

2
46

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1487/2003

New Delhi, this the 9th day of August, 2006

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri V.K. Agnihotri, Member (A)**

Corrected vide
order dated 8.8.07
in MA 1639/2006.

24807

B.M. Bakshi,
S/o of Late Sh. Omkar Nath Bakshi,
Aged about 51 years
R/o 17-1/C, Kali Bari Marg,
P&T Quarters, New Delhi-110001
PS, Business Development Directorate,
Malcha Marg, New Delhi-110021.

.....Applicant.

(By Advocate: Sh.K.K. Sharma with Sh. G.S. Lobana)

VERSUS

1. Secretary, Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi.
2. Asstt. Director General (SGP), Department of Posts,
Dak Bhavan, New Delhi.
3. The Chief Postmaster General, J&K Circle,
Srinagar-1900001.
4. Smt. Usha Suneja, PS to PMG,
Delhi Postal Circle, Meghdoot Bhavan,
Link Road, New Delhi-110001.

.....Respondents.

(By Advocate: Sh. R.N. Singh)

ORDER

HON'BLE SHRI V.K. AGNIHOTRI, MEMBER (A) :

The applicant has challenged the decision of the respondent in Order No. 11-28/2001-SP6 dated 30.05.2003, wherein his request, based on the order of this Tribunal in OA 3261/2001 dated 25.11.2003, for promotion as senior PS ^{PA} w.e.f. 2001, when his junior was promoted, has been rejected.

He has also solicited confirmation of his promotion as Stenographer Grade II w.e.f. 1980 and Stenographer Grade I from 1985.



(47)

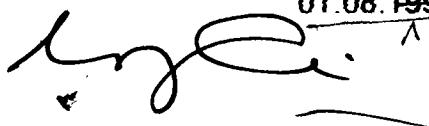
2. In this Tribunal's order dated 25.1.2003, the following directions were given to the respondent:

- (a) The case of the applicant should be considered for promotion in accordance with the relevant recruitment rules and instructions that have been issued from time to time.
- (b) The seniority of the applicant should be kept in view while considering his case for promotion even from back date.
- (c) The applicant subject to suitability should not be denied the benefits that are due to the persons junior to him.

3. In the light of these directions of this Tribunal, the matter was examined by J & K Postal Circle, which was the Cadre Controlling Authority of the PAs working in J & K. They considered the question of promotion and seniority of the applicant in the grades of stenographers by holding a review meeting of the DPC on 08.05.2003. The DPC recommended placement of applicant in Grade II and to Grade I stenographer w.e.f. 15.03.2001 and 20.09.2002, respectively, above his juniors. CPMG, J & K circle accepted the recommendation of the DPC. Thereafter, the impugned order was accordingly issued on 30.05.2003, wherein it was stated that further promotion of the applicant to grade of Senior PA, will be considered on the basis of his seniority in Grade I along with other stenographers in Grade I in others circles on all-India basis. Aggrieved by the impugned order of the respondents, this OA has been filed.

4. The applicant has advanced the following arguments in support of contention:

- (1) applicant joined as Stenographer Grade III (Rs. 330-560) in 1975 and was placed in Selection Grade (Rs.425-640) w.e.f. 01.08.1995. He was promoted as Senior Personal Assistant on



11.01.1994 by all India regular DPC. He was again promoted as Senior Personal Secretary on 26.09.2001 being at Serial No. 22 in all India seniority list of Senior Personal Assistants. But on 28.11.2001 the respondents reverted him to the post of Stenographer Grade III for the alleged mistake of department in 1993 in promoting the applicant and Sh. A.A. Khan by equating their pay scale of Rs. 425-640 as equivalent to Stenographer Grade II (Rs. 425-700). The applicant had never submitted any information, right or wrong, to the J & K Postal Circle for his promotion to the post of senior PA in 1994.

- (2) In the case of **Sh. Ashraf Ali Khan Vs. Union of India and Ors**, the Chandigarh Bench of Central Administrative Tribunal (TA 36/JK/2004) in its order dated 05.05.2006, adjudicated in a matter very similar to that of the applicant, except for the fact that the applicant therein had retired. The respondents were directed to consider the case of the applicant therein for the post of Senior Private Secretary.
- (3) In **ML Raja Ram Naik & Ors. vs. the Additional Director, CGHS, Bangalore & Ors**, the Central Administrative Tribunal (Full Bench), Bangalore, (AT Full Bench Judgement, 1997-2001, Page 194), it was held that appointment to the higher scale in the same post amounts to promotion.
- (4) Sh. K.C. Ghosh, junior to the applicant, was promoted as Senior Private Secretary vide respondent's order dated 28.11.2001 (Annexure A/7). He has not been impleaded as a private respondent because he has since retired.
- (5) The applicant's case is similar to that of Smt. Usha Suneja (respondent no. 4). She was allowed to officiate as Stenographer Grade II from 21.03.1987 to 29.8.1991, purely on temporary, ad



hoc and officiating basis. She was irregularly promoted to Grade I w.e.f. 30.08.1991 purely on temporary, *ad hoc* and officiating basis. She was promoted irregularly to Grade I on regular basis w.e.f. 19.08.1993 and was finally again irregularly promoted as senior PA from 02.12.1994. She is junior to applicant as per the lists of Senior PAs.

5. The case of the respondents is that DPC had recommended to include the name of the applicant in the select panel of senior PA for the year 1992-1993 on the basis of erroneous information furnished at that time by J & K Postal Circle, indicating that the applicant was eligible to be considered for promotion to the Grade of Senior PA. Subsequently, on the receipt of a representation, the matter was got inquired into by the Department. It was found that the applicant was appointed as Stenographer Grade III on 14.1.1975 in the then pay scale of 330-560. The applicant was promoted as Selection Grade Stenographer Grade III w.e.f. 01.08.1995 on 1985 ad hoc basis. The Selection Grade is only financial upgradation to the next pay scale and not promotion to next higher post. It has the duties and the responsibilities of the Stenographer Grade III. The applicant was, therefore, not eligible to be considered for promotion to the grade of senior PA in the year 1992-93 in accordance with eligibility criteria laid down in the Recruitment Rules, as he had never worked as either Stenographer Grade I or Grade II on regular basis. Keeping in view these facts, a show cause notice was issued to the applicant vide Memo dated 14.09.1994, asking him to explain as to why he should not be reverted to his substantive grade, being ineligible for consideration for promotion to the post of senior PA. Aggrieved by the aforesaid show cause notice, the applicant filed a Writ Petition in J and K, High Court bearing no. 233/1998 in SWP No. 2872/1994. The Hon'ble High Court in its interim order dated 21.10.1994 directed the



Department not to revert the applicant herein from the post he was holding. Finally, the Hon'ble High Court of J & K, dismissed the aforesaid Writ Petition vide order dated 13.10.2000. In the interregnum i.e. from 1994-2000, the applicant continued on the post of senior PA by virtue of the said order of the Hon'ble High Court. On receipt of the order of the Hon'ble High Court, a DPC was convened to review the proceedings of the meetings held on 01.12.1993. The DPC recommended deletion of the name of the applicant from the select panel for promotion to the Grade of Senior PA for the year 1992-93. The competent authority accepted the recommendations of the Review DPC and reversion order was accordingly issued vide Memo dated 28.11.2001. The applicant then filed OA No. 3261/2001 in this Tribunal, praying interim stay on the reversion order, pending a decision of the Tribunal. Based on the interim order of the Tribunal dated 05.12.2001, the reversion of applicant was further deferred till the receipt of this Tribunal's order dated 25.11.2003 as mentioned earlier.

7. According to the respondents, as per the Recruitment Rules prevailing at that time, a stenographer should have had two years of regular service in Grade I or seven years of combined service in Grade I and II taken together, in order to be eligible for consideration for promotion to the Grade of Senior PA. According to current Recruitment Rules, Stenographer Grade I with three years' regular service alone are eligible for promotion as Senior PA, the present designation of which is Senior Private Secretary. Since the applicant was not having the required service, even after his seniority was revised, he was not eligible for promotion as Senior PA. He would be considered for promotion to the Grade of Senior PA after he becomes eligible for it as per the recruitment rules in force.



8. The respondents have further averred that up to 1999 there was no post of Stenographer Grade II in J & K Circle, till these posts were created after issue of guidelines by the DoPT. Previously, there were only posts of Selection Grade III stenographers, which is not the same thing as Stenographer Grade II. But in Delhi Circle, there were already four Grade II stenographers before implementation of the above orders. Though respondent no. 4 (Smt. Usha Suneja) was allowed to officiate on *ad hoc* basis as Stenographer Grade II in Delhi Circle w.e.f 21.03.1987 initially; it was later regularized from the same date. It is true that she was promoted as Stenographer Grade I on *ad hoc* basis from 30.08.1991, but the said appointment was subsequently regularized by the competent authority on 19.08.1993. Her promotion to Grade of Senior PA in December 1994, was on the basis of her continuous sever years regular service as Stenographer Grade II and Grade I.

9. The applicant has filed a rejoinder in which he has reiterated the stand taken by him in the OA.

10. We have considered the rival submissions and contentions put forth by the learned counsel for the parties and perused the material on record.

11. According to the respondents, the promotion given to the applicant in 1994 was a mistake. The Government, no doubt, have the inherent right to correct bona fide mistakes. However, the affected party, unless he has contributed to the mistake through some commission or omission, has his own vested rights. This point of view has been upheld in several decisions of the Apex Court judgments, such as **AK Sharma and Anr. v. Union of India and Anr.**, 2000 (1) AISLJ 257; **Union of India & Ors. v. Smt. Sujatha Vedachalam & Anr.**, JT 2000 (6) SC 217; and **State of Haryana & Anr. v.**



Kamal Singh Saharwat & Ors., 1999 (8) SCC 44. At the same time, it is also important to remember that if a benefit has been enjoyed by a person for a long time, even though erroneously, it would not be appropriate to withdraw it. In several cases, the Apex Court has held that withdrawal of such benefits after a long period is not in order [**MA Hameed v. State of AP & Anr.**, 2001 (7) SLR 718 and then **Sadhu Singh & Ors. v. State of Punjab** (Punjab & Haryana High Court), 2001 (6) SLR 677]. In the present case, the applicant had been in the pay scale of Senior PA for more than 10 years, before it was ordered to be withdrawn.

13. We also find that there are similar cases in which either the respondents have provided relief through retrospective regularization (Smt. Usha Suneha), or the matter has been adjudicated by the courts (Sh. Ashraf Ali Khan and Sh. SA Shafat). The prayer of the applicant needs to be examined in the light of these cases.

14. In the result, the OA is partly allowed and the matter is remitted back to the respondents with the direction that they should examine the prayer of the applicant in the light of the observations and findings recorded by us above and pass a reasoned and speaking order within a period ^{of 3} ~~three~~ months from the date of receipt of a copy of this order, under intimation to the applicant. It goes without saying that in the event of the respondents deciding in favour of the applicant, he shall be entitled to all consequential benefits. There will be no order as to costs.



(V.K. Agnihotri)
Member (A)

/lg



S. Raju
(Shanker Raju)
Member (J)