

M. Hara Bhupal

Vs

Union of India and Others

SLP (C) No. 3322 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

24.02.1997

ORDER

1. This special leave petition arises from the judgment of the Central Administrative Tribunal, Hyderabad, made on 24-12-1996 in OA No. 1333 of 1995.

2. The admitted position is that the petitioner, while working as Section Officer in the Intelligence Bureau, Ministry of Home Affairs, Government of India, came on deputation to the CAT, Hyderabad Bench on 14-6-1989 as Private Secretary to the Member. Thereafter, he sought absorption in the services of the CAT as Private Secretary. There was a long-drawn correspondence on this issue and ultimately an option was given to him to get absorbed as Section Officer. Accordingly, he opted for and accepted unconditionally his absorption as a Section Officer in the CAT. He came to be absorbed w.e.f. 4-11-1996. He filed an OA in the Tribunal claiming seniority with reference to the date of his promotion as Section Officer in his parent department or alternatively, from the date of his deputation from 14-6-1989 contending that he had given his option subject to protection of his seniority. The Tribunal has pointed out in its order that there are two different sets of rules for the recruitment of Private Secretaries and Section Officers. The post of Private Secretary is governed by the rules called Central Administrative Tribunal Stenographers' Services (Group B and C Posts) Recruitment Rules, 1989. Equally, there are rules issued by the President under the Act governing the ministerial staff. They are called the Central Administrative Tribunal (Group B and C Miscellaneous Posts) Recruitment Rules, 1989. The posts of the Private Secretary are covered by the Stenographers' Services Rules while the posts of Section Officer are covered by the Ministerial Staff Rules. Rule 5(1) of the former Rules read as under :

"5. (1) Notwithstanding anything contained in the provisions of these rules, the persons holding the posts of Private Secretary.. in the CAT on the date of commencement of rules ... on deputation basis and who fulfil the qualifications and experience laid down in these rules and who are considered suitable by the Departmental Promotion Committee shall be eligible for absorption/regularisation in the respective grade subject to the condition that such persons exercise their option for the absorption and that their parent department does not have any objection to their being absorbed in the Tribunal."

The Tribunal has pointed out that the appointment of the appellant to the post of Private Secretary was made by way of transfer on deputation and is governed by the conditions mentioned in Annexure I to the Rules. The Tribunal ordered as under :

"The 'CAT (Group "B" & "C" Miscellaneous Posts) Recruitment Rules, 1989' were

made separately vide Notification dated 20-9-1989 by the Department of Personnel and Training. These rules make separate provisions for the posts of 'Court Officers/Section Officers'. In the Schedule the post has been designed as Group 'B' Gazetted in the pay scale of Rs. 2000-3500. Only to that extent it is similar to Private Secretary. However, the mode of recruitment is different. The method prescribed is :

'(i) 50% by direct recruitment failing which by transfer/transfer on deputation.

(ii) 50% by promotion failing which by transfer on deputation.'

The entry in column 12 on which an argument of the applicant has been built, insofar as material here, provides as follows :

(ii) Transfer on deputation/transfer :

Person working under Central/State Government/High Court/Sub-ordinate Courts.

(a) (i) holding analogous post on regular basis, or

(ii) holding posts of Assistant or equivalent in the scale of Rs. 1400-2600 with 8 years' regular service.

(b) possessing the educational qualifications prescribed for direct recruits in column 8.'

The appointment is through selection by the DPC. Rule 5 of the aforesaid rules also makes provision for absorption/regularisation of Court Officers/Section Officers in the same grade subject to exercising option and no objection of parent department. The rule applies to those who held the said post on the date of commencement of the rules either on transfer or on deputation basis. The qualifications prescribed for direct recruitment in column 8 for these posts are :

'Essential.

Degree of a recognised University or equivalent.

Desirable.

Degree in law.'

The picture that emerges on comparison of the two sets of recruitment rules is as follows :

'(i) The two posts, namely of Private Secretary and Section/Court Officer are governed by separate set of recruitment rules.

(ii) The mode and method relating to recruitment to these posts are different in material requirements.

(iii) The educational qualifications are different'.

Thus we have no hesitation in holding that these are two distinct posts. The eligibility criteria for absorption vide Rule 5 of both the sets of Rules lays down two essential conditions, namely, that on

the date on the date on which the two sets of Rules were brought into force the incumbent should have been holding the same post and would be eligible to be absorbed in the same grade. In the context although the scale of pay of the post of Private Secretary and Section Officer may be the same and both may be in the feeder cadre for further promotion yet the words same grade occurring in Rule 5 of the respective Recruitment Rules must mean the same post to which the particular Recruitment Rules would apply. Interchangeability in the two posts cannot be read in the Rules. In other words a Section Officer could be eligible to be absorbed only as Section Officer and a Private Secretary only as Private Secretary subject to the condition of holding the post on the date of commencement of the respective Rules.

It is submitted by the applicant that notwithstanding that he was holding the post of Private Secretary he should be deemed to be in equivalent grade or in analogous post and on that basis he could be absorbed even as Section Officer so that he would not lose the benefit of past service for seniority. The applicant seeks to rely on the decision of the Supreme Court in Hari Nandan Sharma Bhatnagar v. S. N. Dixit [(1969) 2 SCC 245 : AIR 1970 SC 40]. It was held that case that the dictionary meaning of 'grade' is rank, position in scale, a class or position in a class according to the value. The term however was explained in A. K. Subraman v. Union of India [(1975) 1 SCC 319 : 1975 SCC (L&S) 36 : AIR 1975 SC 483] as having various shades of meaning in the service jurisprudence, sometimes used to denote a pay scale and sometimes a cadre. It is relevant to note that under the Stenographers' Service Recruitment Rules, 1989, 58 posts of Private Secretary were specified and under the Miscellaneous Posts Recruitment Rules, 1989, 91 posts of Court Officer/Section Officer were specified subject to variation depending on workload. In that sense posts of Private Secretary and Court Officer/Section Officer would fall in two separate cadres. The word 'cadre' means permanent establishment of regiment forming nucleus for expansion at need and it does not mean post but strength of the establishment (See D. G. of Health Services v. Bikash Chatterjee [AIR 1969 Cal 525 : 73 CWN 249].) We are therefore unable to reach any element of interchangeability in the two posts for the purpose of absorption in the post of Section Officer as analogous to absorption in the post of Private Secretary for reckoning seniority. The argument of the applicant therefore cannot be accepted."

3. On the basis of the above distinction, the Tribunal has rightly pointed out that the method of recruitment to the two categories of posts are different and distinct and, therefore, both the posts cannot be treated to be analogous.

4. Shri D. Prakash Reddy, learned counsel appearing for the petitioner has stated that the Government in DOP&T O. M. No. AB14017/71/89-Estt., dated 3-10-1989 has prescribed the procedure to be followed in cases where the appointment is to be made by transfer or transfer on deputation basis. The consolidated instructions indicated in para 5 of "Analogous Posts" and items (i) to (iv) indicated thereunder read as under :

"Whether the recruitment rules for a post prescribe 'transfer on deputation/transfer' as a method of filling up the post, they generally contain an entry in column 12 of the standard form of schedule stating inter alia that the 'transfer on deputation/transfer' shall be made from amongst the officers holding analogous posts on regular basis under the Central/State Governments. This Department has been receiving references from various Ministries/Departments asking for the definition of 'analogous posts'. It has, therefore, been considered appropriate to lay down the following criteria for determining whether a post could be treated as analogous to a post under the Central Government :

(i) Though the scale of pay of the two posts which are being compared may not be identical, they should be such as to be an extension or a segment of each other, e.g. for a post carrying the pay scale of Rs. 3000-5000, persons holding posts in the pay scale of Rs. 3000-4500 will be eligible.

(ii) Both the posts should be falling in the same group of posts as defined in the Department of Personnel and Administrative Reforms Notification No. 13012/2/87-Estt. (D), dated the 30th June, 1987, viz., Group 'A', Group 'B' etc.

(iii) The levels of responsibility and the duties of the two posts should also be comparable.

(iv) Where specific qualifications for transfer on deputation/transfer have not been prescribed, the qualifications and experience of the officers to be selected should be comparable to those prescribed for direct recruits to the 'post where direct recruitment has also been prescribed as one of the methods of appointment in the recruitment rules'.

Where promotion is the method of filling up such posts, only those persons from other Departments may be brought on transfer on deputation whose qualifications and experience are comparable to those prescribed for direct recruitment for the feeder grade/post from which the promotion has been made."

5. He contents that since the analogous posts, i.e., Private Secretaries and Section Officers, carry, admittedly, the same scale of pay, the petitioner is entitled to be transposed and treated as SO right from the date of the absorption (sic deputation) and, therefore, he is entitled to seniority from the date when he was holding the post of SO in his parent department or alternatively from the date of his deputation. We find no force in the contention. It is true that under the above instructions, as indicated above, if the post held in the parent department from which he came on deputation and the post the incumbent holds in the deputation service are analogous, certainly he is entitled to have the benefit of the above instructions. But when candidates are governed by two different sets of rules in the deputation service, even if they are analogous posts, one cannot be transposed from the service of one set of rules into the service of another set of rules. The object of the rules made was to regulate the conditions of service in each cadre/grade and to provide method of direct recruitment or by promotion from one ladder to the higher ladder. If the adoption of this transposition by analogous situation is given acceptance, necessarily one can, by manipulation, get into another service and seek promotional avenues or recruitment by back-door method, which can never be given acceptance. Under those circumstances, we think that the Tribunal was right in not accepting the contention of the petitioner that he should be given the seniority as Senior Officer w.e.f. the date when he was holding that post in the parent department or from the date of his deputation to the CAT, though, admittedly, he had not held the post as Section Officer in the CAT.

6. It is then contended by the learned counsel that since the petitioner had given his option conditionally, he cannot be put in a disadvantageous position than those who equally hold the analogous post, namely, Section Officers, Private Secretaries and the Stenographers who perform the same set of responsibilities and duties. Therefore, Item 2 of the analogous position explained in the above OM would be applicable to the petitioner to the same extent. We find no force in the contention to give acceptance. Merely because the persons performing the analogous responsibility are governed by two sets of rules, they cannot be treated to be on a par for the purpose of giving

seniority.

7. It is then contended that the direction issued by the Tribunal in the operative part of the order has been limited to a period mentioned thereunder. By operation thereof, the petitioner would be denied the benefit which may be extended. We find force in the contention. It is seen that in para 61(7) of the order, the Tribunal has stated that "subject to applicant seeking repatriation within two months from today and the steps as may be taken by Respondents 1 to 4 in that behalf his absorption as Section Officer in CAT w.e.f. 11-6-1994 shall otherwise stand undisturbed and he shall be entitled for fixation of his seniority accordingly as per the rules". In view of the pendency of the matter, we extend two months' time as given by the Tribunal from today. It is open to him to avail of the directions issued by the Tribunal or get himself repatriated to the parent department. It is needless to mention that in the event of his being repatriated, he is entitled to all the benefits in his parent on a par with his immediate juniors.

8. The special leave petition is accordingly dismissed.