

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 796 of 2003

Chandore, this the 10th day of January, 2004

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

C. Samuel, Tax Assistant, 0/o.
Commissioner of Income Tax, Napier
Town, Jabalpur (MP) - 482001. ... Applicant

(By Advocate - Shri A.P. Shrivastava)

V e r s u s

1. Union of India, through Secretary,
Ministry of Finance, North Block,
New Delhi - 110001.
2. Chief Commissioner of Income Tax,
Central Revenue Bldg. Hoshangabad
Road, Bhopal (MP).
3. Commissioner of Income Tax II,
Central Revenue Bldg. Station Road,
Jabalpur (MP).
4. Additional Commissioner of Income
Tax, Range II, Central Revenue Bldg.
Station Road, Jabalpur (MP).
5. Zonal Accounts Officer, Central
Board of Direct Taxes, Zone-II,
M.P. Nagar, Bhopal (MP). ... Respondents

(By Advocate - Shri B.da.Silva)

O R D E R

By Madan Mohan, Judicial Member -

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

"8.1 to direct the respondent to protect pay drawn
in the cadre of Stenographer (OG) by grant of
admissible pay as LDC plus personal pay till it is
absorbed in future increment or promotion in due
course,

8.2 to quash the audit note (Annexure A-12) sent
by respondent asking head of office to fix pay from
1986 and not from 1979 and that too in the minimum
pay scale of LDC without any protection for services
rendered as Stenographer (OG) from 1979 to 28.3.96."

2. The brief facts of the case are that the applicant
joined the Income Tax Department as Stenographer (Ordinary
Grade) on regular pay scale of Rs. 330-560/- w.e.f. 26.5.79.



The applicant had been granted regular increment in time scale at deemed time and that he had also been considered fit for crossing the efficiency bar. He was treated at par with other regular employees and had been given all the benefits like general provident fund, CGEIGS, LTC, CGHS etc. The applicant and some other employees (similarly placed) moved the Hon'ble High Court of Madhya Pradesh seeking regularisation of ad-hoc stenographer. The writ was registered as WP No. 1947/85 and was subsequently transferred to this Tribunal and was registered as TA No. 362/1986. When the TA was pending in the Tribunal the Staff Selection Commission on 28.7.1985 conducted a special qualifying examination for adhoc stenographers. The applicant appeared in the said examination and qualified only for appointment as LDC. The applicant gave his consent to work as LDC. But the applicant continued to work as Stenographer (OG). The Tribunal vide its order dated 19.12.90 decided the TA No. 362/1986. The effect to the order has not been given however the Department directed that adhoc stenographers have to appear in special qualifying examination as a one time measure to be conducted by the SSC on 26.12.1993. The scheme of this special examination was identical to that of the examination conducted by the Subordinate Service Examination with the only difference that this examination was restricted only for adhoc stenographers. This was against the order passed by the Tribunal in TA No. 362/1986. The applicant later appeared in the special qualifying examination held on 26.12.1993. The result of this examination was not communicated to the applicant. The applicant thereafter also continued to work as Stenographer (OG). The respondents however, vide letter dated 1.3.1995 directed the applicant to submit the joining report as LDC. This was after a period of almost 10 years after applicant gave willingness to appoint as LDC on 11.4.1986. The applicant submitted his joining report on 28.3.1995 under protestas his representation for regularisa-



tion in the cadre of Stenographer was pending with the higher authorities. Inspite of various requests, the appointment order appointing as LDC on regular basis was passed on 5.10.2000. The order was given effect from 8.4.1986 and not from 28.7.1985, on which date the applicant had appeared and passed the examination. The pay fixation order of the applicant in the cadre of LDC was issued only on 15.3.2002 i.e. after a lapse of 2 years and after a lapse of nearly 16 years when the applicant submitted his willingness to be appointed as LDC. The ZAO, Bhopal has raised certain objections on the pay fixation order made on 15.3.2002. The ZAO has requested the department to fix the pay of the applicant in the post of LDC w.e.f. 8.4.1986 in the minimum of the pay scale i.e. Rs. 950-1500/- and recover the balance amount arising out of pay fixed vide order dated 15.3.2002. In a similar case like that of the applicant in OA No. 933 of 1997 the Tribunal has passed the order in favour of the applicant therein. It was held by the Tribunal that "his present pay already allowed may be protected by grant of the admissible pay as LDC plus personal pay till it is absorbed in future increments or promotion in due course." The applicant Shri Rajeshwar Rao in OA No. 933/1997, joined the department on adhoc basis as Stenographer in the year 1980, whereas the present applicant joined the Department in the year 1979. The facts of both the cases are almost identical. The services of the applicant should also be regularised from the date of his initial appointment in the Income Tax Department i.e. on 26.5.1979 and all consequential benefits should be given to him and also the pay of Stenographer (OG) may be protected.

3. Heard the learned counsel for the applicant and perused the records care-fully.

4. It is argued on behalf of the applicant that, the applicant had been given all the benefits like GPF, CGEIGS,

LTC, CGHS etc. But however, he was not confirmed as Stenographer (OG). A Writ Petition No. 1947/1985 was filed by the applicant and some other employees facing the common problem. This WP was transferred to this Tribunal and was registered as TA No. 362/1986. When the TA was pending in the Tribunal the SSC on 28.7.1985 conducted a special qualifying examination for ad-hoc Stenographers. The applicant appeared and qualified for appointment as LDC. The applicant also gave consent to work as LDC. But he continued to work as Stenographer (OG). The TA was decided by the Tribunal on 19.12.1990. But the Department directed that the adhoc Stenographers have to appear in special qualifying examination as a one time measure to be conducted by the Staff Selection Commission on 26.12.1993. The respondents directed the applicant to submit the joining report as LDC, vide letter dated 1.3.1995. This letter was issued after almost 10 years. The applicant gave his willingness and he submitted his joining report on 28.3.1995 under protest. In a similar case of Shri Rajeshwar Rao in OA No. 933/1997, the Tribunal granted the relief to the applicant therein. The applicant has worked as adhoc Stenographer for a long period. The pay of the Stenographer is higher than that of LDC. Hence, the applicant is entitled for his pay protection. Our attention is drawn towards Annexure A-11 i.e. an order dated 15.3.02, but this order was withdrawn by the impugned order dated 24.9.2002, which is an illegal action of the respondents.

5. In reply the learned counsel for the respondents argued that the applicant failed to qualify as Stenographer but qualified for the post of Lower Division Clerk. The applicant vide letter dated 11.4.1986 had submitted his willingness for appointment to the post of Lower Division Clerk. Now the applicant cannot claim for his pay protection as adhoc Stenographer as he had joined on the post of LDC and was regularised w.e.f. 8.4.1986. The applicant was given opportunity to appear in the Special Qualifying examination conducted

by the Staff Selection Commission but he failed to qualify for the post of Stenographer. The SSC, New Delhi vide letter dated 16.11.1994 forwarded the dossiers of Shri N.R. Umale and the applicant for regularisation as LDC. The respondents vide order dated 8.12.1994 regularised the applicant on the post of LDC w.e.f. 6.10.1994. The applicant submitted a representation dated 16.12.1994 requesting regularisation as LDC w.e.f. 11.4.1988. On consideration of the request of the applicant he was regularised with effect from 8.4.1986 as LDC vide order dated 5.10.2000. The applicant also submitted representation requesting to fix his seniority which is still pending. The applicant cannot take the benefit of the order passed in OA No. 933/1997 as it is mentioned in this order that the order passed in the said OA may not be quoted as precedent. Hence, the applicant is not entitled for the reliefs claimed.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the applicant joined the Income Tax Department as Stenographer (OG) on 26.5.1979. He had been given all the benefits like GPF, CGEIGS, LTC, CGHS etc and has also been considered fit for crossing the efficiency bar. The applicant and other similarly situated persons filed a WP No. 1947/85 before the Hon'ble High Court of MP which was later transferred to this Tribunal and was registered as TA No. 362/1986. The Tribunal decided the TA on 19.12.1990. The applicant has worked as adhoc stenographer upto 28.3.1995. The pay scale of Stenographer is higher than that of LDC. Though the applicant had given his willingness to join as LDC but we find that he had worked as Stenographer for a considerable long period. The applicant was granted the benefit of pay protection vide order dated 15.3.2002 but later on some audit objection the said order was withdrawn vide order dated 24.9.2002 with a

finding that the excess pay drawn by the official may be recovered and deposited into the Government account immediately. We also find that in OA No. 933/1997 the Tribunal after considering all the facts and circumstances of the case, directed the respondents to regularise the services of the applicant in the post of LDC from the date of his joining in the Income Tax Department and grant him all consequential benefits. It was clarified that the applicant will not be entitled to any arrears of salary on account of this observation, prior to one year from the date of filing the OA. It was also observed that if the applicant is regularised as LDC, his present pay already allowed may be protected by grant of the admissible pay as LDC plus personal pay till it is absorbed in future increments or promotion in due course. The Tribunal also clarified that the said decision may not be quoted as precedent.

7. After considering the aforesaid facts and circumstances of the case, we are of the considered view that as the applicant has actually worked as adhoc Stenographer from the date of his initial appointment i.e. from 26.5.1979 to 28.3.1995 and as he has been granted the benefit of pay protection by the respondents themselves vide order dated 15.3.2002, the relief claimed by the applicant in this OA for protection of his pay drawn by him in the cadre of Stenographer is liable to be granted. We do so accordingly. Accordingly, the audit note dated 24.9.2002 (Annexure A-12) is quashed and set aside. The respondents are directed to grant all consequential benefits to the applicant. Accordingly, the OA is allowed. No costs.

(Madan Mohan)
Judicial Member

M.P. Singh
(M.P. Singh)
Vice Chairman

"SA"