

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

(ORDER RESERVED ON 29.02.2016)

O.A No. 060/01129/2014

Date of decision: 9.3.2016

**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

Bal Ram son of Sh. Prita Ram, aged 49 years, working as Private Secretary, Central Excise Commissionerate, Chandigarh-I, Central Revenue Building, Sector 17, Chandigarh.

...APPLICANT

BY ADVOCATE: Sh. V.K. Sharma.

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. Chief Commissioner, Customs & Central Excise (CZ), Chandigarh-I, Central Revenue Building, Plot No.19, Sector 17-C, Chandigarh - 160017.
3. Additional Commissioner (P&V), Office of Central Excise, Chandigarh-I, Central Revenue Building, Plot No.19, Sector 17-C, Chandigarh - 160017.
4. Ms. Mamta Rani, Private Secretary, Central Excise, Chandigarh-I, Central Revenue Building, Plot No.19, Sector 17-C, Chandigarh - 160017.
5. Ms. Saroj Rani, Private Secretary, Central Excise, Chandigarh-I, Central Revenue Building, Plot No.19, Sector 17-C, Chandigarh - 160017.
6. Ms. Parveen, Private Secretary, Central Excise, Chandigarh-I, Central Revenue Building, Plot No.19, Sector 17-C, Chandigarh - 160017.

...RESPONDENTS

BY ADVOCATE: Sh. Sanjay Goyal, counsel for respondents no.1 to 3.
Sh. P.M. Kansal, proxy for Sh. D.R. Sharma, counsel for respondent no.6.
R. No.4 & 5 Ex-parte. *As* —

ORDER**HON'BLE MRS. RAJWANT SANDHU, MEMBER (A):-**

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"8. (1) That it be declared that the applicant is entitled to seniority in the feeder cadre of Stenographer Grade-II w.e.f. 28.10.1998 i.e. from the date he was appointed as such in that cadre and not from 18.01.2007, the date on which he was reverted to this cadre from the cadre of Inspector, in terms of the instructions and law on the subject and for a declaration that when the DPC was held in 2014 for promotion to the post of Private Secretary, the vacancies cannot be bifurcated between 2008-09 or 2010-11 so as to extend undue benefits to the juniors to the applicant while considering promotion to the said cadre from the cadre of Stenographer Grade-I more so when promotion has been made prospective only and also quash the orders and documentation which declares that he will be assigned seniority from the date of joining in reverted cadre.

(2) Quash the DPC proceedings dated 28.05.2014 (Annexure A-1) as conveyed to the applicant vide letter dated 29.05.2014 for promotion to the post of Private Secretary against the vacancies for the years 2008-2009 and 2010-11 to the extent the vacancies have been bifurcated between two financial years without any logic or reason more so when promotions have been made prospective only and the seniority of the applicant has been taken irregularly and illegally.

(3) Quash the order/Memo dated 29.05.2014 (Annexure A-2) to the extent the applicant has been promoted against vacancy for the year 2010-11 and juniors to him have been promoted against vacancies for the years 2008-09 by treating him as junior to them in feeder cadre which is illegal, arbitrary, discriminatory, violative of Articles 14 and 16 of the Constitution of India.

(4) Quash the order dated 25.11.2014 (Annexure A-3) vide which the request of the applicant for assignment of correct seniority has been rejected.

(5) Issue direction to the respondents to reconsider the case of the applicant for promotion to the post of Private Secretary and treat him as senior to his juniors."

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2. Averment has been made in the OA that the applicant joined service in the respondent's department as Stenographer Grade-III on 22.09.1993 on officiating basis and was appointed on substantive basis as such w.e.f. 08.02.1996. He was promoted as Stenographer Grade-II vide order dated 28.10.1998. Under the rules, stenographers Grade-III and Grade-II with composite service of five years were eligible for promotion to the post of Inspector and the applicant was promoted as Inspector w.e.f. 18.12.2002. Due to his family circumstances, the applicant could not continue as Inspector and sought reversion to his parent cadre of Stenographer vide application dated 14.12.2005. The request of the applicant was accepted and vide order dated 18.01.2007 he re-joined as Steno Grade-II. However, it was mentioned in the order of reversion that the applicant would be given seniority in the cadre from the date of joining the post, but this condition was not acted upon at that time (Annexure A-4). On his reversion to the cadre of Stenographer Grade-II, the applicant alongwith others was promoted as Stenographer Grade-I vide order dated 15.07.2008 by treating him as Stenographer Grade-II from 28.10.1998 and accordingly he joined the new assignment on 15.07.2008 (Annexure A-5). On promotion, the pay of the applicant was also fixed vide order dated 11.10.2010 (Annexure A-6). Seniority lists of Stenographer Grade-I from 01.01.2010 to 02.01.2012 were also issued by the Department in which the applicant has been shown senior to other colleagues i.e. Ms. Mamta Rani, Saroj Rani and Parveen taking his entry as Stenographer Grade-II from 28.10.1998

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(Annexures A-7, A-8 and A-9). The seniority lists as on 01.01.2013 and 01.01.2014 have not been issued so far.

3. It is also stated in the O.A that proposal for merger of Stenographer Grade-I and Grade-II in Central Board of Excise and Customs was received in the year 2010. Before this proposal could be effected, all the Stenographers Grade-II i.e. applicant, Mrs. Mamta Rani, Saroj Rani and Parveen were promoted as Stenographer Grade-I w.e.f. 15.07.2008. Copy of O.M. dated 22.12.2010 circulated vide letter dated 11.01.2011 is enclosed and marked as Annexure A-10. It was directed therein that the merged cadre of erstwhile Stenographer Grade-I & Grade-II would be re-designated as Stenographer Grade-I, and the existing Stenographers Grade-I would remain en bloc senior to the erstwhile Stenographers Grade-II in the merged cadre of Stenographer Grade-I. Thus, the applicant was to be considered eligible for promotion from Stenographer Grade-I to Private Secretary along with other incumbents of this cadre. The Recruitment Rules for promotion to the grade of Private Secretary were received from the Ministry of Finance vide letter dated 10.11.1990 (Annexure A-11). The Post of Senior Personal Assistant was re-designated as Private Secretary vide notification dated 11.04.2001 (Annexure A-12). Though these Recruitment Rules were already available with the Department but when applicant requested to consider his case for promotion as Private Secretary in the year 2010, the case was deferred informing that the revised policy for promotion had not yet been received. However, the case of juniors to the applicant was considered

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against the vacancies for 2008-09 and they were promoted. Against the vacancy for 2010-11 the case of the applicant was considered and approved for promotion. The applicant and his juniors were promoted vide order dated 29.05.2014. Copies of DPC proceedings and promotion orders are enclosed as Annexures A-1 and A-2 respectively.

4. Thereafter the applicant submitted a detailed representation dated 14.08.2014 that he cannot be granted seniority from the date of joining the cadre and his seniority will relate back to the date of his initial appointment on promotion as Stenographer Grade-II. In terms of Ministry of Finance's proposal of merger, cadres of Stenographer Grade-I & Grade-II were merged into a single cadre and re-designated as Stenographer Grade-I in Pay Band-2 with grade pay of Rs.4200/-. Prior to receipt of proposal for merger which was to take effect from 01.01.2006, the applicant vide his application dated 14.12.2005 had already applied for his reversion to the cadre of Stenographer Grade-II and as such not considering the applicant as Stenographer Grade-II from 28.10.1998 as on 01.01.2006 is totally incorrect, irregular and as such the members of DPC have committed illegality. While conducting DPC for the recruitment year 2008-09, the members of DPC did not consider his name alongwith his colleagues i.e. Ms. Mamta Rani, Saroj Rani and Parveen although he was working as Stenographer Grade-II since 1998 onwards. As per rules and law, no presumption and assumption can be taken by the DPC. The DPC has to consider only the facts which were available with it especially when there

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were no instructions / clarifications / guidelines from the Ministry for treating him as Stenographer Grade-I w.e.f. 18.01.2007 (Annexure A-13). The DPC committed illegality in not considering the case of the applicant for promotion to the grade of Private Secretary for the Recruitment year 2008-09. He deserved to be considered as Stenographer Grade-II from 28.10.1998 and as such he was eligible for the post of Private Secretary. In addition to this, holding of DPC for the recruitment year 2008-09 is not understood as no promotion has been given from the date the vacancies were available and there have been given from the date of holding of DPC. Only one DPC was due to be held for the Recruitment year 2010-11 as all the existing Stenographers Grade-I were eligible for promotion from 01.01.2011 and not earlier than that. As such DPC for the Recruitment year 2008-09 is irrelevant. Thus, the impugned orders and action of the respondents are illegal, arbitrary, discriminatory, against the rules, law, violative of Articles 14 and 16 of the Constitution of India and are liable to be quashed and set aside and a direction is liable to be issued to the respondents to assign the applicant correct seniority in terms of rules and law. Hence this OA.

5. In the written statement filed on behalf of respondents no.1 to 3, it has been stated that the Government of India, Ministry of Home Affairs vide O.M. No.1/6/67-Estt.(D) dated 04.09.1967 envisaged that the employees who are appointed in Government Department/Office on or after 14.07.1967 are entitled, in the event of reversion to the parent department within the specified period of two/three years, to the

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original seniority in the grade/post from which they proceeded on foreign service to the Public Sector Undertakings/Autonomous Bodies/Deputation to other posts under Government. In the instant case, the applicant was promoted to the grade of Inspector on 18.12.2002 and worked in the same grade till 18.01.2007 and then got reversion as Steno Grade-II. Hence the seniority can only be granted from the date of joining on the post. Besides the cadres of Stenographers were merged/re-designated w.e.f. 01.01.2006 in view of Board's letter dated 22.10.2010 circulated vide letter dated 11.01.2011. As the merger was effected from 01.01.2006, the Establishment order 97/2008 dated 15.07.2008 has no relevance, since all the posts of Stenographers had been upgraded and merged w.e.f. 01.01.2006. All officers who had been promoted as Stenographer Grade-I vide Estt. Order No.52/2012 dated 03.05.2012, have also been re-designated as Stenographer Grade-I w.e.f. 01.01.2006. Since the applicant was working as Inspector at that time, his name does not figure in merger order dated 03.05.2012, so the applicant was not re-designated. On his reversion, the applicant joined as Stenographer Grade-II only on 18.01.2007. The applicant was not put to any disadvantage as benefit of pay protection had already granted to the applicant by department under Rule FR 15(a) in terms of provisions contained in FR 22(1)(a)(3). The applicant could not be considered for promotion to the grade of Private Secretary with other incumbents as he was never promoted to the grade of Stenographer Grade-I prior to 01.01.2006 to enable the

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department to consider him for promotion as Private Secretary as on 01.01.2008. The other incumbents, on the other hand, were working as Stenographer Grade-II as on 01.01.2006 & were deemed as Stenographer Grade-I on 01.01.2006 and hence became eligible for promotion as Private Secretary as on 01.01.2008. The juniors in Seniority lists issued prior to 01.01.2006 were promoted to the grade of Private Secretary against the vacancies of 2008-2009. The juniors prior to 01.01.2006 were not juniors at the time of promotion as the merger was effected from 01.01.2006 and name of the applicant does not figure in Establishment Order No.52/2012 dated 03.05.2012 vide which merger of stenographers was effected as the applicant was working as Inspector at that time.

6. Respondents no.4 & 5 did not appear despite service and hence were proceeded ex-parte.

7. The written statement filed on behalf of respondent no.6 is on the same lines as that filed on behalf of the official respondents.

8. No rejoinder has been filed on behalf of the applicant.

9. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicant narrated the background of the matter. He stated that for promotion as Private Secretary, the eligibility criteria was two years service as Steno Grade-I or seven years service as Steno Grade-II or both

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combined. If the combined service of the applicant as Steno Grade-I and Steno Grade-II was taken into account, the applicant would be eligible for promotion, keeping in view OM No.AB.14017/12/88-Estt.(RR) dated 25.03.1996 that provided for the following:-

"Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years which is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service."

Since the applicant was senior as Steno Grade-II to respondents no.4, 5 & 6, he was entitled to the benefit of two years reduction in qualifying service for promotion as Private Secretary and hence had to be considered for promotion after he fulfilled the eligibility criteria at the same time when the respondents were promoted by the DPC against the vacancies for 2008-09. Learned counsel also stated that the seniority of the applicant as Steno Grade-II could not be considered from 18.01.2007, the date on which he was reverted to this cadre from the cadre of Inspector since the reversion had been approved by the competent authority.

10. Learned counsel for the respondents no.1 to 3 stated that the applicant did not fulfil the eligibility criteria for promotion as Private Secretary at the time when the private respondents were considered for promotion and hence the applicant could not claim promotion from the same date as the respondents and consequent seniority as Private Secretary. Moreover OM dated

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25.03.1996 had not been adopted by the respondent department.

11. Learned counsel for respondent no.6 adopted the arguments put forth by learned counsel for respondents no.1 to 3.

12. We have carefully considered the matter. It is seen that the applicant worked as Steno Grade-II w.e.f. 28.10.1998 to 18.12.2002 before he was promoted as Inspector. He was reverted as Steno Grade-II w.e.f. 18.01.2007 and as on 01.01.2008, the relevant date for determining eligibility for promotion as Private Secretary for the recruitment year 2008-2009, had put in more than five years service as Steno Grade-II. Besides assuming that the cadres of Steno Grade-I & II were merged w.e.f. 01.01.2006, the applicant has to be considered as Steno Grade-I w.e.f. 18.01.2007 when he was reverted from the post of Inspector. His seniority as Steno Grade-II/I is irrelevant to the matter. The years served in these grades are relevant for determining the qualifying service/eligibility of the applicant for promotion as Private Secretary as per the RRs for this post, since as per the proceedings of the DPC for recruitment year 2008-09 (Annexure A/1) there were 7 vacancies of Private Secretary available of which one was reserved for SC and only 3 persons i.e. the private respondents were recommended for promotion by this DPC, as it was conveyed by Asst. Comms. (P&V) Central Excise Commissionerate vide letter dated 14.04.2014 that only three candidates were in the consideration zone. Hence 4

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vacancies remained unfilled in respect of recruitment year 2008-09. The applicant who belongs to SC category should in our view have been given the benefit of OM dated 25.03.1996 and also been considered for promotion against the vacancies in recruitment year 2008-09. Although learned counsel for the respondents has stated that this OM has not been given effect by the respondent department, but such guidelines issued by DoPT are binding on the departments of the GOI and there is no good reason for the respondent department not to have amended their recruitment rules for the post of Senior Personal Assistant/Private Secretary as per directions in para 3 of this OM.

13. In view of the discussion above, the respondent department is directed to hold review DPC for promotions of Private Secretaries for recruitment year 2008-09 and consider the case of the applicant for promotion keeping in view DoPTs directions in OM dated 25.03.1996. Action in this regard may be completed within two months and if the applicant is held to be 'fit' for promotion, consequential benefits may be released to him within a further period of one month. OA is disposed of accordingly.

14. No costs.

(RAJWANT SANDHU)
MEMBER (A)

(JUSTICE L.N. MITTAL)
MEMBER (J)

Place: Chandigarh.
Dated: 9.3.2016
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