.11.1993.

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19. The implementation of the orders of the Tribunal by the respondents is claimed to be a ground for claiming protection based on principles of equality before law. Suffice to state that the applicants in earlier OAs. who have come to the Tribunal in the year 1990 till 1993 were vigilant about their rights and O.M. dated 19.11.1993 was not issued till the time. The applicants in the present case who were either watching the process or slept over their rights cannot claim equality before law. Equality before law means in every situation the facts and the law involved is one and the same. In the present case, the respondents by issue of O.M. dated 19.11.1993 has departed from the earlier position. As such, the applicants in the present OA. cannot be treated to be at par with the applicants of OAs. 539/90 336/92, 729/92, 1023/93, 673/91, 1101/92 and 1102/92.

20. It is worth mentioning that a decision can be treated as a precedent only for the proposition which it decides. As in the OAs. referred above, O.M. dated 19.11.1993 was not the subject matter of consideration, the said decision cannot be treated as precedent.

21. R-3 O.M. dated 19.11.93 (OA.p.34) specifically covers the defence raised by respondents which is reproduced below :-

"The undersigned is directed to refer to Ministry of Defence O.M. No.B/17166/EME Org.3/2593/D(Civ-I) dated 1.5.81 prescribing the scales of Stenographers attached to Service Officers in the lower formations of Defence Establishments. The question of revising the scales of stenographic assistances to Service Officers in the lower formations in the light of revision of pay scales has been under consideration of the Ministry. It has now been decided to prescribe the following scales to the Stenographers attached to Service Officers in the lower formations, wherever the officers are already availing of stenographic assistance ---."

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22. In the result, we do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

S.L. Jain

(S.L. JAIN)

MEMBER (J)

B.N. Bahadur

(B.N. BAHADUR)

MEMBER (A)

mrj.