

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.333 of 2012

Date of CAV:07.11.2017.

Date of Order : 05.12.2017.

Between :

Mrs.Asiya Sultana, w/o Anwar Ahmed Khan,
aged about 41 yrs, Working as Senior Stenographer
(Reverted now), Central Research Institute of
Unani Medicine, A.G.Colony Road, Erragadda,
Hyderabad-500 038. ... Applicant

AND

1. Union of India, rep., by the Director,
Central Research Institute of Unani Medicine,
A.G.Colony Road, Erragadda,
Hyderabad-500 038.
2. M.Iqbal Ali Khan, s/o later Abdullah Khan,
aged about 49 yrs, Working as UDC, CRIUM,
Hyderabad, rep., by General Secretary, CRIUM
Non-Gazetted Employees Union, (Regd.NO.B-1885/90
& Recognised), A.G.Colony Road, Erragada,
Hyderabad. ... Respondents

Counsel for the Applicant ... Mrs.Rachana Kumari

Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC for R-1
... Dr.A.Raghu Kumar for R-2.

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The applicant is aggrieved by the Annexure.A-I office order dated 10.03.2012 reverting her to the post of Junior Stenographer and keeping in abeyance her promotion to the post of Senior Stenographer.

2. The brief facts of the case are that the applicant joined the post of Junior Stenographer in the office of the first respondent on 4.9.2006. She completed 5 years of regular service as Junior Stenographer as on 3.9.2011 and was eligible to be considered for promotion to the next higher cadre of Senior Stenographer. While so, the post of Senior Stenographer in the Pay Band-2 of Rs.9300-34,800/- + Grade Pay of Rs.4200/- was lying vacant in the respondent Organization. Accordingly, the Departmental Promotion Committee (DPC) in its meeting recommended her for appointment to the post of Senior Stenographer as she was the only eligible candidate in the zone of consideration. On the basis of the recommendations of the DPC, the first respondent issued office order dated 23.2.2012 promoting her to the post of Senior Stenographer with effect from the date of her joining. Accordingly, she joined as Senior Stenographer from 23.2.2012. While so, the applicant was issued the impugned office order stating that on the advice of the Director General, Central Council for Research in Unani Medicine (CCRUM), the first respondent has decided to keep the promotion orders of the applicant in abeyance and also ordered that she stands reverted to the post of Junior Stenographer. These orders were issued without issuing any show cause notice or giving her a reasonable opportunity to represent her case. The other reasons that were assigned for reverting her was that the Upper Division Clerks (UDCs), who have put in more than 15 years of service in the feeder

category of Office Assistant, have been aggrieved by their non-promotion and that the Non-Gazetted Employees' Union agitated against her promotion to the post of Senior Stenographer as she was junior to the UDCs.

3. It is the case of the applicant that just because the promotions of UDCs could not materialize, the promotions in other cadres should not get affected. The respondents have decided to revert her to the post of Junior Stenographer on the plea of restoration of peace in the Campus. The applicant therefore prays for setting aside the impugned orders and also seeks a consequential direction to the respondents to continue her as Senior Stenographer.

4. This Tribunal while admitting the case had issued interim order of suspension of the impugned office order.

5. The first respondent has filed a reply statement stating that the Director General, CCRUM, New Delhi, had vide Annexure.R-I letter dated 15.12.2011 instructed the first respondent to conduct DPCs only after verifying the availability of posts in the higher grade from CCRUM Headquarters. However, the then Director, CRIUM, Hyderabad and the first respondent herein constituted a DPC on 22.2.2012 and filled up the post of Senior Stenographer taking the seniority of a local candidate in violation of the Recruitment Rules for the said post. The respondents submit that the post of Senior Stenographer is a Centralized Post, which has to be filled up taking into consideration all the Junior Stenographers working in different Institutes/Units under the Council. However, the then Director, CRIUM, Hyderabad, promoted the applicant to the post of Senior Stenographer even though she is the junior most amongst the

Junior Stenographers working in the Council. This action is in violation of the Recruitment Rules and the Annexure.A-1 orders of the Director General's instructions dated 15.12.2011. It is also submitted that a copy of the Recruitment Rules to the post of Senior Stenographer was not placed before the DPC. Further, though the promotion order of the applicant was issued on 23.2.2012, the same was not communicated to the Establishment/Accounts Sections and was kept in the custody of the first respondent till 14.3.2012. The Non-Gazetted Employees' Union, Hyderabad, however, represented to the Director General regarding the irregular promotion given to the applicant to the post of Senior Stenographer. Pursuant to this, the DG had instructed the first respondent to keep the promotion order in abeyance till a final decision was taken by the Council. However, the first respondent reverted the applicant to the post of Junior Stenographer instead of keeping the promotion order in abeyance.

6. The first respondent further point out that the completion of 5 years of service in the cadre of Junior Stenographer is only one of the criteria for promotion to the post of Senior Stenographer. The other condition that promotion has to be done from among Junior Stenographer in Headquarters office and subordinate Units/Institutes was not followed and only local seniority was considered in violation of the rules. Since the post of Senior Stenographer is a centralized post, the Junior Stenographers seniority at the National level is the criteria for promotion. As the applicant is the junior most in the list of Junior Stenographers working in the Council, there is no merit in the claim of the applicant that she is eligible for promotion. They have also refuted the contention of the applicant that she is the only eligible candidate in the zone of consideration. The averment that the reversion order was issued so as to restore peace and tranquillity in the Campus was also denied. The respondents point out that the Union has only

organized a peaceful demonstration during Lunch hour and represented to the then Director and Director General, CCRUM, regarding irregular promotion in violation of the recruitment rules. It has been further submitted by the respondents that the proceedings of the DPC suffered from various infirmities. As per the Service Rules for holding a DPC, there has to be a member of SC & ST employees. However, in the DPC conducted for Senior Stenographer, there was no member from this category in the DPC. Further, the Roster Register for reservation for SC & ST is maintained at the Headquarters level and not at the level of the Institute at Hyderabad. As such, the availability of the vacant post and the availability of the persons belonging to the reserved category in the feeder grade has to be determined at Headquarters level only. Annexure.R-11 seniority list of Junior Stenographers circulated by the Council on 16.01.2012 was not put up before the members of the DPC when it met on 22.2.2012. As per this seniority list, the applicant is placed at Serial No.12 and is not eligible for promotion to the post of Senior Stenographer as she was not in the zone of consideration. Further, the first respondent has issued the order of promotion without proper approval of the minutes by the DG and has thus violated the procedure for appointment to the post of Senior Stenographer.

7. The 2nd respondent and the General Secretary of the Central Research Institute of Unani Medicine, NGOs Union Hyderabad, has filed a separate reply refuting the allegations made against the Union in the impugned order. They have referred to the provisions in the Recruitment Rules, which makes it clear that the feeder category for Senior Stenographer is Junior Stenographer working in Headquarters office and subordinate units/institutes with 5 years regular service in the grade. It is submitted that the first respondent has violated the rule by taking into consideration the local

seniority of Junior Stenographers at Hyderabad. They have denied the contention of the applicant that the UDCs who have put in more than 15 years of service in the feeder cadre of Office Assistant have been aggrieved by her promotion. They point out that the entire Non-Gazetted Officers Union agitated against her promotion as she was even junior to all the Lower Division Clerks working in CRIUM, Hyderabad.

8. The applicant has filed a rejoinder reiterating her averments in the OA and pointing out that the post of Senior Stenographer has been lying vacant for 19 1/2 years. Further, the Recruitment Rules do not indicate that the said post should be filled up on All India seniority basis. She also pointed out that there is a similar provision for All India seniority to be considered under the Recruitment Rules for the post of Office Assistant. Since there is no specific mention in the recruitment rules for Senior Stenographer, the respondents have erred in contending that this is a centralized post to be filled on the basis of All India seniority. She also submitted that there is no representation or agitation by the Junior Stenographers working in CCRUM or Regional Research Units since they knew fully well that this post has to be filled up by the Director, CRIUM, Hyderabad. She has also filed a rejoinder to the reply filed by the 2nd respondent enclosing a copy of the office order dated 17.02.2010, according to which the posts of Junior Stenographer in the Council who were working at Regional Research Institutes, Aligarh, Patna, Mumbai, Srinagar, Bhadrak & CRIUM, Lucknow, have been re-designated as UDCs. She points out that the post of Junior Stenographer in CRIUM had not been re-designated, whereas other posts have already been re-designated.

9. Heard the learned counsel for the parties and perused the record.

10. The learned counsel for the Applicant has relied on the orders of the Hon'ble Supreme Court in *Sanay Kumar Upadhyay v. Palak Dhari Yadav and Others* (2016 (4) SCC 621), in which the Apex Court had allowed the appeal on the ground that none other than the appellant claimed the post and that no prejudice was caused to anyone in case the appellant was allowed to continue in the said post. He argued that the applicant's case is also similar as she was the only candidate fulfilling the requirements for the post of Senior Stenographer and no prejudice is caused to anybody else.

11. On the other hand, the learned standing counsel pointed out that the appointment of the applicant as Senior Stenographer is in gross violation of the existing recruitment rules and without due consideration of All India seniority list.

12. The short point for consideration in this OA is whether the applicant is entitled for promotion as Senior Stenographer as per the recommendations of the Departmental Promotion Committee.

13. Undisputedly, promotions are governed by the Recruitment Rules that are in force in an Organization. The respondents have furnished the Annexure R-9 recruitment rules for the post of Stenographer Grade-II. Column Nos. 11 and 12 of the said rules are reproduced hereunder:

“11. Method of recruitment whether : 100% by promotion, failing which by Direct by direct recruitment or by Recruitment promotion or by deputation/transfer and percentage of vacancies to be filled by various methods.

12. In case of recruitment by promotion/deputation/transfer/ grades from which promotion/ deputation/transfer to be made.

: From the grade of Jr. Steographer in Headquarters office and sub-ordinate Units/Institutes with five years regular Service in the grade.”

14. The applicant would contend that there is no mention of any All India seniority list in Column No.12 and that since she fulfills the requirement of 5 years regular service in the grade of Junior Stenographer, she is eligible for appointment as Senior Stenographer. However, from the very fact that all the eligible Junior Stenographers in the Headquarters Office as well as sub-ordinate Units/Institutes have to be considered for promotion, it goes without saying that such promotion has to be ordered taking into consideration the seniority of all the eligible candidates in Headquarters as well as in the subordinate Units/Institutes. The respondents have also furnished the Annexure.R-11 Seniority List of the Junior Stenographers in the Council as on 2.1.2012. As per this list, there are 13 Junior Stenographers and the applicant is placed at Serial No.12. Admittedly, there are 11 seniors who are working in various Regional Institutes as well as subordinate offices and also the Headquarters. Hence, these persons would be eligible for consideration. Admittedly, the DPC has not considered the other Junior Stenographers at Headquarters and other subordinate offices and has confined consideration to the applicant alone, which is irregular. The applicant would contend that the Junior Stenographers working in Regional Research Institutes, Aligarh, Patna, Mumbai, Srinagar, Bhadrak & CRIUM, Lucknow, have been re-designated as UDCs with effect from 17.2.2010 as per the OM of the DG, CCRUM. Hence, the Junior Stenographers in these units would not be eligible for consideration for promotion to the post of Senior Stenographers. If that be the case, the applicant has not placed any material to show that she has challenged the seniority list in which persons working at the aforementioned places have been included in the seniority list of Junior Stenographers. Further, even if the above contention of the applicant is considered, the Annexure.R-11 seniority list produced by the first respondent would show that there are other seniors to the applicant in Headquarters as well as CRIUM, Lucknow, and RRIUM, Chennai, who have not been redesignated as UDCs.

15. Having held that the applicant is not the only eligible candidate for the post of Senior Stenographer and that Junior Stenographers, senior to her in Headquarters and other unit offices, have not at all been considered for promotion, the judgment of the Hon'ble Supreme Court cited by the applicant in Para 10 supra would not be relevant as the Apex Court had allowed the appellant therein to continue in the post of Clerk on the ground that no prejudice was caused to anyone by his continuance. In the instant case, there are seniors to the applicant, who are eligible for promotion as Senior Stenographer and hence it cannot be said that prejudice would not be caused to anyone else by her appointment as Senior Stenographer.

16. Keeping in view the conspectus of the facts of the case, we have no hesitation in holding that the promotion of the applicant ordered by the office order dated 10.03.2012 is in violation of the recruitment rules in force and that the first respondent has acted without authority in holding the DPC for a post on the basis of local seniority at CRIUM, Hyderabad.

17. In this view of the matter, we hold that the OA is devoid of merits and is liable to be dismissed. Ordered accordingly. No order as to costs.

Dated: this the 5th day of December, 2017

Dsn

