

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 180/00842/2014

Monday, this the 11th day of June, 2018

CORAM

HON'BLE MR. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Subhadra V.K, W/o P.Bharathan
Aged 49, Stenographer Grade I
Office of the Deputy Chief Labour Commissioner (Central)
Kendriya Shram Sadan, Oolimugal
Kakkanad, residing at 40/199/A
Thottalekat Road, Ernakulam Applicant

[By Advocate Mr.R.Sreeraj & Mr.P.A.Kumaran]

V.

1. Union of India represented by its Secretary, Ministry of Labour & Employment, Shram Shakti Bhavan, Rafi Marg
New Delhi-110 001
2. The Chief Labour Commissioner (Central),
Shram Shakti Bhavan, Rafi Marg
New Delhi- 110 001
3. The Deputy Chief Labour Commissioner (Central)
Kendriya Shram Sadan, Olimugal, Kakkanad
Kochi-30
4. Shahabuddin Khan, Stenographer, working under the 2nd respondent
5. Anuradha Srinivasan, Stenographer, working under the 2nd respondent
6. J.P.Chatterjee, Stenographer, working under the 2nd respondent
7. S.K.Das, Stenographer, working under the 2nd respondent
8. V.K.Suresh, Stenographer, working under the 2nd respondent
9. U.S.Bhattacharjee, Stenographer, working under the 2nd respondent
10. Neeru Batra, Stenographer, working under the 2nd respondent
11. T.D.George, Stenographer, working under the 2nd respondent
12. Tara Chand, Stenographer, working under the 2nd respondent
13. B.H.Godavari Sharma, Stenographer, working under the 2nd respondent
14. Ajay Kumar Prasad, Stenographer, working under the 2nd respondent

15. Suresh Gope, Stenographer, working under the 2nd respondent
16. Manohar Chowdhary, Stenographer, working under the 2nd respondent
17. Chitrakala Ramesan, Stenographer, working under the 2nd respondent
18. Armendra Prasad, Stenographer, working under the 2nd respondent
19. M.T.Kumbhare, Stenographer, working under the 2nd respondent
20. J.Prasanna Rani, Stenographer, working under the 2nd respondent
21. Dinesh Kumar Chandani, Stenographer, working under the 2nd respondent
22. Teeka Ram, Stenographer, working under the 2nd respondent
23. Munish Kumari, Stenographer, working under the 2nd respondent
24. Diwakar Shantikari, Stenographer, working under the 2nd respondent
25. Gyanendra Melwani, Stenographer, working under the 2nd respondent
26. B.H.Khapad, Stenographer, working under the 2nd respondent
27. D.Mohan Kumar, Stenographer, working under the 2nd respondent
28. M.Suriyakala, Stenographer, working under the 2nd respondent
29. S.Maharana, Stenographer, working under the 2nd respondent
30. A.F.De Souza, Stenographer, working under the 2nd respondent
31. J.K.Karnig, Stenographer, working under the 2nd respondent
32. Sant Ram, Stenographer, working under the 2nd respondent
33. G.Thulasi, Stenographer, working under the 2nd respondent
34. Lakshmidivi M.Parvathikar, Stenographer, working under the 2nd respondent
(Respondent nos.4 to 34 set ex-parte vide order dated 31.5.2018)

... **Respondents**

(By Advocate Mr.N.Anilkumar,Sr.PCGC(R))

This application having been finally heard on 5.6.2018, the Tribunal on 11.6.2018 delivered the following.

O R D E R

Per : HON'BLE MR. U. SARATHCHANDRAN, JUDICIAL MEMBER

Applicant was appointed as Stenographer in the office of the Regional Labour Commissioner (Central), Jabalpur vide memorandum dated 27.6.1990. After joining Jabalpur, she applied for transfer to Kerala on compassionate

grounds. As there was no vacancy of Stenographer in the Kochi Region at that time, her request was not considered. However, on a subsequent representation dated 17.12.1990, she was transferred to Madras Region. When she sought transfer to Kerala again on compassionate grounds vide representations dated 8.7.1993, 30.9.1993 and 19.8.1994 (Annexures A-2, A-3 and A-4), she agreed to be transferred to Kochi region on the available vacancy of Lower Division Clerk (LDC) and accordingly vide Annexure A-5 order she was transferred to Kochi directing her to report on 1.6.1996. She was working as LDC in the office of the Regional Labour Commissioner (Central) with pay protection. On 26.11.1996, she again submitted Annexure A-6 representation pointing out the possibility of a vacancy of Stenographer arising in Kochi Office in the near future. Thereafter, the Regional Labour Commissioner, Kochi vide Annexure A-7 office order dated 23.7.1997 ordered 'readjustment' of the applicant against the vacant post of Stenographer. She states that in the seniority list of Stenographers who had joined the service upto 20.7.1998 she was placed at serial no.25 and placed between Mr.G.Y.Rao and Mr.S.H Khan. But in the draft centralised seniority list of Stenographers circulated on 27.9.2013 she was placed at serial no. 46. Though she submitted Annexure A-9 representation dated 30.9.2013 against the draft seniority list she was placed at Serial No.45 in another draft seniority list vide Annexure A-10. She has not received any response to Annexure A-9 representation. The seniority list was finalised vide Annexure A-11 list notified on 28.1.2014/7.2.2014. She prays for the relief as under:

“ I) To declare that the action on the part of the respondents in unsettling the seniority of the applicant in the cadre of Stenographers after a long span of 16 years is illegal,

arbitrary, unjust, unreasonable, irrational and the same violates Article 14 of the Constitution of India.

II) To direct the respondents to grant the applicant seniority in the cadre of Stenographers between serial numbers 13 and 14 by reckoning her transfer to Kochi Region as Lower Division Clerk as an adjustment and her subsequent appointment as Stenographer as a re-adjustment, thereby not depriving her the length of service in the cadre of Stenographer for the period she worked on administrative adjustment as Lower Division Clerk.

III) To quash Annexure A-11 to the extent it denies the applicant appropriate seniority in the cadre of Stenographer

IV) Such other relief as may be prayed for and this Tribunal may deem fit to grant

V) Grant the cost of this Original Application. ”

2 The official respondents filed a reply statement producing Annexures R1(a) to R1(g). The main contention of the respondents is that her request for transfer was considered sympathetically and respondent no.2 gave telephonic order on 26.12.1990 to the Regional Office at Jabalpur for transfer of the applicant as Stenographer to Madras Region in the same capacity. She joined as Stenographer in Madras Region on 2.1.1991. However, the Regional Labour Commissioner, Madras Region vide letter dated 22.5.1996 informed respondent no.2 that the applicant vide her representation dated 17.5.1996 requested for posting as LDC in the office of respondent no.3 and accordingly she was transferred as LDC in the office of respondent no.3 against the vacant post of LDC with effect from 31.5.1996 placing her at the bottom of the seniority list of LDC in the Kochi region as on 1.6.1996. Applicant agreed to be posted as LDC citing domestic problems and adverse family circumstances. While working as LDC, she submitted representations to respondent no.3 pointing out the possibility of a vacant post of Stenographer and requested for reconversion as Stenographer. According to the respondents as she was posted as LDC at

bottom seniority in the Kerala Region, continuation of her seniority in the post of Stenographer does not arise. After she became Stenographer with effect from 23.7.1997 her seniority was fixed afresh with effect from 23.7.1997. Respondents pray for rejecting the Original Application.

3 The applicant had impleaded other stenographers under respondent no.2 as additional respondent nos.4 to 34. Respondent nos.4 to 34 have been served through respondent no.2. They were set ex-parte vide order dated 31.5.2018.

4 We have heard both sides in detail and perused the records.

5 The short question to be considered is whether applicant is entitled to re-position her original seniority at the time when she joined as Stenographer for the first time under respondent no.2 after she having undergone a posting as LDC and thereafter again re-posted as Stenographer.

6 We have carefully perused the records produced by both sides. Although the contention of the respondents that when the applicant was posted as LDC at Kochi at bottom seniority vide Annexure A-5 order, she had lost her original seniority as Stenographer, sounds quite attractive and convincing, the facts and circumstances of this case, in our view, show otherwise. A perusal of Annexure A-7 shows that her transfer to Kochi accepting the post of LDC is due to the non availability of the vacant post of Stenographer. Annexure A-7 reads:-

“ OFFICE OF THE REGIONAL LABOUR
COMMISSIONER ©, COCHIN

No.70(3)/96/A1

Dated: 23.7.1997

OFFICE ORDER

Sub: Estt. Filling up the post of Stenographer -Readjustment of Smt.V.K.Subhadra, LDC in the vacant post of Stenographer Reg:

Consequent upon the transfer of Shri.V.Surabhi, Stenographer to the Ministry of Labour, New Delhi, Smt.V.K.Subhadra, who is a S.S.C qualified stenographer transferred from the office of the RLC(C), Madras and adjusted to the post of LDC in the office of the RLC(C), Cochin for nonavailability of vacant post of stenographer is readjusted against the vacant post of stenographer with immediate effect. This is as per the order of CLC(C), New Delhi vide letter No.Adm.II/3(13)/94 dated 17.6.1997.

REGIONAL LABOUR COMMISSIONER(C)
COCHIN

To

Smt.V.K.Subhadra, LDC.,
Office of the RLC(C), Cochin

- Copy to:
1. The CLC(C), New Delhi for information with reference to his letter No.Adm.II/3(13)/94 dated 17.6.97
 2. The Dy.CLC(C), Bangalore for information
 3. The DDO, O/O the RLC(C), Cochin
 4. The ALC(C), Trivandrum for information
 5. Service Book
 6. The PAO, DGETII, Guindy, Madras for information.

R.L.C. ©: COCHIN

”

(underlining supplied)

7 Learned counsel appearing for the Central Government relied on Annexure A-5 office order dated 27.5.1996 in support of their contention that she had lost her seniority once she joined the post of LDC at bottom seniority.

Annexure A-5 reads:-

“No.Adm.II/3(13)/94
Government of India
Ministry of Labour
Office of the Chief Labour Commissioner ©

New Delhi, Dated:-27.5.96

OFFICE ORDER NO.22 of 1996

Smt.Subhadra V.K., Steno in the office of RLC(C), Madras is transferred as LDC in the office of RLC(C), Cochin against the vacant post of LDC w.e.f. 31.5.96 (A.N.).

2.She will be placed at the bottom of the seniority list of LDCs in Cochin region on 1.6.96.

3. She is no entitled for joinining time, TA/DA etc.

(Charanjit Lal)
Administrative Officer

Distribution:-

1. Smt.Subhadra,V.K., LDC
- 2.RLC(C), Madras with the request to relieve Smt.Subhadra
3. RLC(C), Cochin with the request to regulate pay of Smt.Subhadra V.K., LDC in terms of FR.22 (2) & (3)
4. Dy.CLC, Bangalore
5. Office order bundle
6. P&AO, DGET-II, Madras
7. Spare copies – 5

(Madhukar Sood)
Section Officer ”

8 Nevertheless, it can be seen from the records and pleadings that the official respondents were quite aware that the applicant's request for transfer from Jabalpur was on compassionate grounds due to her family problems. . As revealed from the representations she had submitted she had applied for transfer on compassionate grounds on account of her own difficulties and family circumstances. A reading of Annexure A-7 (*supra*) clearly shows that the applicant was 'adjusted' to the post of LDC in the office of respondent no.3 for

non-availability of the vacant post of Stenographer. Annexure A-7 further reads that she was “re-adjusted” as Stenographer when the post of Stenographer fell vacant in respondent no.3's office. It shows that this procedure had necessary approval from respondent no.2 also. Applicant is basically a stenographer . She was forced to accept the vacant post of LDC in the Kochi office as a measure to alleviate her distress since there was no vacancy of stenographer at that time. Therefore, it can be seen that her posting as LDC at bottom seniority vide Annexure A-5 order was a technical posting for want of vacancy of Stenographer and same was 're-adjusted' by the authorities subsequently vide Annexure A-7 when a vacancy of stenographer arose at Kochi office.

9. It is worth noting that all other Stenographers concerned who have been impleaded in this Original Application as parties have remained ex-parte

10. Therefore, we hold that the applicant is entitled to get back her original seniority as Stenographer under respondent no.2 from the date of her joining the post at Jabalpur. The Original Application is allowed. Official respondents are directed to carry out consequential changes in the seniority list for the cadre of Stenographers within one month from the date of receipt of a copy of this order. No order as to costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

List of Annexures

- | | | |
|---|---|--|
| Annexure A-1
Adm.I dated 27.6.1990 | - | True copy of the Memorandum Nu.J-70(17)/89- |
| Annexure A-2
submitted by the applicant | - | True copy of the representation dated 8.7.1993 |
| Annexure A-3
submitted by the applicant | - | True copy of the representation dated 30.9.1993 |
| Annexure A-4
submitted by the applicant | - | True copy of the representation dated 19.8.1994 |
| Annexure A-5
(No.Adm.II/3 (13)/94) dated 27.5.1996 | - | True copy of the Office Order No.22/1996 |
| Annexure A-6
submitted by the applicant | - | True copy of the representation dated 26.11.1996 |
| Annexure A-7
23.7.1997 | - | True copy of the office order No.70(3)/96/A1 dated |
| Annexure A-8
14/4.7/8.1997 | - | True copy of the letter no.Adm.II/3(13)/94 dated |
| Annexure A-9
submitted by the applicant | - | True copy of the representation dated 30.9.2013 |
| Annexure A-10 | - | True copy of the relevant pages of the draft seniority
list of Stenographers working in the Regional/Field offices of Chief Labour
Commissioner (Central) Organisation as on 1.1.2014. |
| Annexure A-11 | - | True copy of the relevant pages of the seniority list
of Stenographers working in the Regional/Field offices of Chief Labour Commissioner
(Central) Organisation as on 1.1.2014 circulated as per letter no.Adm.II/3(2)/2013
dated 28/7.1/2.2014 issued by the Administrative Officer, Office of the Chief Labour
Commissioner (Central) , New Delhi |
| Annexure R1(a) | - | True copy of the representation dated 11.9.1990 |
| Annexure R1(b) | - | True copy of the representation dated 18.9.1990 |
| Annexure R1(c) | - | True copy of the representation dated 17.12.1990 |
| Annexure R1(d)
dated 27.12.1990 | - | True copy of the Office Order No.J-70(30)/90-Adm.I |
| Annexure R1(e)
27.5.1996 | - | True copy of the office order No.22 of 1996 dated |
| Annexure R1(f)
dated 7.12.1978 | - | True copy of the G.S.R 1544 of Ministry of Labour |
| Annexure R1(g)
dated 1.1.2014. | - | True copy of the draft seniority list of stenographers |

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