
(2013) 06 MAD CK 0197
In the Madras High Court
Case No : Writ Petition No. 18043 of 2012

S. Ramaa

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Citation : (2013) 06 MAD CK 0197

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : Karthik, for the Appellant; G. Mani Sundar Gopal, Special Government Pleader (P) for R1 to R4, R5 Tribunal, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Petitioner has preferred the instant Writ Petition as against the Order dated 28.03.2012 made in O.A. No. 19 of 2011 passed by the 5th Respondent/Central Administrative Tribunal, Madras Bench, Madras. The 5th Respondent/Central Administrative Tribunal, Chennai, while passing orders on 28.03.2012 in O.A. No. 19 of 2011 (filed by the Petitioner/Applicant) has, in Paragraphs 18 and 19, among other things observed that From the contentions of the Respondents, it is seen that the Applicant can be considered for promotion only with effect from 06.11.2000, because the post of Steno-cum-Typist was re-designated as LDC only with effect from that date. It is pertinent to note that it is by converting one post of LDC to that of Steno-cum-Typist that the Applicant was absorbed as a regular employee on 15.06.1990. The Respondents themselves have conceded that the Applicant does not fulfill the qualification for appointment to the post of Stenographer Grade-III and they have relaxed the conditions in favour of her. The only reason given by the Respondents for not regularising her from earlier date is that the post of Stenographer was converted to LDC only in 2000 and that she was granted exemption from passing the Tamil typewriting test (lower) only in 2006. But, considering the fact that the Applicant was absorbed in the post of Steno-cum-typist on a regular basis on 15.06.1990, by

converting a post of LDC to that of Steno-cum-Typist and since she was qualified for appointment to that post as per the rules then existing and since the Respondents have relaxed the other conditions in her favour, the Respondents contention that promotion can be given only with effect from the date of conversion of Steno-cum-Typist to LDC do not seem to be reasonable. Similarly, the other contentions of the Respondents that orders granting exemption to the Applicant from passing the Tamil Typewriting test was issued only on 19.05.2006 and therefore, she can be considered for promotion only from that date, is also not supported by any valid rules, instructions or any legal findings. Therefore, this contention of the Respondents is also to be rejected as unsubstantiated and consequently, held that though the Applicant (Writ Petitioner) has not made out a case for counting her service for the period from 1980 to 1990, she can be considered for further promotions taking into account her service from the date of her regular appointment to Government service namely from 11.04.1990 and directed the Respondents to take into consideration the services of the Applicant (Writ Petitioner) from 11.04.1990 for the purpose of calculating the period of service for further promotions and grant promotions to the higher Grades notionally with effect from the date on which she could have been promoted, if the period of service from 11.04.1990 is taken into account and disposed of the Original Application accordingly.

2. Assailing the correctness of the Order dated 28.03.2012 in O.A. No. 19 of 2011 passed by the 5th Respondent/Central Administrative Tribunal, Chennai, the Learned Counsel for the Petitioner/Applicant submits that soon after, the Pondicherry Administration Act, 1962, was enacted and promulgated, a Section was opened in the High Court, Madras and later, an Office of the Government Pleader for Pondicherry was also established for the purpose of engaging a Counsel to represent the Government of Pondicherry (now Puducherry) in the capacity of Government Pleader at High Court, Madras.

3. Further, the Learned Counsel for the Petitioner brings it to the notice of this Court that during the year 1979, the Honourable Mr. Justice S. Govindasamy (later died), while he was an Advocate, was appointed as the Government Pleader for Pondicherry and he secured an accommodation in the High Court premises itself to accommodate the Government Pleader office of Puducherry. At that point of time, there was a need for Stenographer in the said office.

4. According to the Learned Counsel for the Petitioner/Applicant, the then Government Pleader got the Petitioner/Applicant appointed by the Department of Law, Government of Puducherry and that she joined the post of part time Stenographer during the year 1980 and on 01.12.1981, she was made as part time Clerk-cum-Typist as a post attached to the office of the Government Pleader. The Petitioner/Applicant discharged her duties on full time basis right from 08.45 AM in the morning till the closure of the office at 08.00 PM and in that capacity, she discharged her duties as Stenographer till the year 1990.

5. Added further, the Petitioner was regularly appointed as Steno-cum-Typist with

effect from 15.06.1990, as per G.O.Rt. No. 155/90/LLD, based on repeated representations and recommendations of the then Government Pleader on 11.04.1990.

6. At this stage, the Learned Counsel for the Petitioner/Applicant contends that the Petitioner was appointed as Stenographer in a solitary post, without any promotional avenue governed by a separate recruitment rule for this post only. Moreover, it formed part of the Central Civil Services Group C Ministerial post with separate service regulations.

7. The Learned Counsel for the Petitioner urges before this Court that the Petitioner's past service of ten years namely from 1981 to 1990 was not taken into consideration, even to fix notional seniority and for increment upto 1990.

8. It is the further submission of the Learned Counsel for the Petitioner that the 3rd Respondent/Under Secretary (DP & AR), Government of Puducherry, after repeated representations made by the Petitioner, appointed her as Stenographer Grade III on 21.03.2001 in the Department of Education, without taking into account her past ten years service and the exemptions granted to her for acquiring Tamil typewriting qualification and also that, the said ten years of service was not considered for notional seniority and for increment.

9. The prime argument advanced on behalf of the Petitioner is that her representation for seniority from the year 1981 and further posting her in equal grade, were not considered by the Respondents. That apart, the Petitioner was lowered in her position and she was re-designated as Lower Division Clerk and given the post of Stenographer Grade III and the same being an anomaly, it is to be rectified by giving seniority of ten years preceded in the so called process of regularisation.

10. The Learned Counsel for the Petitioner draws the attention of this Court to the proceedings dated 13.06.2001 and 21.03.2001 and submits that the term Promotion employed therein is a complete misnomer so as to deny the benefit of promotion to the post of Stenographer Grade II as on 21.03.2001 instead of Stenographer Grade III to the Petitioner.

11. Besides this, the Learned Counsel for the Petitioner vehemently takes a plea that although Stenographer Grade III was created in the year 2000, the Petitioner was appointed only in the year 2001 and in between 30 Stenographers were selected by the Respondents through direct recruitment, by conducting competitive examinations. However, the Petitioner's experience and seniority were not considered. Since 30 newly recruited Stenographers were appointed in the year 2000, the Petitioner's seniority was lowered below 30 newly selected Stenographers.

12. Finally, the Learned Counsel for the Petitioner contends that the Petitioner's representation, dated 25.06.2007, for inclusion of her past services from the year 1981 to 1990 and for payment of consequential pay benefits from

15.06.1990, by promoting her from Stenographer Grade II to Stenographer Grade I at appropriate time, was not considered. A barely enough reply was furnished to the Petitioner by the Administration which necessitated the Petitioner to initiate the present proceedings.

13. Per contra, it is the submission of the Learned Special Government Pleader (Puducherry) for the Respondents 1 to 4 that the service of the Petitioner/Applicant as part time Clerk-cum-Typist was admitted and subsequently, as part time Stenographer in the office of the Government Pleader for Pondicherry, in the High Court of Madras. Continuing further, it is contended on behalf of the Respondents that through an order dated 11.04.1990, a sanction was accorded to Lieutenant Governor of Puducherry to the re-designation of one post of Clerk in the Law Department as Steno-cum-Typist and the said post was transferred to the office of the Government Pleader of Puducherry at High Court of Madras. Thereupon, the Petitioner was appointed to the post of Stenographer-cum-Typist in the scale of pay of Rs. 3050-4590.

14. In the instant case, there is no dispute that the Petitioner/Applicant was appointed as part time Stenographer during the year 1980 and she was made part time Clerk-cum-Typist as on 01.12.1981, as a post attached to the office of the Government Pleader, Puducherry. Later, she was regularly appointed as Steno-Typist with effect from 15.06.1990. The said post of Stenographer, in the office of the Government Pleader, Puducherry at Madras High Court, was an isolated one.

15. Indeed, the post of Steno-cum-Typist was re-designated as Lower Division Clerk in the same scale of pay of Rs. 3050 4590, as per order dated 06.11.2000, issued by the Department of Personnel and Administrative Reforms on 01.08.1981. The recruitment rules were framed for the post of Stenographer Grade III and as per the said Rules, 60% posts were filled by direct Recruitment and 40% posts were filled by promotion, failing which by direct recruitment.

16. The Educational qualification of the Petitioner is PUC and (a) Shorthand English Higher and (b) Typewriting English Higher. The Petitioner was not possessed of qualification of Typewriting in regional language and therefore, she was unqualified for consideration for the post of Stenographer Grade III. In regard to the promotion quota, Lower Division Clerk with three years and who passed stenography and Typewriting in English, were eligible to be considered for promotion to the post of Stenographer Grade III (Rs. 4000-6000) based on seniority-cum-merit, with a condition that they should pass speed test in Shorthand at 80 WPM and also acquire qualification in Tamil/Telugu/Malayalam in Typewriting and pass higher grade qualification in English Typewriting on or before the completion of probation period.

17. The Respondents had taken the Petitioner/Applicant's services in the post of Stenographer in the pay scale of Rs. 3050-4590, which was re-designated as Lower Division Clerk (Rs. 3050-4590) only on 06.11.2000, as qualifying service

for promotion to the post of Stenographer Grade III (Rs. 4000-6000), even though she had not appeared for the Shorthand Speed Test at 80 WPM conducted by the DPAR, required for promotion from Lower Division Clerk to Stenographer Grade III. However, the Petitioner/Applicant was promoted as Stenographer Grade III with effect from 21.03.2001 with a condition that she should pass Tamil typewriting (Lower) within a period of two years, failing which, she would be reverted back to the post of Lower Division Clerk.

18. The Petitioner/Applicant accepted the conditional promotion and joined the promoted post of Stenographer Grade III but, she never attempted or passed the required Tamil typewriting (lower), within the probation period and even in the extended period of probation so far on account of which she was to be reverted back to the feeder post of Lower Division Clerk. But, the Respondents, by taking a lenient view and also considering her age and length of service, obtained the approval of lieutenant Governor, Puducherry, exempting the Petitioner from passing the required typing test in Tamil. The post of Stenographer was re-designated as Lower Division Clerk only on 06.11.2000 and as per the recruitment rules for the post of Stenographer Grade III, she would be eligible only after completion of three years of service as Lower Division Clerk i.e., on 06.11.2003.

19. However, the Respondents, by adopting a lenient view, promoted the Petitioner/Applicant to the higher post of Stenographer Grade III, with effect from 21.03.2001, two years in advance. Furthermore, the grant of retrospective exemption would only lead to giving premium to one, who was not qualified as against a large number of qualified candidates, with a consequential march on seniority over many other seniors, who attained their seniority position, after being fully qualified in all respects. In fact, the benefit of exemption granted was only prospective from 19.05.2006 and as such, the Petitioner/Applicant is eligible for promotion to the post of Stenographer Grade II only with effect from that date.

20. Following the implementation of VI Central Pay Commission from 01.01.2006, the Department of Personnel and Training, issued Office Memorandum dated 10.03.2010, directing other Departments to review the recruitment rules of Stenographer Cadre in the light of the VI Central Pay Commission, according to which Stenographer Grade III is required to be re-designated as Stenographer Grade II in the pay scale of Rs. 5200-20200 with Grade Pay of Rs. 2400. The Stenographer Grade I and Stenographer Grade II in the pre-revised scale of Rs. 5500-9000 and Rs. 5000-8000 were replaced by a Single revised pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4200 and they were to be merged into a solo entity and to be re-designated because of the merger of Stenographer Grade II and Stenographer Grade I in the designation of Stenographer Grade I, now the post of Stenographer Grade II, the post on which the Applicant was officiating was merged with the post of Stenographer Grade I and the requirement of considering the Petitioner's promotion to the post of

Stenographer Grade I, does not arise. The Petitioner/Applicant was brought into the common seniority list of Stenographer Grade III, maintained by the Department and therefore, any promotion would be made according to the Petitioner/Applicant's turn as per the seniority position in the feeder posts for further promotion, as contended by the Respondents.

21. It is to be borne in mind that the Petitioner/Applicant was appointed as Steno-cum-Typist on regular basis with effect from 15.06.1990. Before that date, she was working as part time Stenographer and part time Clerk-cum-Typist in the office of the Government Pleader, Puducherry. There were no formal orders of the Government appointing the Petitioner/Applicant to this post.

22. During the year 1990, when steps were initiated to regularise the Petitioner/Applicant's services, the Law Department of Puducherry Government re-designated one post of Lower Division Clerk in that Department to the post of Steno-cum-Typist in the same scale in G.O.Ms. No. 155/90/LLD, dated 11.04.1990. The recruitment rules for this designated post were also framed in G.O.Ms. No. 46/90-LLD, dated 05.06.1990 and that the Petitioner/Applicant was absorbed against this post. According to the Respondents, the Petitioner was qualified for appointment of Steno-cum-Typist in Group "C", as per these recruitment rules.

23. It is seen from the office order bearing No. 48-12/I/88-LLD, dated 02.01.1989 of the Government of Puducherry, Law and Labour Department that the Petitioner/Applicant was appointed as part time Clerk-cum-Typist with effect from 01.12.1981 in the office of the Government Pleader for Puducherry at Madras High Court. Further, it is mentioned that consequent on the creation of a post of part time Stenographer in lieu of the post of part time Clerk-cum-Typist held by the Petitioner/Applicant, she was appointed as part time Stenographer on a consolidated salary of Rs. 1100/- per month with effect from 01.07.1988.

24. By means of G.O.Rt. No. 155/90/LLD of Law and Labour Department, issued by the Government of Pondicherry dated 11.04.1990, it is mentioned that the post of part time Stenographer on a consolidated salary of Rs. 1100/- per month and the post of full time daily rated Attender at Rs. 35/- per day which were created in G.O.Ms. No. 51/81-LLD, dated 30.11.1981 read with G.O.Ms. No. 41/88/LLD, dated 23.06.1988 and G.O.Ms. No. 23/81/LLD, dated 03.04.1981, respectively, now, existing in the office of Government Pleader of Pondicherry at Madras, shall be transferred to the Law Department of Pondicherry.

25. In terms of G.O.Rt. No. 31, Chief Secretariat (Education), Government of Pondicherry, dated 21.02.2000, sanction of the Lieutenant Governor was accorded for the creation of one Group C post of Stenographer Grade III, attached to the Government of Pondicherry, High Court, Chennai, in the scale of pay of Rs. 4000-100-6000 (in lieu of one existing post of Steno-cum-Typist) with effect from the date of filling up of the post upto and inclusive of 22.08.2001 or till the necessity therefor ceases whichever is earlier etc.,

26. It transpires from the office order bearing No. 31011/1/2000-Law, dated 21.03.2001, issued by the Law Department of the Government of Pondicherry that the Petitioner (Steno-cum-Typist, Office of the Government Pleader of High Court of Madras) was relieved of her duties on the forenoon on 21.03.2001 so as to enable to appoint to the promoted post of Stenographer Grade III, created in the Education Department, Pondicherry and attached to the office of the Government Pleader of Pondicherry at High Court.

27. By means of an order bearing No. 38073/Edn/Dte. Estt/A4/94 of the Directorate of Education, Government of Pondicherry, dated 13.06.2001, the Petitioner (Steno-cum-Typist) was promoted and appointed as Stenographer Grade III, with effect from the Forenoon of 21.03.2001 and posted in the office of the Government Pleader for Pondicherry at Chennai, against the post created by the Educational Department and attached to the Government Pleader for Pondicherry at High Court, Chennai, vide G.O.Rt. No. 31, dated 21.02.2000 of Chief Secretariat (Education), Pondicherry, etc.

28. The 2nd Respondent through Memorandum No. A.32016/4/2007/DPAR/SS. II (1), Department of Personnel & Administrative Reforms (Personnel Wing), Puducherry, dated 05.09.2007, rejected the representation of the Petitioner for promotion to the post of Stenographer Grade I, by informing that as per the Government of India decision No. 2 below 14 of CCS (Pension) Rules, 1972, the services paid from contingencies involving part time for a portion of the day, may not be counted for qualifying service for pensionary benefits and further, Tmt S. Ramaa (Writ Petitioner) was appointed initially as Steno-Typist in the scale of Rs. 3050-4590 with effect from 15.06.1990 in the cadre of control of Law Department and posted in the office of the Government Pleader, Madras. Further, it was mentioned that thereafter, as the post was in a single cadre without any further promotional post in the cadre control of Law Department, the same came into the common control of Lower Division Clerk/Typist of DP & AR (PW) and then, she was promoted as Stenographer Grade III, on 21.03.2001, in the vacant post of Stenographer Grade II (Rs. 4000-100-6000) and posted in the office of the Government Pleader at Madras. Therefore, her request to grant the pay of Rs. 4000-6000 applicable to the post of Stenographer Grade III with retrospective effect from 15.06.1990 instead of 21.03.2001 was not acceded to.

29. Apart from the above, in the aforesaid Memorandum, Paragraph 3 reads as under:

3. There is no post of Steno Gr. I in the office of the Govt. Pleader, Madras. Moreover there is one proposal for restructure of entire Stenographer cadre and the post of Gteno Gt. I has to be upgraded as senior person Assistant in the scale of Rs. 6500-200-10500. In this circumstance, the request of the individual may not be able to consider by this Department. Moreover she is working as Steno Gr. III and there are senior Steno Gr. III and Steno Gr. II are in service and there is no provision in the rules to overtake all her seniors.

2. It is informed further that action is being taken to fill up the post of Steno Gr. II in the office of the Govt. Pleader, Madras as well as to consider Smt. S. Ramaa, Steno for promotion as Steno Gr. II.

30. It is seen from the Memorandum bearing No. A-48011/2/2007- DP & AR/SS. II (1) of the 2nd Respondent/Government of Puducherry Department of Personnel & Administrative Reforms (Personal Wing), dated 14.10.2009, the Petitioner (Stenographer Grade III) was promoted as Stenographer Grade II, purely on ad hoc basis and posted in the Department of School Education, Puducherry.

31. In this connection, we pertinently point out that as per the Government of India decision No. 2 below Rule 14 of Central Civil Services (Pension) Rules, 1972, it is stated that under Article 368 of CSRs (Rule 14), periods of service paid from contingencies do not count as qualifying service for pension. Also, it is mentioned as under:

It has been decided that half the service paid from contingencies will be allowed to be counted for the purpose of terminal gratuity as admissible under the cCS (TS) Rules, 1965, where the staff paid from contingencies is subsequently appointed on regular basis. The benefit will be subject to the conditions laid down in OM, dated 14th May, 1968, above.

{G.I., Dept. of Per. & Trg., O.M. No. 12011/85-Estt. (c) dated the 10th March, 1986.}

32. It cannot be forgotten that retrospective promotions cannot be given as it may result in consequent payment of back wages, to the detriment of Government exchequer. At times, the effect of promotions are notionally admitted by the administration, as a result of a Court case and under such circumstances, back wages may or may not be allowed to an Applicant/Petitioner. However, the advantage of higher fixation of pay is always permitted. Also that, an employee so promoted is also entitled to appropriate seniority position in seniority list and as such, he is also entitled to be considered for future promotion on that basis.

33. At this stage, we aptly point out the decision of the Honourable Supreme Court in Gangadhar Kar v. Durgacharan Panda and others with SLP NO. 3295 of 1989 Kali Charan Das v. State of Orissa and others, 1995 Supp (3) SCC 133 , at Special Page Nos. 134 and 135 in Paragraphs 2 and 3, it is observed and laid down as follows:

2. The first respondent was appointed as Laboratory Assistant on August 10, 1959, and was confirmed in the post on August 10, 1961. In 1965 he opted to join the Agricultural Department as Supervisor, Marketing. However, within a few months thereafter he sought repatriation to his parent department but for one reasons or the other that was not permitted till March 17, 1970. On repatriation, he has posted as Laboratory Assistant. He claimed promotion to the post of

Assistant Controller from the date his juniors in the cadre of Laboratory Assistant were promoted to that post. His representations to the authorities concerned for his promotion as Senior Assistant with effect from January 8, 1968 having not been granted, he filed a Writ Petition No. OSC-2179 of 1975 in the High Court of Orissa for promotion. The High Court directed the authorities concerned to granted him deemed date of promotion with effect from the date his juniors were so promoted. The authorities conceded his claim in that behalf. He had then to be considered for promotion to the next higher post of Assistant Controller from the date his immediate junior was so promoted. His representation was rejected. Thereupon he filed another Writ Petition No. OSC-851 of 1978 claiming seniority from October 9, 1968 over those who had been promoted from the date. The High Court took the view that since he was given promotion retrospectively from January 8, 1968 in the cadre of Senior Inspectors he was entitled to be placed above him juniors in the cadre of Assistant Controllers also. This view of the High Court seems to be unassailable for the reasons that once the first respondent was granted pro forma promotion retrospectively his seniority had to be fixed from the date on which he was granted such promotion. It is nobody's case that any condition was imposed in regard to seniority while permitting him to repatriate to the cadre of Laboratory Assistant nor is it anybody's case that the decision of the Government to grant him promotion retrospectively was qualified by a condition that he will not be entitled to seniority. If he was granted retrospective promotion without any qualification whatsoever the High Court is right that his seniority must be determined on the basis as if he had continued in his parent department retaining his original seniority. We, therefore, do not see any merit in this appeal and dismiss the same. I.As. Nos. 1 and 4 do not survive.

SLP No. 3259 of 1989

3. The SLP is taken on board and is dismissed.

34. We deem it appropriate to point out the decision in *N.M. Sheik v. Union of India* reported in (1987) 5 ATC 514, wherein the Tribunal described notional promotion as a promotion which the Government servant gets under exigencies of situation, which he could not claim as of right. However, if an employee was wrongly denied the promotion such notional promotions cannot deny his entitlements to all the benefits of promotion.

35. Although, on behalf of the Respondents, a plea was taken before this Court that the Petitioner was not regularised from earlier date and that, the post of Stenographer was converted to Lower Division Clerk only during the year 2000 and she was granted exemption from passing the Tamil typewriting test (lower) in the year 2006 only, it is to be pointed out that the Petitioner was absorbed in the post of Steno-cum-typist on regular basis on 15.06.1990, by converting the post of Lower Division Clerk to that of Steno-cum-Typist and since she was qualified for appointment to that post, as per rules then in force and also that, the Respondents relaxed the other conditions in her favour, the said plea that promotion could be given only from the date of conversion of Steno-cum-Typist

to Lower Division Clerk, does not hold water, in our considered opinion.

36. It may not be out of place for this Court to cite the decision of the Kerala High Court in *General Manager, Southern Railway, Madras v. D. Jayakumar*, {2000 (5) SLR 57}, at Page Nos. 58 and 59, wherein in Paragraphs 6 and 7, it is mentioned hereunder:

6. We notice that original order laying down the qualification itself was issued by the Chief Personnel Officer and the same Officer in consonance with the agreement of the Chief Electrical Engineer jointly decided to relax the qualification vide Exts. P2 and P3. Facts reveal that those orders were passed by the Chief Personnel Officer with the concurrence of higher authorities. We have no reason to think otherwise. It may be noted that contesting respondents entered service earlier than the first respondent. For example, second respondent was engaged as a substitute Electrical Khalasi on 06.12.1980 and he was given temporary status on 6.4.1981. He was appointed as substitute AC Khalasi on 11.04.1986 and he was regularised in that post with effect from 26.10.1988. He was later promoted as Air Condition Coach Attendant on 04.11.1994. Whereas the first respondent was engaged as substitute Electrical Khalasi on 24.01.1984, and was given temporary status from 23.05.1984. First Respondent was appointed as substitute Air Condition Khalasi on 5.6.1989 and he was regularised in that post with effect from 6.9.1993. Service put in by the contesting respondents and their experience were the factors which weighed with the Railway Administration for relaxation of educational qualification. Since we have already found that Chief Personnel Officer has got power to pass relaxation orders in consultation with higher authorities, we do not find any infirmity in the reasoning shown in those orders to grant relaxation of educational qualification.

7. We have gone through various documents produced before this Court as well as the order of the Tribunal in detail. We fail to see in what manner Officer of the Railway Administration tried to mislead the Tribunal or suppressed relevant facts. On a direction given by the Tribunal, in fact, Officers of the Railway Administration have produced all the documents and also filed additional reply affidavit. While submitting additional reply statement, by an inadvertent oversight, they omitted to add VIIIth pass and only stated VIIIth Standard. However, it is relevant to note that Ext. P2 order was produced along with the reply affidavit, which would indicate otherwise. We are not prepared to say that Officers of the Railway Administration have deliberately tried to mislead the Tribunal. It is pertinent to note that serious observations are made by the Tribunal without hearing the Officer concerned. We are of the view that such observations are unwarranted.

In the above-mentioned circumstances, we are of the view that Tribunal has gone wrong in setting aside the orders of exemption passed by the Chief Personnel Officer granting exemption to respondents 2 to 10 and also making serious comments against officers of the department, and also awarding costs.

37. In the decision of the Honourable Supreme Court in Ram Shankar Bhattacharjee Vs. Gauhati High Court and Others, , at Paragraphs 5 and 6, it is observed thus:

The short question that came up for consideration is whether the appellant Ram Shankar Bhattacharjee when appointed as Private Secretary in the pay scale of Rs. 3000-5000 got a promotion to a higher grade superseding the claims of the present respondents 4 & 5. The contention of the appellant's learned Counsel that he was given promotion cannot be accepted for various reasons. Firstly, there was no post as such as Private Secretary to the Hon''ble Judge with a different pay scale. Moreover, whenever promotion is effected, the claims of other officers are also to be considered, and in the instant case the claims of respondent nos. 4 & 5 were not considered for such promotion. The materials produced in this case would only show that the appellant was posted as Stenographer Grade I and Private Secretary to the Hon''ble Judge which carried a higher pay scale. It was never a promotion superseding the claims of Respondent nos. 4 & 5. The learned Single Judge was not justified in holding that the post of Private Secretary was a promotional post at Agartala Bench at the relevant time and it has been rightly reversed by the Division Bench. Promotion could be given only to a post which is given in the classification of the Gauhati High Court Rules. As there was no such post mentioned in the Schedule, there could not have been a promotion to that post. The Division Bench has taken the correct view and we see no reason to interfere with the same. The appeal is accordingly dismissed. There will be no order as to costs.

38. In the decision of the Honourable Supreme Court in K. Trimurthulu and Others Vs. M.V.N. Murthy and Others, , it is observed that the period of casual service has also been excluded.

39. In the decision Dr. (Mrs.) Pushpa Vishnu Kumar Gurtu Vs. State of Maharashtra and others, , the Honourable Supreme Court has held that the period of service rendered de hors the rules cannot also be counted for the purpose of seniority.

40. In the decision of the Honourable Supreme Court in V.K. Dubey and Others Vs. Union of India (UOI) and Others, , it is observed and held that similar post or previous service has not been taken into account for reckoning seniority where the two services are distinct or different.

41. One cannot ignore an important fact that in the recruitment rules of Stenographer cadre, there is no provision to count the period of part time contingent services as qualifying service for promotion, when the undisputed fact remains that no formal orders of Government appointing the petitioner to the above post was issued. Indeed, these details were communicated to the Petitioner through Memo No. 32016/4/2007/DPAR/SS. II (1), dated 05.09.2007 of DP AR (PW), Puducherry, only after getting confirmation from the Law Department under whose purview the Petitioner was engaged as part time

Stenographer and part time Clerk-cum-Typist for the period from 01.12.1981 to 14.06.1990 in the office of the Government Pleader at Madras. Therefore, we come to an irresistible conclusion that the Petitioner's service for the period from 01.12.1981 to 14.06.1990 in her capacity as part time Stenographer and part time Clerk-cum-Typist could not be counted for her future promotions. From 15.06.1990, the Petitioner was appointed as Steno-cum-Typist on regular basis. Initially, only in the year 1990, an attempt to regularise the Petitioner's service, was made, when the Law Department of the 2nd Respondent re-designated one post of Lower Division Clerk in that Department to the post of Steno-cum-Typist in the same scale in G.O.Ms. No. 155/90/LLD, dated 11.04.1990, and also the recruitment rules for this re-designated post was framed under G.O.Ms. No. 46/90-LLD, dated 05.06.1990 and that the Applicant/was absorbed against this post. Further, she was qualified for appointment as Steno-cum-Typist, Group C under these recruitment rules. Thus, it could be seen candidly that the Petitioner's regular appointment to Government service was from 11.04.1990. As such, we direct the Respondents on the basis of Equity, Fair Play, Good conscience and even as a matter of prudence to take into account the services rendered by the Petitioner/Applicant from 11.04.1990, for calculating the period of service in respect of future promotions and to grant her promotion to the higher Grades with all attendant monetary benefits like higher fixation of pay etc. It is made clear that the Petitioner/Applicant is also entitled to appropriate seniority position in the seniority list and accordingly, she is also entitled to be considered for future promotion on that basis. In this regard, in doing an equitable Justice, to prevent an aberration of Justice, we also accordingly direct the Respondents to complete this exercise and to pass appropriate orders within a period of three months from the date of receipt of a copy of this order. In the circumstances, the contrary view taken by the 3rd Respondent/Central Administrative Tribunal, Chennai, in its order dated 28.03.2012 in O.A. No. 19 of 2011 that the Respondents are directed to take into consideration the services of the Applicant (Writ Petitioner) from 11.04.1990 for the purpose of calculating the period of service for further promotion and grant her promotion to the higher Grade notionally with effect from the date on which she could have been promoted, if the period of service from 11.04.1990 is taken into account, are not correct in the eye of law and in the interest of Justice, this Court interferes with the said order and sets aside the same to promote substantial cause of Justice. The other conclusion arrived at by the 3rd Respondent/Central Administrative Tribunal, Chennai that the Applicant has not made out a case for counting the services from the period from 1980 to 1990, is upheld.

Consequently, the Writ Petition is allowed in part in the above terms, modifying the order of the Tribunal, leaving the parties to bear their own costs.