

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT CAMP : INDORE

Original Application No.830 of 2004

Gwalior, this the 28th day of October, 2005

Hon'ble Shri M.P.Singh - Vice Chairman
Hon'ble Shri Madan Mohan - Judicial Member

Mrs.Lathika Nair, Wd/o Late Shri A.R.Nair,
Aged 44 years, Occupation Service,
P.A. to Director of Postal Services, Indore,
R/o Quarter No.II/20, Old C.T.O. Compound,
Indore (MP)

& Applicant

(By Advocate - Shri C.B.Patne)

Versus

1. The Union of India through Secretary to the Govt. of India, Ministry of Communications and Information Technology, Department of Posts, New Delhi.
2. The Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
3. The Chief Post Master General, Madhya Pradesh Circle, Hoshangabad Road, Bhopal-462012 (MP).
4. Shri G.P.Verma, P.A. to Director (HQ) Dak Bhawan, Hoshangabad Road, Bhopal-462012 (MP) - Respondents

(By Advocate-Shri Umesh Gajankush for respondents 1 to 3)
None for respondent no.4

O R D E R

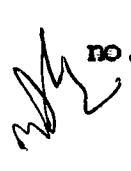
By M.P.Singh, Vice Chairman.-

By filing this Original Application, the applicant has claimed the following main reliefs:-

- "8(b) to quash the provisional seniority list issued as on 1.1.2003 (Ann.A/8) in so far as it places the applicant at Sr.No.24 and Res.No.4 at Sr. No.23, as also the order maintained in the promotion notification dated 1.9.2004 in so far as it shows the applicant at Sr.No.20 and Res. No.4 at Sr.No.15.
- (c) to command the Res.No.1 and 2 to treat the applicant as senior to the Res.No.4 in the cadre of Stenographer Grade-I as per the decision of the Hon.Supreme Court and to consider her claim for posting in the M.P.Circle as P.S. in preference to Res.No.4 and to issue necessary orders in this behalf.
- (d) to allow this application with costs;"

M.P.

2. The brief facts of the case are that the applicant was appointed as Stenographer Grade-III vide order dated 6.7.1982. She was promoted to the post of Stenographer Grade-II vide order dated 25.6.1993 and posted in the Regional Office at Indore. According to her she was not given due seniority in the post of Stenographer Grade-II. She made a representation and respondent no.2 vide letter dated 9.11.1999 assigned her correct seniority as on 1.7.1997 (Annexure-A-6), in which the name of the applicant appears at serial no.1 and the name of private-respondent no.4 appears at serial no.3. The private-respondent no.4 belongs to SC category. He was initially appointed in the Department on 16.3.1983 whereas the applicant was appointed on 14.7.1982, but Respondent no.4 being a member of the reserved category, he was given out of turn promotion as Stenographer Grade-II on 4.3.1993, whereas the applicant was given this promotion on 23.7.1993. In the provisional seniority list of Stenographer Grade-I, prepared for promotion to the post of Private Secretary, the applicant has been shown at serial no.24, whereas the name of private-respondent no.4 has been shown at serial no.23. According to the applicant, this is against the rules, in view of the office memorandum dated 21.1.2002 issued by the Department of Personnel & Training, which makes the reserved category Central Government servants promoted out of turn, senior only w.e.f. 17.6.1995 whereas the applicant and private-respondent no.4 were promoted to the post of Stenographer Grade-II in the year 1993. Aggrieved by the aforesaid provisional seniority list, the applicant submitted a representation to respondent no.2 on 10.12.2003 making a request for showing the name of private-respondent no.4 below her name in the gradation list as in the year 1993



Her representation has not been finalized so far and on the contrary a notification has been issued by the respondent no.2 in which the name of the applicant has been shown at serial no.20 in the list of persons who were promoted to the post of Private Secretary. She has been allotted to Gujarat circle, whereas the private-respondent no.4 appears at serial no.15 and he has been allotted Chhattisgarh circle. In consequence, the Chief Post Master General, Gujarat Circle, Ahmedabad issued posting order of the applicant as Private Secretary to the Post Master General, Rajkot Region, Rajkot vide memo dated 9.9.2004 and she has been directed to ^{be} relieved forthwith to join her new assignment. She has not been relieved from Indore so far.

2.1 According to the applicant, there are two posts of Private Secretary - one at Bhopal in the office of respondent no.3, and another in Indore in the Office of P.M.G., Indore Region. One Mr.H.R.Sortie, working as Senior PS to the respondent no.3 at Bhopal has proceeded on leave preparatory to his retirement and he is going to retire on 30.9.2004. Mrs.Jagdamba Soman, PS to PMG, Indore Region, has been attached at Bhopal in place of Mr.Sortie and thus, one post of P.S. is physically vacant at Indore and after 30.9.04, one post of P.S. would be vacant in M.P.Circle. Thus, the applicant can easily be accommodated in M.P.Circle on the post of P.S., but the private-respondent no.4 is manipulating the facts and he is trying to get the vacant post of PS in the MP Circle by misinterpreting the aforesaid memo dated 21.1.02 (Annexure-A-9), while working at Headquarters, Bhopal. Hence this OA has been filed with the prayer that since she is senior to private-respondent no.4, she should be retained in M.P.Circle in preference to private-respondent no.4.

3.

The official-respondents in their reply have stated

that the applicant was initially appointed as Stenographer Grade-III on 14.7.1982 and Shri G.P.Verma (private-respondent no.4) was appointed on 16.3.1983 in the cadre of Stenographer Grade-III. A DPC for promotion to the cadre of Stenographer Grade-II was held on 1.3.1993. 8 persons were considered by the DPC for recommending the name of the candidate for appointment against one upgraded post of Stenographer Grade-II from the cadre of Stenographer Grade-III. As per roster, there was a carry forward SC point of 1979. The name of Shri G.P.Verma, being the candidate of SC community was recommended by the DPC. The SC point was filled in Grade-II by promoting the private-respondent Shri G.P.Verma, vide order dated 4.3.1993. The private-respondent assumed ^{charge} on 4.3.1993 as Stenographer Grade-II, at Circle Office, Bhopal. Subsequently, on the promotion of Smt. Jagdamma Soman, Stenographer Grade-II to Grade-I and upgradation of Grade-III post of Stenographer to Grade-II in C.O., two posts of Stenographer Grade-II fell vacant. Two other persons, namely, Ku.Vibha Nanoti and Smt.Vasanta Nair of Stenographer Grade-III cadre were promoted to Grade-II vide C.O.Memo dated 18.6.1993 (Annexure-R-IV). As both the above officials declined their promotion, Smt.Lathika Nair, applicant and Roshamma John were given the promotion as Stenographer Grade-II vide order dated 25.6.1993. The promotion to Grade-II was initially declined by the applicant vide her application dated 6.7.1993, thereafter the applicant offered her willingness to accept the promotion in Grade-II vide her application dated 19.7.1993 and she joined on 23.7.1993 as Stenographer Grade-II. In the gradation list of Stenographer Grade-II as on 1.7.1997 issued by the Circle Office, in the order of seniority, Shri G.P.Verma was correctly shown at serial no.1 and the applicant Smt.Lathika Nair was shown at serial no.2. On representation by the applicant on

24.3.1999, regarding alleged wrong fixation of her seniority in Stenographer Grade-II, her seniority was re-cast in the light of Government of India, Ministry of Personnel Public Grievances and Pension (Department of Personnel & Training) Order No.22011/7/86-Estt(D) dated 3.7.1986. She was placed at serial no.1 in the revised Circle Gradation List, which was revised vide C.O.Memo No.STA 14-58/REP/GL dated 9.11.1999 (Annexure-A-6). Vide DOPT OM dated 30.1.1997 a provision was added to restore the seniority of general/OBC candidates over the SC/ST candidates promoted earlier to them who originally ranked lower than the general/OBC candidates (Annexure-A-9). This provision was, however, to take effect from 30.1.1997 and the past cases were not to be modified in terms of this order. In the instant case Shri G.P.Verma, was promoted as a sole candidate to Grade-II on 4.3.1993. Hence the above provision was not applicable to him as such. However, this provision was again amended vide DOPT's memo dated 21.1.2002 (Annexure-A-9) which reads as follows:-

"The Government has now decided to negate the effects of the DOPT OM dated 30th Jan.1997 by amending Article 16(4A) of the Constitution right from the date of its inclusion in the Constitution i.e. 17th June,1995, with a view to allow the Government Servants belonging to STs/SCs to retain the seniority in the case of promotion by virtue of Rule of reservation. In other words, the candidates belonging to General/OBC category promoted later will be placed junior to SC/ST Government Servants promoted earlier even though by virtue of rule of reservation.

Therefore, in pursuance of the aforementioned Constitution (Eighty-fifth) Amendment Act, 2001 it has been decided as follows:-

(1) (a) SC/ST Government servants shall, on their promotion by virtue of rule of reservation/roster, be entitled to consequential seniority also; and

(b) The above decision shall be effective from 17th June, 1995.

(ii) The instructions contained in DOPT OM No. 20011/1/96-Estt.(D) dated 30.11.1997 as well as the clarifications contained in DOPTOM No.2011/2/97-Estt(D) dated 21.3.1997 shall stand withdrawn w.e.f.30.1.1997 itself".

Therefore, the order issued vide C.O.Memo No.STA 14-58/REP/GL dated 9.11.1999 (Annexure-A-6) is held erroneous on both the counts as narrated above and is sought to be cancelled, thus

restoring the original seniority of Shri G.P.Verma in Grade-II.

On circulation of provisional seniority list of Stenographers who have completed two years in Grade-I and/or 7 years' continuous service in Grade-II or Grade-I put together as on 1.1.2003 for consideration for promotion to Private Secretary, the name of the applicant was shown at serial no.24 below the name of Shri G.P.Verma, who is at serial no.23 (Annexure-A-8). On 10.12.2003, the applicant represented to the Directorate claiming her seniority over Shri G.P.Verma. The Directorate vide its letter dated 7.1.2004 had issued clarification in regard to the representation against seniority by the applicant and has rejected the request of the official, in view of Department of Personnel and Training OM dated 21.1.2002, vide ^{DG} letter dated 7.1.2004 (Annexure-R-VIII). Vide OM dated 21.1.2002 (Annexure-A-9), the orders contained in OM dated 3.7.1986 stands withdrawn and the effect of withdrawal was given from 17.6.1995. Consequently, the memo dated 9.11.1999 (Annexure-A-6) revising the order of seniority of the applicant is to be withdrawn and the position of earlier gradation list published on 1.7.1997 (originally) will be restored. Shri G.P.Verma will rank senior to the applicant.

3.1 The respondents have further stated that the applicant and the private-respondent have been promoted to the post of Private Secretary (CGS Gr.B) Gazetted in the Pay scale of Rs.6500-200-10500 on regular basis with effect from the date of assumption of charge vide order dated 1.9.2004 (Annexure-A-11). The applicant has been allotted to Gujarat Circle, and the private-respondent Shri G.P.Verma has been allotted to Chhattisgarh Circle vide order dated 1.9.2004 (Annexure-A-11). Promotion orders under circle office memo dated 23.9.2004 (Annexure-R-IX) were issued in respect of both the officials. Shri G.P.Verma has declined the promotion unconditionally on 11.12.2004 and the applicant has neither declined nor got herself relieved from her parent posting at PMG Office, Indore. The respondents have urged that in view of the aforesaid facts, the OA filed by the applicant deserves to be dismissed.

4. Heard the learned counsel of both the parties and perused the pleadings available on record. We have given careful

consideration to the arguments advanced on behalf of both the sides.

5. The admitted facts of the case are that the applicant was appointed as Stenographer Grade-III on 14.7.1982 and the private-respondent Shri G.P.Verma was appointed as Stenographer Grade-III on 16.3.1983. As per the reply filed, the private-respondent Shri G.P.Verma was promoted to the post of Stenographer Grade-II vide order dated 4.3.1993 against a carried forward SC point of 1979. The applicant has been promoted as Stenographer Grade-II in July, 1993 against an unreserved vacancy. Accordingly, the respondent no.4 was given seniority over the applicant. Thereafter, in pursuance of the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Virpal Singh Chauhan, JT 1995 (7)SC 231, it was decided by the DOPT OM dated 10.1.1997 to modify the existing policy of fixing seniority on promotion, by addition of the proviso to general principle 5(i) contained in MHA OM dated 22.12.1959 and para 2.2 of the DOPT's OM dated 3.7.1986, which stipulated as under:-

"Provided that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade.

In view of the aforesaid instructions, the applicant's seniority was revised and she was placed over the private-respondent. Thereafter, vide OM dated 21.1.2002 DOPT have decided to update the earlier DOPT's OM dated 30.1.1997 ^{in view of the} ^{amendment of} Article 16(4A) of the Constitution right from the date of its inclusion in the Constitution i.e. from 17th June, 1995 to allow the Government servants belonging to SCs/STs to retain the seniority in the case of promotion by virtue of rule of reservation. In other words, the candidates belonging to general/OBC category promoted later will be placed junior to the SC/ST Government servants promoted earlier even though by virtue of the rule of reservation.

Therefore, in pursuance of the aforementioned Constitution (Eight fifth) Amendment Act, 2001, it has been decided as follows:-

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"(1) (a) SC/ST Government servants shall on their promotion by virtue of rule of reservation/ roster, be entitled to consequential seniority also; and

(b) the above decision shall be effective from 17th June, 1995.

(2) The instructions contained in DOPT OM No. 20011/1/96-Estt(D) dated 30.1.1997 as well as the clarifications contained in DOPT O.M.No. 20011/2/97-Estt.(D) dated 21.3.1997 shall stand withdrawn w.e.f. 30.1.1997 itself.

(3) Seniority of Government servants determined in the light of O.M. dated 30.1.1997 shall be revised as if that O.M. was never issued".

(4) (a) On the basis of the revised seniority, consequential benefits like promotion, pay pension, etc. should be allowed to the concerned SC/ST Government servants (but without arrears by applying principle of 'no work no pay').

(b) For this purpose, senior SC/ST Government servants may be granted promotion with effect from the date of promotion of their immediate junior general/OBC Government servants.

Accordingly, the respondents have revised the seniority placing the private-respondent above the applicant. It has been done because of the fact that private-respondent was promoted to the grade of Stenographer Grade-II against a reserved post earlier than the applicant. Thus, the respondents have rightly assigned the due seniority to the private-respondent no.4 over the applicant. We do not find any illegality or irregularity in the orders passed by the respondents.

6. In the result, the O.A. is dismissed, however, without any order as to costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

rkv.

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....
पतिनिधि अर्थात् शिवा:-

(1) सचिव, उच्च न्यायालय एवं एडवोकेट जनरल, जबलपुर

(2) आदेशक श्री/श्रीमती/श्री.....के कार्यालय

(3) प्रत्यक्षी श्री/श्रीमती/श्री.....के कार्यालय

(4) कोषपाल, जे.प.ए., जबलपुर

सूचना एवं आदेशक कार्यालय

उप रजिस्ट्रार

C.B. Datta 1/12
U. 1/12/15486
1/12

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8/11/95