

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 2482/2013

DATED THIS THE 21st DAY OF AUGUST, 2017

HON'BLE DR K. B SURESH....MEMBER (J)
HON'BLE MR. K.N.SHRIVASTAVA..... MEMBER (A)

Asha Sharma

W/o Late Sh. P.S. Sharma

R/o D-5, Jeevan Jyoti Apptt.,

Pitam Pura, Delhi – 34

.... Applicant

By Advocate : Ms. Ritika Chawla

VERSUS

1. Directorate of Publicity and Public Relations,
Through its Addl. Asst. Director / H.O.O.,
Customs and Central Excise,
I.P. Estate, C.R. Building, New Delhi.

2. Directorate of Statistics and Intelligence,
Through its Director,
Central Excise and Customs,
C.R. Building, New Delhi.

3. Directorate of Publications,
Through its Asst. Director,
Customs and Central Excise,
12, Gagan Deep Building,
Rajendra Place, New Delhi – 110 008.

... Respondents

By Advocate : Shri Rajinder Nischal

ORDER

HON'BLE DR K.B.SURESH, MEMBER (J)

Apparently the applicant was appointed as LDC/KPO through Employment Exchange according to the rules prevailing in force at that point of time. This is more effectively stipulated in the letter issued by the Assistant Commissioner of Directorate of Publicity and Public Relations, Customs and Central Excise to the Under Secretary in the Ministry of Finance dated 28.05.2006 which is quoted below:

"Subject: Appointment as IBM Typist regarding ACP upgradation.

Please refer to your letter F. NO.A.32011/17/2004-Ad.IIIA, dated 17th February, 2006 on the above subject.

The information asked for in the above said letter is as below;

- 1. Initially Sh. P.S. Sharma was appointed as L.D.C. and Smt. Asha Sharma was appointed as LDC/KPO through Employment Exchange according to the rules prevailing or in force at that time.*
- 2. The RRs for IBM Typist have not yet been notified. These were draft Recruitment Rules for direct appointment of IBM Typist submitted to the Ministry.*
- 3. According to Draft Recruitment Rules – Yes.*
- 4. Sh. P.S. Sharma was appointed as Sr.I.B.M. Typist w.e.f. 27.5.1994 (Copy of the Appointment order enclosed). Smt. Asha Sharma was promoted as Layout Artist w.e.f. 27.5.1994 and the post is governed by the same Draft Recruitment Rules."*

This notification also submit that the Recruitment Rules have not yet been notified but a draft Recruitment Rules for direct recruitment of IBM Typist were submitted to the Ministry. The applicant's junior Shri P.S. Sharma was appointed as IBM Typist with effect from 27.05.1994 and the applicant was promoted as Layout Artist with effect from 27.05.1994 and the post is governed by the same draft Recruitment Rules.

2. Therefore the Government of India vide F.No.A.32011/17/2004-Ad.IIIA, Government of India, Ministry of Finance, Department of Revenue dated 27.11.2006 issued a clarification regarding ACP upgradation which is quoted below:

"I am directed to refer to your letter F.No. पनि/7/99/स्था/3231 dated 23.10.2006 on the above cited subject and to inform you that the Recruitment Rules of IBM Typist have not been framed so far. They are under process. Further the matter was referred to DOP&T for advice. The DOP&T has advised that the method of appointment proposed is by direct recruitment failing which by deputation. Thus the appointment of two individuals based on a departmental test is ab-initio irregular and need to be reviewed accordingly. If any further appointment have been made, the same also needs to be reviewed. The question of grant of ACP should arise only after the question of initial appointment is settled."

It is clear that the DoPT has also advised that the method of appointment for IBM Typist is by direct recruitment failing which by deputation.

3. In this connection, the appointment order issued to the applicant No. 9499/71/6090 dated 09.04.1975 produced as Annexure-A8 is significant and which is quoted below:

"Kumari Asha Saxena, L.D.C. (K.P.O.) of this Directorate is appointed to officiate as I.B.M. (Typist) in the scale of Rs.330-10-380-EB-12-500-EB-15-560, w.e. from the date she takes over as such and until further orders.

2. She should, however, note that her appointment to this post is purely temporary and subject to the fulfilment of this conditions mentioned in the Recruitment Rules, which are being formed. Her present appointment can be terminated without assigning any reasons."

4. Nowhere in this office order it is mentioned that the applicant had been promoted but that the post is purely temporary and subject to the fulfilment of the conditions mentioned in the Recruitment Rules which are being formed. The case of everybody is that appointment to this post is on the basis of direct recruitment. Even though the applicant was working as LDC from 1970 onwards, her appointment as IBM Typist is on a direct recruitment basis and nothing else.

5. The respondents admit in their reply that applicant had initially joined as LDC on 30.06.1970 and then promoted as IBM Typist on 09.04.1975. This promotion as IBM Typist is only imaginary as it was only a direct recruitment and nothing else. Since the applicant is appointed as a direct recruit on 09.04.1975, her entitlement for 1st ACP

arises 12 years after that event, i.e., on 09.04.1987. Thereafter she gets first promotion as Layout Artist with effect from 27.05.1994. The respondents would say that the juniors of the applicant Shri Vinod Kumar Sharma and Shri Pawan Kumar Bansal initially joined as IBM Typist on 11.03.1976 and 25.03.1976 respectively and they were granted the first upgradation under the ACP with effect from 09.08.1999 and the second with effect from 01.04.2000. It is to be noted in this connection that by 27.05.1994 applicant had already completed almost 24 years of service.

6. The averment of the respondents that the office order Annexure-A8 do not mention that applicant was appointed as direct recruit is neither here nor there as the same order do not mention that the applicant was promoted. If the applicant was promoted, it has to be specifically stated that applicant has been promoted and therefore Annexure-A8 can only be considered as direct recruitment appointment order especially in view of the other annexures stated and quoted above.

7. It is also to be noted that LDCs who had joined service 7 to 9 years later than the applicant are working as AO but the stand taken by the respondents is that since they belong to the Ministerial cadre and therefore are governed by different set of service rules but at present the

post of AAD is lying vacant. Therefore it is to be expected that the respondents will do the needful to correct this anomaly but then it is crystal clear going by the government orders aforesaid that applicant had completed 24 years of service in the year 1999 itself. Whether the post of Layout Artist is a promotion or not has not yet been fixed as that is in a different category altogether but then if the juniors of the applicant are eligible for certain benefits then, without any doubt, pari-materia benefits are available to the applicant as well. After having served for 40 years, it is not just for the applicant to go out of service below that of her juniors. Therefore there will be a mandate to the respondents to grant applicant the benefit of 1st and 2nd ACP in the pay scale of Rs.6500-200-10500 and Rs.7450-225-11500 with effect from 26.06.2010 with all consequential benefits. The benefits may be calculated and granted to her within 2 months next.

8. OA is allowed to this extent. No order as to costs.

(K.N.SHRIVASTAVA)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)