

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.655/97

dated : 26.10.99

M. Hara Bhupal

: Applicant

Vs.

1. Union of India, rep.by
Secretary, Dept. of Personnel,
and Training, M/o Personnel and
Public Grievances, North Block
New Delhi 110001

2. Central Administrative Tribunal
rep. by the Registrar
Principal Bench, Faridkot House
Copernicus Marg
New Delhi 110001

3. The Registrar
Central Admn. Tribunal
Hyderabad Bench, HACA Bhavan
Saifabad, Hyderabad 4

4. The Director
Intelligence Bureau
M/o Home Affairs, Govt. of India
North Block, New Delhi 1

: Respondents

Counsel for the applicant

: G. Venugopal Rao
Advocate

Counsel for the respondents

: B. Narasimha Sharma
CGSC

Coram

HON. MR. R. RANGARAJAN, MEMBER (ADMN.)

HON. MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL.)





Sk

OA.655/97

dated :

Order

Order (per Hon. Mr. B.S. Jai Parameshwar, Member (Judl.))

Heard Mr G. Venugopal Rao learned counsel for the applicant and Mr. MC. Jacob. for Mr. B. Narasimha sharma, learned counsel for the respondents 1 to 3.

1. Notice to Respondent No.4 served. Called absent.
2. This is an application filed under section 19 of Administrative Tribunals Act, 1985. The application was filed on 19.5.97.
3. The applicant was working as Section Officer in the Scale of pay of Rs.2000-3500 (Pre Revised) in the Respondent No.4 organization. He came on deputation to work in the Central Administrative Tribunal (CAT) as Private Secretary on deputation basis with effect from 14.6.89. He was working as such till 20-5-97. He was repatriated to the Respondent 4 organization as per the directions contained in OA.1333/95 filed by him. The directions issued in the said OA came to be confirmed by the Hon. Supreme Court in SLP.NO.3322/97 dated 24.2.1997.
4. Before his relief in the CAT, the applicant has filed this application for the following reliefs :
 - a) Declaring the action of the respondent No.2 in not considering the case of the applicant for absorbing him as Private Secretary under the already invoked Rule of Relaxation exercising powers under Rule 7 of the Stenographers Recruitment Rules in respect of Private Secretary category for which there is no rule for absorption earlier, as done in the case of Shri B.S. Sohal and others vide office order No.PB/1/40/95-Estt.I dated 23.12.96 of Respondent No.2 as discriminatory, arbitrary and illegal which affect the fundamental rights of the applicant guaranteed under Articles 14 and 16 of the Constitution of India;



b) Directing the Respondents to absorb the applicant as Private Secretary as done in the case of Sri B.S. Sohal and others vide Proc.No.PB/1/40/95-Estt.I dated 23.12.95 of Respondent No.2 as already rules of PS Recruitment Rules have been relaxed invoking powers under Rule 7 of the Stenographers Recruitment Rules; and

c) Granting all consequential benefits to the applicant including seniority and other promotional benefits.


5. His contentions are as follows:

The Respondent No.3 vide memo No.A.12018/8/89-Estt. Dated 30.1.92 (Annex.1) asked the applicant whether the applicant was willing to be absorbed in the CAT and if so to give his option. Accordingly the applicant submitted his letter of option dated 5.2.92 (Annex.2). It is stated that the Respondent No.2 vide letter No.PB/1.63/91-Estt. Dated 1.9.92 (Annex.3) also directed for completion of formalities like obtaining ACRs, Vigilance clearance certificate, consent of parent Department etc. with respect to him. However, no further action was taken to issue orders absorbing the applicant in the CAT.

6. The relevant Recruitment rules for the Private Secretaries in the CAT is the CAT Stenographers' Service (Group B and C Posts) Recruitment Rules, 1989 (Annex. A-21). The said rules came into force with effect from 20.4.89. The applicant relies on Rule 4, column 6 to 14 of the said rules. The applicant submits that there is no provision in the Recruitment rules for absorption of deputationists, in the cadre of Private Secretaries since "transfer is one of the methods prescribed for the posts of PS".

7. The applicant submits that Hon'ble Vice Chairman, who ^{was} ~~were~~ holding office then had assured him to absorb him in the CAT.

8. The Principal Bench by their letter dated 22/24.6.93 (Annex.6) informed that the applicant cannot be absorbed as Private Secretary in the absence of a rule position in the Recruitment rules to that effect. However, the Principal Bench asked the applicant whether he was willing to continue on deputation for the fifth year

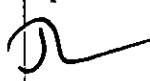


term. The applicant exercised his option to continue in the CAT on deputation basis even in the 5th year term.

9. It is stated on 17.1.94 (annex.7) the applicant submitted a representation whether he could not be absorbed as PS for want of rule position or he could be absorbed as Section Officer on the basis of his regular post in his Parent Department provided that such conversion as Section Officer was in the public interest and that his seniority should be fixed taking his past service on deputation ^{basis} ~~rules~~ in the CAT as PS. The said representation was forwarded to the Principal Bench with recommendation. By letter dated 28.6.94 (Annex.9) the Respondent No.2 directed him to exercise fresh option for absorption as Section Officer in the CAT. The applicant exercised his option on 4.7.94 with certain conditions. In this regard he refers to Annex.10 and 11. The applicant submitted that he was absorbed as Section Officer in CAT with effect from 6.12.94. However he was continued as PS even thereafter till April, 96 when he was directed by the Respondent No.3 to discharge the work as Section Officer in the section.

10. The applicant submits that thereafter Circular dated 12.12.95 was issued by the Principal Bench seeking options from the officials who were working on deputation basis as Private Secretaries and who had completed two years of deputation service as on the date for absorption as PS. It is submitted that the said circular instructions were issued by relaxing the recruitment rules as a one time measure. The applicant in response to the said circular submitted his option dated 22.12.1995 (Annex.sd14) requesting the second respondent for converting his earlier absorption as Section Officer to that of Private Secretary since he was originally drawn on deputation in the CAT as Private Secretary and he was absorbed in the cadre of Section Officer in the absence of rule position in the Recruitment Rules. He requested that his seniority shall be fixed taking into consideration his original date of deputation i.e.14.6.89.

11. However, the circular dated 12.12.1995 came to be challenged before the Jaipur and Bombay Benches of this Tribunal. The applicant submits that no steps



were taken for absorption as per circular dated 12.12.95. The applicant made a representation dated 17.6.96 (Annex.15). Ultimately he learnt that the Principal Bench had absorbed some Private Secretaries and hence he submitted a representation dated 26.12.96 to intimate the action taken on his option dated 22.12.95. The applicant submits that the Principal Bench had absorbed four private secretaries viz. S'Sri B.S. Sohal, T.V. Gopalan, H.C. Mittal, and T.C. Verghese and their cases were considered by relaxing the relevant Recruitment Rules. However, the applicant submits that his case was not considered nor any reply was given to him to his representation dated 26.12.96.

12. The applicant submits that the Principal Bench disputed the seniority in the cadre of Section Officers and thus he was constrained to approach this Bench in OA.1333/95 on 20.10.95. The absorption of those four officers were made during the pendency of the OA.1333 of 95 was decided on 24.12.96 and the option was given to the applicant to seek repatriation to his parent department. This was so on the suggestion made by Respondent No.2. The applicant challenged the order in the OA before the Hon. Supreme Court in SLP.NO.3322 of 97. The SLP was dismissed on 24.2.97. The application^{nt} even filed Review Application before the Hon. Supreme Court and it is stated that the same is still pending.

13. The applicant submitted representation dated 23.4.97 (Annex.22) exercising his option for repatriation to his parent department i.e. Respondent No.4 and requested to relieve him from duties in July, 1997. However, by letter dated 14.5.97 (Annex.23) the Respondent No.2 decided to repatriate the applicant with immediate effect. Thus for all practical purpose his absorption as Section Officer in the CAT was set at nought.

14. (a) He has sought relief's on the ground that four officials named above were absorbed as Private Secretaries by relaxing the Recruitment Rules. His case was not considered for absorption in the cadre of Private Secretaries.

(b) The respondents 2 and 3 held assurances to him to absorb in CAT in the cadre of Private Secretary; and



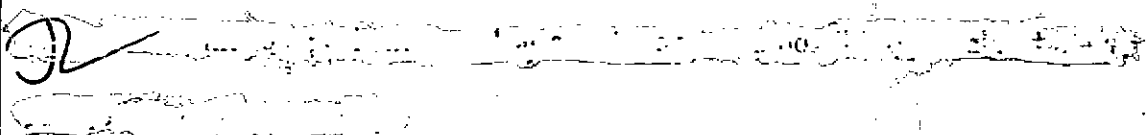
© The action of the Respondent No.1 to 3 in not considering the case of the applicant for absorption by relaxing Rule 7 of the Recruitment Rules is arbitrary and illegal.

15. The respondents have filed their preliminary objections to the application contending that the prayer made by the applicant in the application has become infructuous as the applicant has been repatriated to his parent department. The applicant exercised his option for absorption in the cadre of Section Officer in the CAT and he was absorbed as such with effect from 6.12.94. The applicant was not entitled to take advantage of the circular instructions issued on 12.12.95. There was no provision for regular absorption of officials working in the cadre of Private Secretary on deputation basis. There is no provision for a regular Section Officer getting reabsorbed as Private Secretary. When once the applicant opted for absorption in the cadre of Section Officers the applicant cannot harp on the previous position as Private Secretary and seek to take advantage of relaxation made as one time measure by circular dated 12.12.1995. By virtue of repatriation the applicant was relieved from this Tribunal on 20.5.97. Thus they submit that there are no merits in the OA and the application is not maintainable.

16. The applicant has filed a rejoinder more or less reiterating the grounds made in the application. He further submits that he is eligible to be considered for absorption in the cadre of PS as per circular dated 12.12.95.

17. The fact that there was no rule permitting absorption of the Private Secretaries working on deputation basis is not in dispute. It is also to be noted that the applicant himself opted for absorption in cadre of SO and his request was considered and was absorbed as such with effect from 6.12.94.

18. The applicant having once absorbed in the cadre of SO cannot take advantage of the circular instructions contained in circular dated 12.12.95 which was issued about a year thereafter.

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19. When the rule position was clear and there was no possibility for absorbing a PS working on deputation in the CAT as per the rules the applicant got himself absorbed in the cadre of SOs. He even though opted to absorb in the cadre of SOs attempted to put certain conditions on the Principal Bench to consider his seniority from the original date of his deputation i.e. 14.6.89. The applicant attempted to put conditions and attempted to question the seniority in the cadre or SOs/COs, which we feel not justified. As per order dated 5.1.95 (Annex.12) it is clearly mentioned that inter-se seniority of all officers would be determined separately. The applicant attempted to obtain seniority in the cadre of SOs with effect from 14.6.89.

20. It is only after the circular instructions dated 12.12.95 were issued the four officials cited in the application were absorbed. Though circular instructions were issued in relaxation to the recruitment rules as one time measure by then the applicant had already been absorbed in the cadre of SO by order dated 5.1.95. When that was so it was not open to the applicant to rely upon the circular instructions dated 12.12.95 and seek for absorption in the cadre of PSs, by then he was a regular SO in the CAT. He cannot secure any benefit from the circular dated 12.12.1995.

21. Besides as per the directions in OA.1333/95 the applicant him self gave option for repatriation ~~back~~ to his parent department. Accordingly he was repatriated to his parent department. When once he ^{is} ~~was~~ repatriated to his parent department the question of considering his case for absorption on par with those who were absorbed on the basis of the circular dated 12.12.95 ^{does} ~~did~~ not arise. No doubt the applicant had filed this application a day before his relief in the CAT. By order dated 20.5.97 it was indicated that the future service benefits of the applicant would be determined in the light of the outcome of the application.

22. Considering the facts and circumstances of the case we are of the view that the applicant cannot claim regularization in the cadre of Private Secretaries in the CAT. By the time circular dated 12.12.95 the applicant was already absorbed in the CAT in the cadre of SO with effect from 6.12.94. In view of his willingness to get repatriated to his parent department the absorption in the cadre of SOs stood automatically cancelled.



Further the decision in OA.1333/95 has been confirmed by the Hon. Supreme Court in SLP.NO.3322/97 Dated 24.12.97. It is submitted that a review application was filed is pending before the Supreme Court.

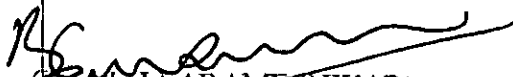
23. An employee who is working on deputation has no right to claim for absorption in the borrowing department. Even though he might have expressed his option to get absorbed in the borrowing department that does not give any right to claim absorption to the employee. The Competent authority must consider his options, his service records and other particulars, and then ^{issue} necessary orders. That has not been done in the instant case.


24. The applicant made certain averments regarding assurances made by the Respondents 2 and 3. In the absence of rules position, we are not persuaded to accept the said version to be correct. Further the incumbents of Respondents 2 and 3 could not have held such assurances to the applicant knowing fully well the rule position.

25. In that view of the matter the applicant cannot claim absorption on par with those who were absorbed on the basis of circular dated 12.12.95. The preliminary objections raised by Respondents 1 to 3 are upheld.

26. For the reasons stated above the OA has no merits and is liable only to be dismissed.

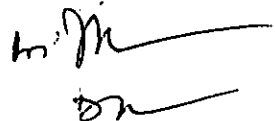
27. Accordingly, the OA is dismissed. No order as to costs.


(B.S. JAI PARAMESHWAR)
Member (Judl.)


(R. RANGARAJAN)
Member(Admn.)

Dated: 26.10.99

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

COPY TO :-

1. BBHND
2. HRRN M (A)
3. BBSJP M (J)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR

VICE - CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN :

MEMBER (ADMN.)

THE HON'BLE MR. D.S. JAI PARAMESWAR :

MEMBER (JUDL.)

* * *

DATE OF ORDER: 26.10.99

MA/RA/CP.No.

in

OA. NO. 655/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

