

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On: 31st August, 2010*
Judgment Delivered On: 1st September, 2010

+ **W.P.(C) NO.3280/2010**

RAM SHANKAR SHUKLA & ORS. Petitioners
Through: Mr.C.Hari Shankar, Advocate
Mr.Jagdish N., Advocate

versus

UOI & ORS. Respondents
Through: Mr.R.V.Sinha and Mr.A.S.Singh,
Advocates for R-1

Mr.A.K.Bhardwaj, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Vide order dated 22.1.2010 OA No.2145/2009 filed by the writ petitioners has been dismissed.
2. Briefly stated, there exist two different cadres under the Indian Railways; those forming the secretarial staff and those working as stenographers. The secretarial staff is governed by the Railway Board Secretariat Service Rules 1969 (herein after referred to as the RBSS Rules). The stenographers are governed by the Railway Board Secretariat Stenographers Service Rules 1971 (herein after referred to as the RBSSS Rules).
3. The origin of the dispute is Rule 8(3) of the RBSS

Rules which reads as under:-

“8(3) Vacancies in Grade I shall be filled by promotion of permanent officers of the Section Officers Grade who have rendered not less than eight years approved service in that grade and of permanent officers of the Grade A of the Railway Board Secretariat Stenographers Service who have rendered not less than eight years approved service in that grade and have worked as Section Officers for at least a period of one year in accordance with the proviso to rule 6 and included in the Select List for Grade I of the Service prepared under sub-rule (5).

Provided that an officer of the Grade A of the Railway Board Secretariat Stenographers Service who has not worked as a Section Officer for the said period of one year shall also be considered for promotion to Grade I if he is otherwise eligible for such promotion and the Central Government in the Ministry of Railways, for reasons to be recorded in writing, are satisfied that such a person was not appointed to the Section Officers Grade owing to exigencies of Service.”

4. A perusal of Rule 8(3) and the proviso thereof would evidence that vacancies in Grade I have to be filled by promotion. Feeder cadre are officers working as Section Officers Grade A against permanent posts having 8 years approved service in the grade as also officers in Grade A of the RBSSS Rules having 8 years approved service in the grade and have worked as Section Officer for at least one year. Thus, the two cadres merge for promotion in Grade I posts. It be noted that Grade I posts are those of Under Secretaries. Further, as per the Proviso Senior Stenographers Grade A who have not worked as Section Officers for a period of one year would also be eligible if an order is passed recording satisfaction that a candidate could not work as Section Officer owing to exigencies of service.

5. It has to be noted that the rule contemplates 8 years approved service in the grade. Rule 2(c) of the RBSS

Rules 1969 defines approved service in relation to a grade as under:-

“2(c)(i) in respect of an officer recruited directly to that grade, the period or periods of regular service rendered in that grade, including the period or periods of absence during which he would have held a post on regular basis in that grade but for his being on leave or otherwise not being available to hold such post, from the first day of July of the year, following the year in which the examination for direct recruitment was held;

(ii) in respect of an officer recruited to that grade through departmental examination, the periods or periods of regular service rendered in that grade including the period or periods of absence during which he would have held a post on regular basis in that grade, but for his being on leave or otherwise not being available to hold such post, from the first day of July of the year for vacancies of which such examination was held;

(iii) in respect of an officer recruited to that grade on the basis of length of service in the lower grade, the period or periods of regular service rendered in that grade, including the period or periods of absence during which he would have held a post on regular basis in that grade, but for his being on leave or otherwise not being available to hold such post, from the first day of July of the year for which the recruitment was made;

Provided that where there is a delay of more than ninety days in joining the post on appointment, in any of the cases mentioned sub-clause (i), (ii) or (iii), such delay should not be due to any fault on the part of the officer,”

6. It is apparent that approved service in relation to a grade means service rendered on regular basis in a grade. Thus, as per Rule 8(3) of the RBSS Rules 1969, eligibility for being considered for promotion in Grade I (Under Secretary) would be 8 years permanent service rendered on regular basis by Section Officers or 8 years service as Stenographers in

Grade A.

7. Aforesaid legal position is not in dispute.
8. What then is the dispute?
9. Two in number.
10. Firstly, whether on facts it can be held that all Stenographers have to be treated as holding Grade A posts or not.
11. As noted by the Tribunal in para 8 of the impugned decision, as per RBSSS Rules some Stenographers were in Grade A posts and some were in Grade B posts. Further, as noted by the Tribunal Stenographers Grade A were in the pay-scale Rs.650-1200 and Stenographers Grade B were in the pay-scale Rs.650-1040. With the promulgation of revised pay-scales as recommended by the 4th Central Pay Commission, with effect from 1.1.1986 all Stenographers were merged in one pay-scale Rs.2000-3500 which was also the pay-scale of Senior Personal Assistants, which post is a Grade A post.
12. On 18.6.1991 an office order was issued as under:-
"Sub:Revision of nomenclature of various grades in Railway Board Secretariat Stenographers' Service.

The question of revision of the existing designation of the four grades of Central Secretariat Stenographers Service (CSSS) as they do not truly represent the functions and status of the posts have been under consideration of the Ministry of Personnel, Public Grievances & Pension (Department of Personnel & Training) for some time past. The matter has also been raised by the staff side before the Departmental Council (JCM) and discussed in its meeting.

The matter has been considered carefully in the Deptt. of Personnel and Training in the light of discussions held in the meetings of the Departmental Council and other relevant material.

Based on the above decision of the Department of Personnel and Training, it has been decided that the

revised designation of the four grades of RBSSS will be as follows:

No. Grade & Scale of Pay	Existing Designation	Revised Designation
P.S. Grade (Rs.3000-4500)	Private Secretary	Principal Private Secretary
Gr.A&B (Merged) (Rs.2000-3500)	Sr.Personal Assistant.	Private Secy.
Gr. 'C' (Rs.1640-2900)	Personal Assistant	Personal Assistant
Gr. 'D' (Rs.1200-2040)	Stenographer	Stenographer

The necessary amendment in the RBSSS Rules would be made in due course. The above decision will be effective from the date of issue of DOP's OM No.20/32/89-CS.II) dt. 15.5.91."

13. It is apparent that the office order was issued because of the fact that with the implementation of the pay-scales as per the 4th Central Pay Commission all Stenographers were placed in the pay-scale Rs.2000-3500 and were called Senior Personal Assistants and in the Secretariat posts in the same pay-scale were Grade A posts. As noted above, hitherto for Stenographers were in Grade A and Grade B i.e. in the pay-scale Rs.650-1200 (Grade A) and Rs.650-1040 (Grade B). Additionally, due to the reason the RBSSS Rules 1971, vide Rule 3 declared that composition of the service shall be in four grades as under:-

<u>Grade</u>	<u>Classification</u>
Grade A Grade B	Railway Board Secretariat Service- Class II
Grade C	Railway Board Secretariat Service Group B
Grade D	Railway Board Secretariat Service Group C

14. Further, the Schedule referable to the composition of service was specified as per Sub-Rule 2 of Rule 3 by stating that the posts specified in the First Schedule to the Rules shall constitute Grade A and those specified in the Second Schedule shall constitute Grade B. The First Schedule and the Second Schedule reads as under:-

“THE FIRST SCHEDULE

Duty posts included in Grade A of the Railway Board Secretariat Stenographers Service

1. All posts of First Personal Assistant to the Minister of Railways.
2. Posts of Private Secretary to Deputy Minister for Railways.
3. Posts of Private Secretary to Chairman, Railway Board ex-officio, Principal Secretary to the Government of India.
4. Post of Private Secretary to Financial Commissioner, Railway Board, ex-officio Secretary to the Government of India.
5. Post of Private Secretary to Members, Railway Board, ex-officio Secretary to the Government of India.
6. Posts of Private Secretary to Additional Member, Railway Board, ex-officio Additional Secretary to the Government of India.
7. Posts of Private Secretary to Director General Vigilance, Railway Board, ex-officio Additional Secretary to the Government of India.
8. Post of Private Secretary to such other officers as are ex-officio Additional Secretary or above to the Government of India.

THE SECOND SCHEDULE

Duty posts included in Grade B of the Railway Board Secretariat Stenographers Service

1. All posts of Assistant Private Secretary to the Minister for Railways.
2. All posts of Senior Personal Assistant to such Directors, Railway Board and other officers as are in

the scale of Rs.2500-125-2750.

3. Post of Private Secretary to Secretary, Railway Board, ex-officio Joint Secretary to the Government of India.”

15. The question which arose before the Tribunal was whether without carrying out the necessary amendments in the RBSSS Rules 1971 in respect whereof it was cautioned vide office order dated 18.6.1991 (vide last paragraph thereof) that the rules need to be amended. Additionally the question whether merely because Stenographers Grade B and Grade A were merged in the same pay-scale which happened to be the pay-scale applicable to Grade A posts could it be said that Stenographers Grade B (till 4th Pay Commission Recommendations were implemented) could be treated as having approved service in the grade (the requirement of Rule 8(3) of the RBSS Rules) by reckoning their service rendered as Stenographers Grade B prior to 1.1.1986. This was the first question which arose and in respect thereof we note that the Tribunal has noted the contention of the petitioners in para 4 as under:-

“4. They have specifically stated that the private respondents were appointed as Grade ‘B’ in the RBSSS. In order to substantiate his arguments, learned counsel for the applicants invited our attention to page 95 at 112 to show that as per the Railway Board Secretariat Stenographers Service Rules, 1971, under the 5th Schedule para 3 deals with only maintenance of Select List of Grade-B. The private respondents were appointed as per the select list of Private Secretaries in terms of clause (a) of sub-para (1) of Regulation 3 of Fifth Schedule to the Railway Board Secretariat Stenographers Service Rules, 1971 (page 136). They have thus submitted that since the private respondents were appointed against Rule 3(1)(a) of the Fifth Schedule to the RBSSS Rules 1971, it is clear that the respondents were promoted only to Grade-B.”

16. The Tribunal has simply held that with the recommendations of the 4th Central Pay Commission being implemented, Stenographers were placed in the pay-scale of Rs.2000-3500 and hence would be treated as in Grade A.

17. Learned counsel for respondents No.1 to 3 conceded that the Tribunal has twisted the submission urged by the petitioners who were the applicants before the Tribunal and has ignored the legal position noted by us in paras 2 to 6 above and with reference to the same we find that the Tribunal has just not decided what would have to be treated as rendering *approved service in the Grade*. Further, the Tribunal has not dealt with the consequence of the RBSSS Rules not being amended as was required to be done in terms of the office order dated 18.6.1991.

18. Since we are remanding the matter to the Tribunal with a direction to deal with the issues which arise for consideration and as noted by us herein above, we speak no further except to note as aforesaid to bring out the legal issue No.1.

19. The second issue which arose for consideration before the Tribunal was whether the Proviso to Rule 8(3) of the RBSS Rules stood complied with. As noted above, Stenographers Grade A were eligible to be inducted in Grade I if they had worked for one year as Section Officer which could be waived upon proof of a person otherwise eligible, not having worked as a Section Officer on account of exigencies of service.

20. The Tribunal has returned a finding in favour of the private respondents and we find that in so doing, the Tribunal has ignored a plethora documents and especially the office note dated 30.7.2007 which the petitioners obtained through an RTI query which shows that the office was aware that as a

ritual it was being treated that Stenographers were not being posted as Section Officers and was being so recorded.

21. The Tribunal has gone by a note dated 14.8.2007 penned by the Secretary Railway Board, in respect whereof there is a controversy for the reason the Secretary Railway Board has referred to the exigencies of service with reference to a quota available for Stenographers to be promoted as Section Officers which issue became redundant when the quota was abolished in the year 1971.

22. We do not know what would be the corresponding pages of the record of OA before the Tribunal, but we note that there are serious issues relating to the factual situation arising out of the notings from page No.407 to 436 of the record of the instant writ petition and in respect whereof it needs to be adjudicated whether there was any basis for the respondents No.1 to 3 to enblock record that on account of exigencies of service Stenographers could not be posted as Section Officers. It be noted that the Tribunal has not noted any objected fact with respect whereto it could be said that on account of exigencies of service Stenographers could not function as Section Officers.

23. Like on the first issue, we speak no more on the second issue for the reason we find that the Tribunal has not adverted to the factual matrix before it and has rendered a perfunctory finding.

24. We dispose of the writ petition by setting aside the impugned order dated 22.1.2010 and remand the matter before the Tribunal with a direction that OA No.2145/2009 shall be decided afresh.

25. At the remanded stage the Tribunal would settle the issues required to be adjudicated upon and after noting the relevant rules applicable, the facts which stand attracted

thereto and culling out the legal norm applicable giving reasons for the same, would thereafter decide the matter with logical reasoning.

26. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

SEPTEMBER 01, 2010
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