

19

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA No. 392/95

Date of Order 5-1-2000

Surinder Kumar Dhar son of Shri Mohan Lal Dhar
Aged about 35 years, resident of 2 B, Jhalana
Dungari, Lawan Marg, Jaipur 302004.

.... Applicant

VERSUS

1. Union of India through the Secretary,
IB, Ministry of Home Affairs, Govt.
of India, North Block, New Delhi.
2. Director, IB, Ministry of Home Affairs,
Govt. of India, North Block, Gate No. 7,
New Delhi.

.... Respondents.

CORAM

The Hon'ble Mr. S.K. Agarwal, Member (Judicial)
The Hon'ble Mr. N.P. Nawani, Member (Administrative)

Mr. S.K. Jain, : Counsel for the applicant.
Mr. K.N. Shrimal : Counsel for the respondents.

(O R D E R)

(PER HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL))

In this Original Application filed u/s 19 of the
Administrative Tribunal's Act, 1985, the applicant makes
the following prayers:-

- (i) Respondents be directed to treat the applicant
as confirmed from the date of his initial appoint-
ment/regularisation of service and to allow
all consequential benefits including the benefit
of seniority.
- (ii) Rule 11(1) of the I.B. Stenographers Services
Rules, 1971 be declared as ultravires.
- (iii) Respondents be directed to assign correct
seniority to the applicant and provisional
seniority list dated 14.1.93 be quashed and set
aside with a direction to respondents to
include the name of the applicant in the

...2/-

PP

new seniority list by treating the date of appointment and confirmation of the applicant from 4.9.82 and to quash letter dated 22.2.95 by which the representation of the applicant was turned down.

- (iv) Respondents be further directed to dispense with the direction of passing All India Competitive Examination looking to the fact that applicant is performing his duties satisfactorily for the last thirteen years.

2. In brief, the case of the applicant is that applicant was initially appointed on the post of Stenographer Grade III in the pay scale Rs. 330- 560 vide letter dated 30.8.82 and thereafter he was regularised vide order dated 30.1.87. It is stated in the initial appointment letter that the applicant has to qualify All India Competitive Examination in shorthand etc. for the purpose of seniority and confirmation but the respondents did not conduct any such examination so far, although respondents have issued a provisional seniority list dated 14.1.93 in which applicant was given seniority/^{at}serial no. 129-H. It is also stated that respondents failed to conduct All India Competitive Examination and due to that reason applicant could not get the benefit of seniority, confirmation and other benefits such as promotion. Applicant has also stated that he appeared in the examination conducted by Staff Selection Commission in the year 1993 but the name of the applicant was not included in the panel. Applicant preferred representation which was turned down vide a letter dated 22.2.95. It is stated that action of the respondents in not conducting All India Competitive Examination for the purpose since 1982 is arbitrary and discriminatory. Therefore, Rule 11(1) of the I.B. Stenographers Services Rules, 1971 has become ineffective and ultravires. It is also stated that action of the respondents in not giving seniority to the applicant w.e.f. 4.9.82 is arbitrary and in violation of Article 14 & 16 of the Constitution of India. Therefore, the applicant filed this Original Application for the relief, as mentioned above.

Surf

9

3. Reply was filed. It is stated in the reply that this Original Application is barred by limitation as applicant has challenged provisional seniority list dated 14.1.93 in August, 1995. It is also stated that when Staff Selection Commission was unable to sponsore adequate number of candidates, it had permitted I.B. to recruit stenographer Grade III in the year 1981 ^{subject} / to their qualifying in All India Competitive Examination conducted by Staff Selection Commission. It is stated that applicant was appointed as Stenographer Grade III in I.B. on ad hoc basis as it was clearly mentioned in the offer of appointment that applicant was required to pass All India Competitive Examination in not more than three chances. It is also stated that Staff Selection Commission conducted the ~~the~~ examination four times during the year 1982 to 1987 but the applicant appeared only twice in the year 1985 and 1987 and failed to qualify in 1985 and was fould ineligible in the year 1987. The services of the applicant were regularised in January, 1987 under Rule 11(1) of I.B. Stenographer Services Rules, 1971 subject to qualify All India Competitive Examination for this purpose but applicant was found ineligible. In the reply it is made clear that respondents conducted examination on 23.12.95 and applicant has appeared in the said examination and the applicant was declared successful. Therefore, this Original Application has become infrustuous and deserves to be dismissed. It is further stated that claim of the applicant for seniority and confirmation w.e.f. 4.9.82 is untenable as applicant did not qualify All India Competitive Examination. It is also stated that in the examination conducted by the respondents on 23.12.95, the applicant's name figures in the list of successful candidates. Therefore, this Original Application is devoid of any merit and liable to be dismissed.

4. Rejoinder and reply to rejoinder was also filed which is on record.

5. Heard the learned lawyers for the parties and also perused the whole record.

6. It is not in dispute that applicant appeared in the examination conducted by respondents on 23.12.95 and in the said examination the name of the applicant is figured in the

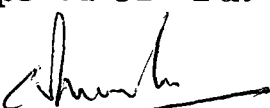
Surge

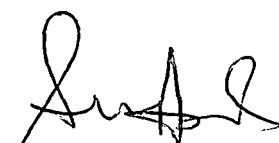
(22)

list of successful candidates. In the offer of appointment and the subsequent letter dated 30.1.87 by which the services of the applicant were regularised makes a provision that applicant has to qualify All India Competitive Examination held for Stenographer for the purpose of seniority and confirmation. Provisional Seniority list dated 14.1.93 has not been finalised and appears to be provisional till the date. We, therefore, feel it proper that respondents may determine seniority and confirmation of the applicant with reference to the fact that the name of the applicant figured in the list of successful candidates in the examination conducted by the respondents on 23.12.95.

7. In view of the discussions, as above, we direct that applicant may file ^arepresentation for determination of his seniority and confirmation within a period of four weeks from the date of passing of this order and thereafter the respondents shall decide the representation of the applicant within a period of four months from the date of receipt of the representation by reasoned and speaking order keeping in view the fact that applicant has already been declared successful in the examination conducted by respondents on 23.12.95. The other prayers made by the applicant is not sustainable in view of the fact that applicant has already been declared successful in the examination conducted by respondents on 23.12.95.

8. With above direction, this Original Application is disposed of with no order as to costs.


(N.P. NAWANI)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)