

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

AT HYDERABAD

OA No. 72/95

Date of Order: 3-4-95

Between:

K.Gangadharan.

.. Applicant.

and

1. Union of Indig. ren. by its  
CSM Marg, Bombay-39.
2. The Chief Executive,  
Nuclear Fuel Complex,  
ECIL PO, Hyderabad 762.
3. The Director(Purchase & Stores)  
Directorate of Purchase and Stores),  
Dept.of Atomic Energy,  
V.S.Bhavan, Anushaktinagar, Bombay-94.

.. Respondents.

For the Applicant: Mr. S.Ramakrishna Rao, Advocate

For the Respondents: Mr.N.V.Ramana, Addl.CGSC.

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN : MEMBER(ADMN)

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O.A.No.72/95.

Date: 7-4-95

J U D G M E N T

I as per Hon'ble Sri R.Rangarajan, Member(Administrative) I

Heard Sri S.Ramakrishna Rao, learned counsel for the applicant and Sri N.V.Ramana, learned Standing Counsel for the respondents.

2. The applicant was appointed as a Junior Stenographer in the Nuclear Fuel Complex (NFC) on 22.1.1973. He was transferred to Central Stores, NFC in October, 1973. When Directorate of Purchase and Stores (DPS) was formed as a separate unit of Department of Atomic Energy on 1.1.1974, the applicant along with other staff working in the Central Stores had come under the Rolls of DPS. When the applicant made a request for permitting him to appear for the examination conducted for promotion to the post of Senior Stenographer Grade-II, in other units of Department of Atomic Energy, he was not permitted by stating that he does not belong to those seniority units in DAE. When it was felt that there were no seniority units in DAE for Junior Stenographers in DPS and as the applicant and other staff working in the Central Stores were allotted to DPS without eliciting from them about their option either to continue to work in the Central Stores, NFC or go over to DPS, the applicant and some others filed OA No.750/90 on the file of this Bench praying for a declaration that the Circular dt. 1.4.1978 whereby Junior Stenographers were not permitted to compete for higher posts in the Purchase and Store cadre of DPS is not valid and to give promotion to the applicants therein with effect from the date on which their juniors were promoted in the Stores and Purchase Division.

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That OA was disposed of by the order dt. 30.4.1993 by the Bench of which one of us is the Member (Vice-Chairman). As per the said judgment R-1 therein was directed to transfer back the applicants to NFC in the next available vacancies and on such transfer, they have to be placed in their original seniority in NFC.

3. Accordingly, the applicant was transferred to NFC as Junior Stenographer on 10.2.1994. When the applicant made representation on 31.3.1994, regarding his promotion to the higher grades with retrospective effect when juniors were promoted, he was promoted as Stenographer Gr.II from 26.5.1993 in the grade of Rs.1400-2600 by order dated 17.11.1994 (Annexure-III) and his name was shown at the 15th position in that grade. It is alleged by the applicant that the first employee in that list is far junior to him. It is also alleged that one of his junior had been promoted as Stenographer Gr.I in the next higher grade of pay of Rs.1640-2900.

4. A representation dt. 19.11.1994 was again sent by the applicant stating that he may be promoted and placed at the appropriate place. In response to the above representation R-2 informed him by his letter dt. 24.12.1994 (Annexure-I) that the applicant has not passed the written examination and has cleared only Stenography speed test and hence his promotion has been treated against seniority-cum-fitness quota. It was further stated in that letter that it is not possible to exempt him from qualifying in the departmental examination prescribed under the norms/recruitment rules for considering him under limited departmental quota unless he takes up the examination and passes the same.

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5. Aggrieved by the above decision of R-2 this OA has been filed on 13.1.1995, praying for a direction to R-2 to exempt him from appearing for the written test in respect of promotion already given treating the said promotion under limited departmental quota/open quota (in case of his junior's selection in NFC) with retrospective effect i.e. with effect from his junior promoted with all the consequential benefits and to consider him for upgradation in the appropriate grade in which the junior to the applicant is placed.

6. The respondents in their counter affidavit state that in obedience to the judgment in OA 750/90, the applicant was transferred back to NFC in the next available vacancy and he was given his due seniority by placing him in the post of Junior Stenographer (present Stenographer Gr.III) since he was junior Stenographer at the time of his transfer to DPS from NFC. After restoring his original seniority, he has been promoted against promotional quota as he had already passed speed test.

7. The promotional scheme as applicable to Stenographers category for promotion to Grade-II Stenographer as stated by the respondents in NFC in the counter affidavit is reproduced below:-

Prior to 30.1.1982, 50% of the vacancies arising in each year in the grade of Stenographer Gr.II were filled up through Direct Recruitment quota and the remaining 50% were filled-up by selection against departmental circular (Limited Departmental Examination). This selection consists of written examination as well as Speed Tests. After 30th January, 1982, 50% of the vacancies were filled by direct

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recruitment, 25% by selection among the candidates i.e. Gr.III Stenographers who applied for such posts against departmental quota and the remaining 25% to be filled by seniority-cum-fitness provided they pass only speed tests in Stenography. To augment the promotional avenues of the Stenographers, it was administratively decided to fill up 50% of the posts by selection and 50% by seniority-cum-fitness.

8. It is further submitted by the respondents that the applicant was promoted against the seniority-cum-fitness quota to the Grade of Stenographers Gr.II and not against the quota to be filled by selection as he has not passed the written test.

fixed in Stenographer Gr.II post on the basis of his promotion against seniority-cum-fitness quota.

9. There is no dispute in regard to the fact that the applicant had passed the speed test for promotion against seniority-cum-fitness quota to the grade of Stenographer Gr.II. He has also been promoted as Stenographer Gr.II with effect from 26.5.1993. There is no two opinion in regard to the method of selection for Stenographers Gr.II as outlined in para-7 supra. But, the applicant alleges in his rejoinder that he is entitled to be considered for promotion under seniority-cum-fitness quota from 29.7.1977 as he had passed the speed test both in 100 w.p.m. and 120 w.p.m. in 1976 itself. Further, it is submitted by the applicant that as he was never allowed to participate in the written examination conducted by NFC, he should be exempted from appearing for written tests.

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in respect of promotion already given treating the said promotion under limited Departmental quota/open quota with retrospective effect from the date his junior was promoted in that quota and his further promotion to higher grade has to be considered on that basis.

10. We have heard the learned counsels and also perused the records.

11. ... of the applicant is that his promotion already granted to him as Stenographer Gr.II is to be shown against the selection quota without subjecting him to any written test. There is no ambiguity that the selection quota promotion to Stenographer Gr.II is only when a candidate passes the written examination. The selection quota promotion is on the basis of comparative merit amongst those who volunteer for selection. Individually examining a candidate by subjecting him to a written test for promoting him to Gr.II Stenographer against the selection ... not lead to any comparative assessment of the candidate. The merit of the applicant herein cannot be assessed by subjecting him to written test now in comparison with others who took the tests long back. As the selection had taken place long back in the eighties it will not be proper to place him in the Grade of Stenographer Gr.II against selection quota by subjecting him to a written test now. It will not be also proper to promote him without subjecting him to a written test as this will be against recruitment rules. It is also submitted by the respondents in the Additional Counter affidavit that no exemption had been given to any Stenographer for the written test in the limited departmental examination in NFC. In view of the

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above, the contention that the applicant should be shown as promoted to Gr.II Stenographer against selection quota without subjecting him to written test is not tenable.

12. The second contention of the applicant is that he should have been promoted under seniority-cum-fitness quota from 29.7.1977. As seen from the recruitment rules, the promotion against seniority-cum-fitness quota is on the basis of seniority and passing of the speed tests. It is stated for the applicant that he had passed the required speed test in 1976 itself and this is also accepted by the respondents. As per the judgment in OA 750/90, the applicant on his repatriation from DPS to NFC has to be given all consequential benefits including (Stenographer). In view of this direction, his seniority as Gr.III Stenographer had to be restored to the original position when he was posted to DPS from NFC. Hence, he is entitled for promotion against seniority-cum-fitness quota from the date his immediate junior was promoted against this quota to the Grade of Stenographer Gr.II as he had passed the requisite speed tests already. Therefore, a direction has to be given to fix his seniority in the Stenographer Gr.II category above that of his immediate junior in the erstwhile seniority list of Stenographer Gr.III at the time of his posting to DPS in the year 1973, who had been promoted to Stenographer Gr.II in NFC against seniority-cum-fitness quota. On that basis he is also eligible for promotion to further higher grades if his juniors have been promoted to such grades already provided the applicant passes the requisite tests if any prescribed for such promotion in the first attempt itself.

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13. In the result, R-2 is directed to fix the seniority of the applicant in the grade of Stenographer Gr.II from the date on which his immediate junior was promoted to that grade against seniority-cum-fitness quota. On that basis, if any of his junior had secured promotions even to still higher grade posts, the applicant should also be promoted to that grade/grades provided he passes the requisite tests if any prescribed for such promotion in the first attempt itself. ... for any monetary benefits by way of arrears due to advancing of his seniority as directed above.

*Time for implementation is 30.6.95*

14. The OA is ordered accordingly. No costs. /

(R.Rangarajan)  
Member(Admn.)

(V.Neeladri Rao,  
Vice Chairman

Dated 3<sup>rd</sup> March, 1995.

Grh.

*for 5-4-95*  
Deputy Registrar(J)CC

- To
1. The Secretary,  
Dept.of Atomic Energy, CSM Marg,  
Bombay-39.
  2. The Chief Executive, Nuclear Fuel Complex,  
ECIL PO, Hyderabad-762.
  3. The Director (Purchase and Stores)  
Directorate of Purchase and Stores)  
Dept.of Atomic Energy, V.S.Bhavan, Anushaktinagar, Bombay-94.
  4. One copy to Mr.S.Ramakrishna Rao, Advocate, CAT.Hyd.
  5. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
  6. One copy to Library, CAT.Hyd.
  7. One spare copy.

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