

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 167 of 2013

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Goraga Yogiswara Rao, aged about 52 years, S/o Late Goraga Veerayya, resident of Type-II-13, Old A.G.Colony, Unit-IV, PO-GPO, Bhubaneswrr-751001 at present working as Stenographer in the office of the Dy. Chief Labour Commissioner (Central), Plot No. N-7/6 & 7, IRC Village, Behind ISKCON Temple, Nayapalli, Bhubaneswar-751015.

.....Applicant

VERSUS

1. Union of India, represented through Secretary, Ministry of Labour & Employment, Govt. of India, Shram Shakti Bhawan Rafi Marg, New Delhi-110001.
2. The Chief Labour Commissioner (Central), Ministry of Labour & Employment, Govt. of India, Shram Shakti Bhawan Rafi Marg, New Delhi-110001.
3. The Deputy Chief Labour Commissioner (Central), Plot No. N-7/6 & 7, IRC Village, Behind ISKCON Temple, Nayapalli, Bhubaneswar-751015.

.....Respondents.

For the applicant : Mr.S.Pattnaik, counsel

For the respondents: Mr.M.R.Mohanty, counsel

Heard & reserved on : 4.9.2019 Order on : 18.9.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs :

- "(i) Let it be declared/hold that letter/order dated 13/19.2.2013 which has been communicated vide letter dated 28.2.2013 under Annexure A/14 is illegal/inoperative/non sustainable in the eye of law and liable to be struck down.
- (ii) Let it be hold/declared that granting of 1st financial upgradation under ACP in favour of the applicant w.e.f. 10.7.2002, in treating the applicant as direct recruited in the post of Stenographer is fully justified within the tenor and four corners of the Recruitment Rule.
- (iii) Let it be declared/hold that, applicant is entitled to get the benefit of 2nd financial upgradation under MACP w.e.f. 10.7.2010.
- (iv) To allow the Original Application.
- (v) And pass such other order/direction as deemed fit and proper to the facts and circumstances of the case to give complete justice to the applicant."

2. The applicant, while working as a Lower Division Clerk (in short LDC) under the respondents, had appeared in a Limited Departmental Competitive Examination (in short LDCE) conducted for selection as Stenographer and being selected, he was appointed and joined as Stenographer on 10.7.1990. Treating such appointment as Stenographer as direct recruitment, the respondents allowed the benefit of the first Assured Career Progression Scheme (in short ACPS) to the applicant w.e.f. 10.7.2002, i.e. after completion of 12 years of service from the date of appointment as Stenographer, vide order dated 20.3.2007 (Annexure-A/8). Thereafter, the applicant's case for second upgradation under the Modified ACPS (in short MACPS) was processed after 20 years from the date of his appointment as Stenographer i.e. from 10.7.2010 and for this purpose, the Screening Committee meeting was convened and his case was recommended. But his case for second MACPS benefit was not approved by the respondent no.2 and the case was referred to the DOPT for clarification as to whether the appointment of the applicant as Stenographer is to be treated as direct recruitment or promotion. Then based on the clarification of the DOPT, letter of the respondent no.1 dated 21.5.2012 (Annexure-A/13) was issued stating that the appointment of a LDC as Stenographer through the LDCE will be treated as a promotion. The respondents, thereafter, rejected the claim of the applicant for the second upgradation benefit under the MACPS w.e.f. 10.7.2010 vide impugned order dated 28.2.2013 enclosing the order dated 19.2.2013 (Annexure-A/14). Being aggrieved by this order, the applicant has filed this OA claiming that his appointment as Stenographer is to be treated as direct recruitment.

3. The Counter filed by the respondents relied on the clarification of the DOPT dated 21.5.2012 (Annexure-A/13), copy of which is enclosed at Annexure-R/7 of the Counter, which states that the appointment of the shorthand and type knowing LDCs as Stenographer as per the Recruitment Rules is to be treated as a promotion and not direct recruitment. Hence, the impugned order dated 28.2.2013 (Annexure-A/14 of the OA and Annexure-R/9 of the Counter) was passed by the respondents rejecting the claim of the applicant for 2nd MACPS benefit w.e.f. 10.7.2010 on the assumption that the appointment of the applicant as Stenographer was a direct recruitment.

4. The applicant has filed the Rejoinder, reiterating the contention that the appointment as Stenographer is to be treated as direct recruitment. It is stated that as per the Recruitment Rules (Annexure A/12 of the OA), the appointment of Stenographer is by way of selection through a test from the shorthand knowing LDCs with five years of service and there is no recruitment by way of promotion/deputation/transfer etc. It is also stated that there is no DPC

existing for the purpose. It is stated that the Recruitment Rules clearly provide that the appointment in question is not a promotion. The applicant has cited the following judgments in support of his averment that his appointment was not a promotion :

- i) C.C.Padmanabhan -vs- Director of Public Instructions [AIR 1981 SC 64]
- ii) Union of India -vs- R.K.Puri [WP(C) No.8835/2003]

5. Learned counsel for the applicant was heard. He submitted that the appointment order dated 26.6.1990 (Annexure-A/4) as Stenographer stated 'appointment' and not 'promotion.' He also submitted that as per the DOPT's clarification on the ACPS vide the OM dated 10.2.2000 (Annexure-A/11) states at point no. 8, the appointment in question is to be treated as direct recruitment.

6. Learned counsel for the respondents was heard. He reiterated the averments in the Counter and stated that the decision has been taken in this case, based on the clarification dated 21.5.2012 received from the DOPT (Annexure-A/13).

7. Having regard to the submissions as well as the pleadings on record by both the parties, the short question involved in this OA is whether the applicant's appointment as Stenographer vide order dated 26.6.1990 (annexure A/4) is to be considered to be a direct recruitment or promotion from his earlier post of LDC to Stenographer. The applicant has contended that it is a direct recruitment mainly in view of the following reasons :-

- (i) As per the Recruitment Rules, post of Stenographer is to be filled up through LDCE from the LDCs with 5 years of experience.
- (ii) The initial appointment of the application on 22.11.1982 was LDC. Vide letter dated 25.4.1990 (Annexure A/3), respondents allowed the LDCs having 5 years of service to appear in the LDCE to select for posting as Stenographers. The applicant was selected and he was appointed vide order dated 26.6.1990 (Annexure A/4).
- (iii) The DPC for ACP benefit was convened and the applicant was allowed 1st ACP benefit after 12 years from the date of appointment as Stenographer i.e. from 7.10.2002 vide order dated 20.3.2007 (Annexure A/8), on the basis of the letter dated 8.3.2007 of the respondent No.2 (Annexure A/7), stating that since no DPC has been provided for selection of Stenographers from among the LDCs, it is to be treated as direct recruitment.
- (iv) Applicant's case was considered for 2nd financial upgradation under MACP after completion of 20 years of service from 26.6.1990 i.e. w.e.f. 10.7.2010 and his case was recommended vide letter dated 9.12.2010

(Annexure A/9). But it was not allowed and the DOPT's advice was sought for as to whether appointment as Stenographer from LDC is to be treated as promotion on direct recruitment.

(v) As per clarification of DOPT vide circular dated 10.2.2000 (Annexure A/11), the appointment of LDCs as Stenographer is to be treated as a direct recruitment.

8. The reply to the point No. 8 of the DOPT OM dated 10.2.2000 (A/11) regarding the question whether the appointment to a new service through a LDCE is to be treated as a promotion or direct recruitment, states as under:-

"If the relevant Recruitment Rules provide for filling up of vacancies of Stenographers Grade 'D'/Junior Stenographers by direct recruitment, induction of LDCs to the aforesaid grade through Limited Departmental Competitive Examination may be treated as direct recruitment for the purpose of benefit under ACPS. However, in such cases, service rendered in a lower pay-scale shall not be counted for the purpose of benefit under ACPS. The case of Grade 'D' employees who become LDCs on the basis of departmental examination stand on different footing. In their case, relevant Recruitment Rules prescribe a promotion quota to be filled up on the basis of departmental examination. Therefore, such appointments shall be counted as promotion for the purpose of ACPS. In such situations, past regular service shall also be counted for further benefits, if any, under the Scheme."

9. From the OM dated 10.2.2000 of the DOPT as extracted above, it is clear that the Recruitment Rules will determine whether the appointment in question is to be treated as a 'direct recruitment' or otherwise. If the rules provide for filling up of a post by direct recruitment through the LDCE, then the said appointment will be direct recruitment. The Recruitment Rules for the post of Stenographer under the respondents state that the post of Stenographer is filled up as under (Annexure A/12) :-

"By selection through a test in Stenography & type-writing from among the short-hand knowing LDCs working in the regional & field offices, who have put in at least Five years service in the grade and possess qualifications prescribed in column 7, failing which by direct recruitment."

10. From the above provisions in the Recruitment Rules, it is clear the filling up of the post of Stenographer through selection from among the eligible LDCs through LDCE, is not a direct recruitment, since it is mentioned that if the posts cannot be filled up by the eligible LDCs through LDCE, then it is to be filled up by direct recruitment. It is clear the Rules do not consider the filling up of the post of Stenographer by selection of LDCs through LDCE as the direct recruitment, which is to be resorted only on failure to fill up the post through LDCE mechanism. Hence, the rules clearly provide for the appointment of Stenographers through LDCE mechanism, failing which through direct recruitment. Hence, LDCE mechanism cannot be considered as direct recruitment as per the Recruitment Rules.

11. Since the Recruitment Rules do not treat that the filling up of the post of Stenographer through LDCE from among the eligible LDCs as direct recruitment, other grounds advanced by the applicant in the OA to argue that the appointment in question was direct recruitment, are not tenable. In the judgment in the case of C.C. Padmanabhan (supra), it is held that for promotion, the new post should be of higher category or higher grade of the same service or class. Since the Recruitment Rules in this OA provide for selection of the LDCs as Stenographers through LDCE, both the post of the LDC and Stenographer have to be considered to be of the same class. There is no rules or guidelines furnished before us to show that both the category of posts (i.e. LDC and Stenographers) belong to different class in terms of the ratio of the judgment in the case of C.C. Padmanabhan (supra).

12. In the OA No. 382/11 and other OAs decided by Jodhpur Bench and relied on in the Rejoinder, the dispute was about the appointment of the Extra Departments Agents (in short EDA) as a Group D employee under the Department of Posts, which has to be treated as a direct recruitment, since the EDAs are not government servants as per the rules governing their engagement/appointment under which it is a part time engagement. But the Group-D posts under the Department of Posts constitute a regular cadre of government servant and hence, the appointment of EDA to the post of Group-D post has to be treated as direct recruitment. Hence, the judgment in OA No. 382/11 will not be helpful for the applicant as it is factually different from the present OA. in which the initial appointment of the applicant was in the cadre of the LDCs.

13. In the judgment in the case of Shri R.K.Puri (supra), cited by the applicant in the Rejoinder, the dispute was whether selection of the employee as Sub-Inspector of CRPF though a selection process when he was a Stenographer, was a direct recruitment or promotion. It was found that the post of Sub-Inspector (Steno) is not a feeder post from Stenographer Grade III and as per the existing rules, the appointment as Sub-Inspector (Steno) can be considered as a promotion. In that case, the employee concerned after selection as Sub-Inspector had tendered technical resignation from his earlier post of Stenographer Grade III. In the present OA, there is nothing on record to show that the applicant had tendered technical resignation as LDC before joining as Stenographer. Hence, the cited case is factually distinguishable.

14. In view of the discussions above, we are of the view that the appointment of the applicant as Stenographer vide order dated 26.6.1990 (Annexure A/4) was a promotion for the purpose of the ACPS/MACPS in view of the provisions of the Recruitment Rules read with the clarification for point No. 8 in the DOPT

OM dated 10.2.2000 (Annexure-A/11). Hence, we are unable to accept the grounds advanced by the applicant before us to interfere in the decision of the respondents. The OA, being devoid of merit, is accordingly dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath