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

+ **W.P.(C) 7446/2016**

Date of decision: 20th October, 2016

**CENTRAL SECRETARIAT STENOGRAPHERS SERVICE
ASSOCIATION AND ORS** Petitioner

Through Mr. Padma Kumar S. Advocate.

versus

UNION OF INDIA AND ANR Respondent

Through Mr. Dev P. Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL)

Having heard counsel for the petitioner, we are not inclined to interfere with the impugned order dated 27th January, 2016 passed by the Central Administrative Tribunal, Principal bench, New Delhi.

2. The contention of the petitioners is that the petitioners are entitled to notional fixation of pay, effective from 1st July of the year to which the select list pertains, notwithstanding the date specified in Rule 2(c) of the Central Secretariat Stenographers Service Rules, 1962 under which the term “approved service” is defined.

3. The definition of term “approved service” as per Rule 2 (c) of the

Central Secretariat Service Rules, 1962 is as under:-

“(c) “approved service” in relation of any Grade means

(i) in respect of an officer recruited directly to that grade, period or periods of regular service rendered in that grade, including 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, period or periods of regular service rendered in that grade, including 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;”

The aforesaid clause specifically defines “approved service” to mean the period or periods of regular service rendered in that particular grade. Approved service, under clause (ii) relating to departmental candidates, includes the period not only of regular service rendered in the grade but also the period on or after the 1st day of July of the year of vacancies for which the examination was held. Merely because the select list is published would not mean that the persons mentioned in the select list have rendered regular service, for appointment is made subsequent to publication of the select list. Nevertheless, clause (ii) quoted above extends the benefit of approved

service for the departmental candidates as it is counted and begins from the 1st day of July of the year in which vacancies arise for which examinations are held. It is not stated and observed that the selected candidates would be treated as notionally promoted/appointed or paid wages from the year of the vacancy to which the select list pertains. Back-dated or retrospective promotions or pay is not the mandate of Rule 2(c). In view of the aforestated Rule and position, the contention of the petitioners that they should be given notional fixation of pay with reference to the year to which the select list pertains, in our opinion, is fallacious and has to be rejected.

4. Learned counsel for the petitioners, however, contends that an identical rule exists and is applicable to the officers belonging to Central Secretariat Service (CS Service) and the said officers have been granted benefit of “approved service” for notional pay from the 1st day of July of the year of the vacancies for which examinations were subsequently held. Our attention has been drawn to Annexure P-8 to urge that there was a delay in holding of the tests and publication of the select list for the years 2003, 2004, 2007 and 2008.

5. The aforesaid Annexure P-8 is a file noting made by the Under Secretary (Estt. D). As per the table quoted in the noting, the select list for

the post of Private Secretary (PS) was finalised for the years 2002-2003 on 18th May, 2006, for 2004 on 16th November, 2007, for 2007 on 1st June, 2010 and for 2008 on 20th December, 2010. Similarly, the select list for Sr. Principal Private Secretary was finalised on 23rd June, 2005 for the years 2002-2003, on 12th August, 2008 for 2006, on 21st January, 2009 for 2007 and on 22nd July, 2009 for the year 2008. The details would only indicate that there was a delay in finalization of the lists. Annexure P-27 is a file noting that sets out and states the reasons for the delay in publication of the select list for the respective years.

6. Learned counsel for the petitioners submits that the petitioners are identically situated as the officers of the CS Service who have been granted the notional fixation of pay for the select lists for the years 2001 to 2008.

7. The benefit of notional fixation of pay for the select lists has only been granted to CS Service officers and not the officers of the CSS Service to which the petitioners belong. Admittedly, per Rule 2(c) (ii) quoted above, the benefit of “approved service” with effect from 1st July of the preceding year, in terms of Rule 2(c), has been given to the petitioners as well as to other officers in the CSS Service. The Rule is not questioned or challenged in the present writ petition.

8. In *K. Madhavan & Anr. vs. Union of India* (1987) 4 SCC 566, the Supreme Court held that as a rule, retrospective appointment to a post should not be resorted to, unless, on a sound reasoning and foundation, it becomes necessary to sparingly do so. Further, a Division Bench of this Court in *Union of India & Anr. vs. K.L. Taneja & Anr.* 2013 SCC OnLine Del 1428 referring to the decision of the Supreme Court in *Union of India v. K.K. Vadera* 1989 Supp (2) SCC 625 held that the observations of the Supreme Court in *K.K. Vadera* (supra) would mean that service jurisprudence does not jurisprudentially recognize retrospective promotions and unless a specific rule exists evidencing to the contrary, promotions take effect from the date the person is actually promoted and not retrospectively. Citing a catena of decisions on the subject-matter, the Division Bench held as under:-

"21. The cornucopia of case law above noted brings out the position:-

- (i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.
- (ii) If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so....."

9. On the question of fixation of pay where notional promotion has been granted from an earlier date, the Supreme Court in *State of*

Haryana vs. O.P. Gupta (1996) 7 SCC 533, applying the "no pay for no work" principle as stated in *Paluru Ramkrishnaiah vs. Union of India* 1989 2 SCC 541, has held that a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of the higher post. The decision in *O.P. Gupta* (supra) has further been applied in *State of Haryana & Anr. vs. S.K. Khosla & Ors.* (2007) 15 SCC 777. Treating or taking the vacancy year for fixation of notional pay fixation, would not only be contrary to the mandate of Rule 2 (c) (ii) and amount to re-writing and substituting the position under the Rule but would also not be in consonance with the law as laid down by the Courts. It would be in contradiction with the first principle applicable to service jurisprudence, i.e. promotion should not be granted retrospectively.

10. Reliance placed by the petitioners on cases of some of the officers of the CS Service is incorrect and misplaced as in the said cases the benefit was contrary to the position under the Rule, and was granted under a mistake and error. The respondents have rectified and corrected the error on their part and are no longer granting the same benefit of notional pay fixation even to officers of CS Service. The decision to this effect as recorded in the note

dated 10th September, 2012 has been made effective and followed from the select list for 2009 onwards. Error made in the past in a different service, which may be based upon a particular order passed by the Tribunal, cannot be perpetuated, for the faults and omissions have to be rectified and corrected. As stated above, starting with the select list of 2009, benefit of notional pay fixation in the CS Service is not being given with effect from 1st July of the year of the vacancy. The said position has been uniformly applied and adhered to since the beginning in the present service i.e. CSS Service. This should not be disturbed. It is also well settled that a person is entitled to the pay-scale in the promotional post from the date he has joined the said post and not from retrospective effect i.e. the date of vacancy. As observed above, retrospective promotion is not the norm. In this case, benefit of approved service would be from the date specified in Rule 2(c)(ii)

11. In case the present writ petition is allowed, we could be faced with multiple litigations and identical prayers by other government employees similarly situated. Undue benefit, contrary to the Rule position and settled principles, would have a cascading and odious effect. Once this position is accepted, it would be erroneous to grant notional pay fixation by grant of increments from the date of vacancy, for similar benefit was erroneously

given for some years, in another service, notwithstanding the position that the error or mistake has been rectified and corrected in the said service.

12. The writ petition has no merit and is accordingly dismissed.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

OCTOBER 20, 2016
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