



**Central Administrative Tribunal
Principal Bench, New Delhi**

**OA No. 1987/2023
With
OA No. 2081/2023
OA No. 2082/2023**

This the 26th day of April, 2024

**Hon'ble Mr. R.N. Singh, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)**

OA No. 1987/2023

Mrs. Shilpi Gupta, aged – 35 years
W/o Sh. Ankit Gupta
Working as Stenographer in Grade-D in
CAT Principal Bench, New Delhi
Resident of WZ-249, Palam Village
New Delhi-110049 ... Applicant

(By ADVOCATE: Sh. Yogesh Sharma)

VERSUS

1. Union of India through
The Secretary
Ministry of Personnel, Public Grievances & Pensions
Govt. of India, North Block
New Delhi

2. Central Administrative Tribunal
Through the Principal Registrar
Principal Bench, 61/35, Copernicus Marg
New Delhi-110001

... Respondents

(By Advocate: Sh. S.N. Verma)



OA No. 2081/2023

Ms. Arti, aged 32 years
W/o Sh. Inder Bhan
Working as Stenographer in Grade D in
CAT Principal Bench, New Delhi
Resident of J-50, Vishnu Garden, New Delhi-18

... Applicant

(By ADVOCATE: Sh. Yogesh Sharma)

VERSUS

1. Union of India through
The Secretary
Ministry of Personnel, Public Grievances & Pensions
Govt. of India, North Block, New Delhi-01
2. Central Administrative Tribunal
Through the Principal Registrar
Principal Bench, 61/35, Copernicus Marg
New Delhi-110001

... Respondents

(By Advocate: Ms. Gauraan)

OA No. 2082/2023

Ms. Neha, aged 33 years
D/o Sh. Anil Kumar
Working as Stenographer in Grade D in
CAT Principal Bench, New Delhi
Resident of B-120, Street No. 9, New Usmanpur
Delhi-53

... Applicant

(By ADVOCATE: Sh. Yogesh Sharma)

VERSUS

1. Union of India through
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New Delhi-110001

... Respondents

(By Advocate: Sh. Dilbagh Singh)

**ORDER (ORAL)****Hon'ble Mr. Tarun Shridhar, Member (A)**

The applicants in all the three Original Applications (OAs) are Stenographer Grade-D appointed and working on adhoc basis in the Central Administrative Tribunal (CAT). All of them are aggrieved by an order vide which the terms and conditions of their appointment have been revised to their detriment and all of them also seek regularization on account of a continuous and long period of service they possess. Accordingly, at the suggestion of the learned counsel representing both the applicants and the respondents, all the three OAs have been clubbed together and are being disposed of by this common order. However, as advised by the learned counsels, the facts of OA No. 1987/2023 are being recorded and considered in this common judgment. These shall be applicable in the case of all the three OAs.

2. During the year 2012, the Central Administrative Tribunal (CAT) i.e. respondent no. 2, sent a requisition to the concerned employment exchange seeking appropriate names for appointment as Stenographer Grade-D on adhoc basis.



Vide an order dated 22.11.2012, the applicant was given appointment as Stenographer Grade-D in the Principal Bench of the CAT in the regular scale of pay in Pay Band – 1 i.e. Rs. 5200-20200 plus Grade Pay of Rs. 2400/-. While the said order mentioned that this adhoc appointment will not bestow any claim for regular appointment, it also mentioned that the initial appointment was only for a period of three months or till the posts are filled up on regular basis, whichever is earlier. The said order contained another stipulation that the adhoc appointment can both be extended or curtailed in administrative exigencies. It so happened that this appointment which was for a period of three months or till the posts are filled on regular basis, has continued since then till date uninterruptedly, barring an artificial/technical break of one day. The appointment has also continued on a regular scale of pay carrying a Grade Pay till 27.02.2023 when the impugned order was passed and the services on adhoc basis were disengaged and the applicant was re-appointed as Stenographer Grade-D, however now on contract basis on a fixed remuneration of Rs. 40,000/- instead of the regular scale of pay including Grade pay. This time, the order of re-



engagement mentioned the initial engagement for a period of six months or till the posts are filled up on regular basis or until further orders, whichever is earlier. This engagement too has continued beyond a period of six months since then continuously and uninterruptedly.

3. Aggrieved by the action of the respondents in altering the terms and conditions of her appointment and not considering her prayer for regularization, the applicant has preferred this OA praying for the following reliefs:

- “(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of set asiding the impugned order dated 27.02.2023 (Annex. A/1) only to the limited extent by which the respondents change the nature of appointment of the applicant and reduce the monthly pay of the applicant and consequently, pass an order directing the respondents to allow the applicant to work on the same post with the same term and condition including pay and allowances as per pay scale with all consequential benefits.
- (ii) That the Hon’ble Tribunal may further graciously be pleased to pass an order directing the respondents to consider the case of the applicant for her regularization as Stenographer Grade-D as done in past in identical situation with all consequential benefits.
- (iii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.”

4. Learned counsel for the applicant has argued that the appointment of the applicant was in pursuance to an open,



competitive and fair selection process as her name was sponsored through the employment exchange. She fulfils all the requirements of the requisition sent by respondent no. 2.

Further, the applicant possesses the essential and requisite qualifications outlined in the concerned Recruitment Rules, and her appointment was made after ascertaining her eligibility. No doubt, the initial appointment was only for a period of three months, however it has continued for a period of more than eleven years now. There is not a hint or a whisper or any questions raised regarding her performance and conduct, and she has been discharging her duties to the best satisfaction of her employers. In the past, the respondents had, from time to time, appointed various officials on adhoc basis and subsequently given them the benefit of regularization of service; many of them since then have also got promoted to higher positions. In this context, learned counsel draws attention to Paragraph 4.6 of the OA wherein, in a tabular form, she has referred to cases of five such employees. This factual position is not contested. In fact, the additional affidavit filed by the respondents on 02.04.2024 makes a mention of 32 other such employees whose initial



appointment/engagement was on adhoc basis but they were subsequently given the benefit of regularization. Although the respondents have tried to justify the action in that matter by stating that the requirement of appointment through Staff Selection Commission did not exist in the Recruitment Rules of those categories. However, we find that even at the time of appointment of the present applicant, there was no such requirement in the Recruitment Rules.

5. Learned counsel for the applicant submits that an identical issue had engaged the attention of the Mumbai Bench of the Tribunal in **Dr. Pravin Kumar Ramji Anjani vs. Union of India** reported in **2016 (2) (CAT) SLJ 592**, and the Tribunal had held that a person who was appointed as per the Rules by proper process and one who possesses the qualification in terms of Recruitment Rules cannot be deemed to have been appointed in an illegal or irregular manner and thus, has a claim for regularization. He has also drawn support from a judgment of the Hon'ble Apex Court in **Civil Appeal No. 9413-14/2019** titled **Rajnish Kumar Mishra & Ors. vs. State of Uttar Pradesh & Ors. etc.** wherein, respecting the principle of parity and non discrimination, the



Hon'ble Apex Court had held that persons who had been appointed on ad-hoc basis and had continued for ten years or above, were deserving of regularization if they possessed the necessary qualification and were appointed subsequent to a formal requisition by the competent authority.

6. The respondents have strongly contested the OA and submitted that continuation of the appointment of the applicant and even consideration of regularization would be in contravention to the law laid down by the Hon'ble Apex Court in the case of **State of Karnataka & Ors. vs. Umadevi & Ors.** reported in **AIR 2006 SC 1806** wherein the Hon'ble Apex Court had unambiguously held and laid down a law that a person who is appointed bypassing the established procedure can have no claim for any regularization and has to be necessarily disengaged once regular appointments take place. No doubt, the Hon'ble Apex Court had given some exceptions, however, the same are not at all applicable in the instant matter.

7. It has been reiterated by the learned counsels for the respondents that adhoc appointments are resorted to in administrative exigencies and they have to necessarily give



way once regular appointment takes place. The appointment letter of the applicant categorically and with great clarity mentions that the appointment is for a period of three months or till the posts are filled up on regular basis. The applicant was well aware that she will have to be disengaged once regular appointment takes place.

8. Explaining the background, learned counsels point out that during the year 2012 when the applicant along with few other persons was appointed as Stenographer Grade D, despite requisition candidates were not sponsored by the Staff Selection Commission (SSC). Therefore, the Chairman exercising the powers of relaxation of Rules appointed the applicant along with others by requisitioning appropriate names from the employment exchange. Later on the finance and audit department raised objections that such appointments and the pay scale extended to them is in contravention to the financial rules and instructions including the instructions of Department of Personnel & Training (DoP&T) circulated vide Office Memorandum dated 23.07.2001 and accordingly, necessary corrective steps were taken to alter the terms and conditions of appointment to bring them in consonance with



the extant instructions and policy. The respondents have not disengaged the applicants but only revised the terms and conditions of the appointment so that these adhere to the policy, both administrative and financial, which is in vogue today.

9. Learned counsel for the respondents has also produced before us a judgment of the Hon'ble High Court of Delhi in the case of **Delhi University Contract Employees & Ors., vs. University of Delhi & Ors.**, WP(C) No. 7929/2013 submitting that the Hon'ble High Court had also held that once there are vacancies in sanctioned posts and such posts and vacancies are to be filled up through a regular recruitment process, neither the Courts nor the Executive is empowered to frame a scheme to absorb or regularize those who have been appointed without following a regular recruitment process. Further, the Hon'ble High Court had held that a regular recruitment process cannot be put to a halt on account of irregularly appointed persons occupying such posts.

10. Learned counsels have gone on to argue that some adhoc/contract employees of the Tribunal had approached the Allahabad Bench of the Tribunal in **OA No. 1451/2017** titled



Mohd. Rashid & Anr. Vs. Union of India & Ors., praying

for their regularization and the Allahabad Bench vide order dated 05.03.2021 had allowed the OA but the said order was put to challenge before the Hon'ble High Court of Allahabad in WP(C) No. 18147/2021 and the Hon'ble High Court had held that the applicant in the OA was entitled to appointment only till a regularly selected candidate is available and joins.

11. Learned counsels have further drawn our attention to a judgment of a Co-ordinate Bench of this Tribunal dated 01.12.2022 in **OA No. 3616/2019 along with OA No. 501/2022** in which the Tribunal had, drawing strength from various judgments of different Courts, held that unless there are Rules to this effect, there could be no question of regularization even after ten years of service. The Bench had also held that there was no ambiguity as far as the law laid down by the Hon'ble Apex in the case of Uma Devi (supra) was concerned and hence refused to provide any relief to the applicants therein.

12. We have heard the learned counsel for the parties at great length over several dates. We have also carefully gone



through the pleadings on record. There is no dispute as far as the facts of the case are concerned.

13. Briefly stated, the applicant was appointed on 22.11.2012. The appointment was adhoc for a period of three months or till the posts are filled up on regular basis. The period of three months has got extended to more than 11 years now. This period has been continuous and uninterrupted. The appointment was on a regular scale of pay accompanying Grade Pay as is admissible to regular employees. It is also not disputed that in the past several employees of the Tribunal who have been appointed on adhoc basis for a short period of time have been regularized as already recorded earlier by referring to paragraph 4.6 of the OA as also the contents of the additional affidavit filed by the respondents. So the respondents too admit that regularization has taken place in the past, not of a random isolated individual but in the case of a large number of employees. We are not questioning the justification for such regularization, however we find it a bit curious that against this background, the prayer in the instant OA is being contested so strongly.



14. Let us read the impugned order dated 27.02.2023 vide which the terms and conditions of service of the applicant have been altered. For the sake of clarity, we are reproducing it verbatim:

“In continuation to this office orders of even number dated 25.11.2022 and 12.12.2022 conveying the approval of the Hon’ble Chairman, Central Administrative Tribunal to the engagement of below mentioned candidates to the post of Stenographer Grade ‘D’ in CAT, Principal Bench purely on short term/ad-hoc basis in Level 4 of revised pay matrix for a period of three months or till the posts are filled upon on regular basis or until further orders and on considering the frequent objections raised by PAO, CAT in respect of their continuity of services beyond one year and payment of their remuneration from “Salary” Head, besides Govt. instructions regarding restrictions on ad-hoc appointment and regularization of ad-hoc appointees as contained in DoP&T O.M. dated 23.07.2001, the Hon’ble Chairman has been pleased to disengage their services as Stenographer Grade ‘D’ on ad-hoc basis with immediate effect and pleased to re-engage them as Stenographers in CAT, Principal Bench purely on contract basis on a fixed remuneration of Rs. 40,000/- in public interest, initially for a period of six months or till the posts are filled up on regular basis or until further orders, whichever is earlier, w.e.f. 28.02.2023 or from the date of their joining.

S.No.	Name of the Candidate
1.	Ms. Arti
2.	Ms. Neha
3.	Ms. Shilpi Gupta

15. Now, let us dissect this order. The applicant was appointed with the approval of the Hon’ble Chairman of the



CAT. However, this impugned order is being passed on account of “frequent objections raised by the PAO, CAT”.

The applicant was appointed in a scale of pay (Pay Band) plus Grade Pay, and now what is the objection? Why is the salary being paid from “Salary Head”? Prima facie it sounds absurd, if not contemptuous. We have put a question to the learned counsel for the respondents as also to ourselves. Does the PAO enjoy an authority superior to the Hon’ble Chairman, CAT and could his objection be a sufficient ground to alter the terms and conditions to the disadvantage of the applicant after more than 11 long years of service? No other reasons have been adduced in the impugned order except referring to Government instructions regarding restrictions on adhoc employments and regularization of such employees. However, the counter reply filed by the respondents goes on to elaborate various reasons which have been instrumental in passing the impugned order.

16. Now let us see what the counter reply states. In the year 2011, the respondents requested the SSC for nomination of candidates for the post of Stenographer Grade-D. The SSC did not respond despite repeated reminders, so states the



counter reply. The respondents sought a No Objection Certificate (NOC) to fill up the vacant posts through other permissible channels. However, the NOC was also not received. On account of pressing demand of Stenographers from outlying Benches, the respondents resorted to the route of local employment exchange and sought requisition of appropriate names. Accordingly, it has been repeatedly argued, it was to tide over the administrative exigency created on account of shortage of Stenographers that this route was adopted however, making it clear that it was purely an ad-hoc engagement till regular appointment was to be made.

17. Learned counsel for the respondents during the course of arguments have stressed upon the term “stop gap arrangement”. Now, we are constrained to note that this stop gap arrangement has continued for more than a decade and is continuing till date. The counter reply states that the Government, from time to time, gives directions to all Ministries/Departments that any appointment has to be in terms of the constitutional scheme and exactly as per the Uma Devi (supra) judgment. It further goes on to state that against this background, the PAO has objected to the appointment of



the applicant “without the approval of the Government” and further the PAO of CAT refused to disburse her salary.

18. We pause here. The applicant was appointed by the approval of the Chairman of CAT, against a sanctioned/vacant post which the organ of the Government i.e. the SSC was not assisting in filling up on regular basis.

19. Section 6 of the Administrative Tribunals Act, 1985 lays down the qualification for appointment as Chairman and it prescribes that a person shall not be qualified for appointment as the Chairman unless he is or has been a Judge of a High Court. We have before us a case where an appointment made by the Chairman through an open and transparent process is objected to by the PAO who also refuses to disburse the salary of the appointee after holding such appointment to be irregular, that too after more than eleven years of such appointment have already elapsed. Does this not amount to a reckless challenge to the authority of the head of a judicial institution?

20. Let us understand the jurisdiction of Central Administrative Tribunal. Section 14 of the Administrative Tribunals Act, 1985 states that the Central Administrative



Tribunal shall exercise jurisdiction, powers and authority exercisable immediately before the appointed day by other courts except the Hon'ble Supreme Court in respect of various service matters. And what does the counter reply state? That a judicial body which exercises powers of all Courts subordinate to the Hon'ble Supreme Court is under the jurisdiction of Central Government and requires its approval for appointment of a Stenographer Grade-D and further disbursal of his/her salary. Could it have been more outrageous?

21. Curiously, the counter reply has been filed by the Deputy Registrar of the CAT on behalf of both the respondents i.e. the DoP&T and the CAT. The respondents have justified this in terms of DoP&T OM dated 16.03.2016 vide paragraph 10 of the additional affidavit dated 02.04.2024 which reads as under:

“10. That further, it is submitted that vide OM dated 16.03.2016, the DoP&T has issued instructions to Ministries/Departments, inter-alia advising that (i) a common counter reply should be filed before a Court of Law on behalf of the Union of India by the concerned administrative Department/Ministry where the petitioner is serving or has last served; and (ii) a unified stand should be adopted instead of bringing out each Departments/Ministries point of view in the said reply. In the present case, the reply filed by the respondents has been vetted by the DoPT in consultation with the Department of Legal



Affairs. Copies of DoPT letter dated 02.11.2023 & OM dated 16.03.2016 are annexed herein as Annexure AA-4 'Colly'."

22. We have put a specific query to the learned counsel for the respondents whether this Tribunal is to be considered to be an administrative Ministry or an administrative Department subordinate to the Government. The answer has been in the negative. However, the learned counsel has explained that such a direction does not compromise the judicial independence of the Tribunal since in administrative and financial matters, the DoP&T being the nodal Ministry is to be consulted by the Tribunal in terms of the extant rules. We beg to disagree. The Tribunal is a creation of an Act of Parliament and not a wing of the Government. We have already discussed the provision with respect to the jurisdiction of this Tribunal. To clarify, the matters which engage the attention of the various Benches of this Tribunal, by and large, are those which primarily used to be under the jurisdiction of the Hon'ble High Courts and/or in some cases Courts lower than that. Section 14 of the Administrative Tribunals Act, 1985 makes it abundantly clear.



23. We fail to understand as to how the Registry of the Tribunal has taken upon itself to file counter reply on behalf of the Government and thus, surrender to the jurisdiction which is squarely its own. The constitutional principle of governance by the Rule of law underscores judicial review of administrative actions; here we are overturning the entire principle by subjecting a judicial body to administrative control of the government. We do appreciate that when it comes to making laws, it is the legislature which is competent. We also recognize that it is the legislature which enjoys the exclusive power to frame appropriate rules. We further appreciate that the power of subordinate legislation vests with the executive. However, before us is the case wherein day to day administration of the CAT, a judicial body, is being controlled by the Government, ironically, through a Ministry and Department who is respondent before us in most of the cases and whose orders, policies, rules and instructions are put to challenge before us on a day to day basis in innumerable OAs.

24. Such a situation strikes at the foundation of the rule of law and severely compromises judicial independence. While



there may be some merit in the argument put forth by the learned counsel for the respondents that judicial powers and duties are to be understood distinctly from financial and administrative duties and responsibilities, we are conscious that they cannot be strictly partitioned or distinctly earmarked. We have already clearly mentioned above that we are not questioning either the powers of the Executive or the Legislature as far as their domain is concerned. However, we are certainly not comfortable with a situation wherein a functionary of the Government questions the decision of the Chairman who is a person possessing qualifications set forth in Section 6 of the Administrative Tribunals Act, 1985 which read as under:

"6. Qualifications for appointment as Chairman, Vice-Chairman and other members.- (1) A person shall not be qualified for appointment as the Chairman unless he is, or has been, a Judge of a High Court:"

25. And further, the Chairman is decidedly the competent authority on the subject under the relevant Rules. Section 12 of the Act outlines that it is the Chairman who shall exercise the financial and administrative powers over all the Benches.



26. We are guided by the observations of the Hon'ble Apex Court in the case of **Union of India vs. R. Gandhi, President, Madras Bar Association**, Civil Appeal No. 3067/2004 wherein the Hon'ble Apex Court had held that though the validity of the provisions of a Legislative Act cannot be challenged on the ground that it violates the basic structure of the Constitution, it can certainly be challenged if it is violative of the constitutional provisions which enshrine the principle of rule of law, separation of powers and independence of judiciary. We reiterate that the Central Administrative Tribunal is a judicial institution exercising the powers which were exercised by the Courts below the Hon'ble Apex Court. Further, in **Roger Mathew vs. South Indian Bank Limited**, Civil Appeal No. 8588/2019 reported in (2020) 6 SCC 1, the Hon'ble Apex Court had observed as under:

“180. What appears to be of paramount importance is that every tribunal must enjoy adequate financial independence for the purpose of its day-to-day functioning including the expenditure to be incurred on (a) recruitment of staff; (b) creation of infrastructure; (c) modernization of infrastructure; (d) computerization; (e) perquisites and other facilities admissible to the Presiding Authority or the Members of such tribunal. It may not be very crucial as to which Ministry of Department performs the duties of nodal agency for a tribunal, but what is of utmost importance is that the



Tribunal should not be expected to look towards such nodal agency for its day-to-day requirements. There must be a direction to allocate adequate and sufficient funds for each tribunal to make it self-sufficient and self-sustainable authority for all intents and purposes. The expenditure to be incurred on the functioning of each tribunal has to be necessarily a charge on the Consolidated Fund of India. Therefore, hitherto, the Ministry of Finance shall, in consultation with the nodal Ministry/Department, shall earmark separate and dedicated funds for the tribunals. It will not only ensure that the tribunals are not under the financial control of the Department, who is a litigant before them, but it may also enhance the public faith and trust in the mechanism of tribunals.”

27. Further, in Madras Bar Association vs. Union of India

& Anr., WP (C) No. 804/2020, reported in (2021) 7 SCC 369,

Hon'ble Apex Court had observed as under:

“63. Dispensation of justice by the Tribunals can be effective only when they function independent of any executive control: this renders them credible and generates public confidence. We have noticed a disturbing trend of the Government not implementing the directions issued by this Court. To ensure that the Tribunals should not function as another department under the control of the executive, repeated directions have been issued which have gone unheeded forcing the Petitioner to approach this Court time and again. It is high time that we put an end to this practice. Rules are framed which are completely contrary to the directions issued by this Court. Upon the tribunals has devolved the task of marking boundaries of what is legally permissible and feasible (as opposed to what is not lawful and is indefensible) conduct, in a normative sense guiding future behaviour of those subject to the jurisdictions of such tribunals. This task is rendered even more crucial, given that



appeals against their decisions lie directly to the Supreme Court and public law intervention on the merits of such decisions is all but excluded. Also, these tribunals are expected to be consistent, and therefore, adhere to their precedents, inasmuch as they oversee regulatory behaviour in several key areas of the economy. Therefore, it is crucial that these tribunals are run by a robust mix of experts, i.e. those with experience in policy in the relevant field, and those with judicial or legal experience and competence in such fields. The functioning or non-functioning of any of these tribunals due to lack of competence or understanding has a direct adverse impact on those who expect effective and swift justice from them. The resultant fallout is invariably an increased docket load, especially by recourse to Article 226 of the Constitution of India.”

28. It is pertinent to emphatically state that the comments of the Hon'ble Apex Court are telling with respect to judicial and administrative independence of the Administrative Tribunals and contrary to the assertion made by the respondents in their counter reply. The Hon'ble Apex Court had emphatically stated that Tribunals should not function as another department under the control of the executive. Sadly, the position taken by the respondents appears to be different, relegating the Tribunal to just an adjunct of the Department of Personnel & Training (DoP&T).

29. We have taken note of the judgments relied upon by the learned counsel for the respondents, specifically the judgment



in **Vinod Kumar Sharma & Ors. vs. Union of India & Ors.**

in OA No. 3616/2019. We have to say that there is a very important distinctive fact as the applicants therein were appointed on a consolidated salary on contract/ad-hoc basis whereas the present applicant has been appointed against a sanctioned post on a regular salary and Grade Pay as admissible to a regular employee. It is at a much later stage that such salary and conditions have been revised downwardly by bringing it on a consolidated remuneration.

30. The applicant has sought regularization. Admittedly, she has been working for nearly eleven years continuously now. There is no adverse remark or comment qua her performance. Several other similarly placed employees of the CAT have been regularized periodically. Why should applicant's case be treated differently? Further, by no stretch of imagination can this appointment be termed to be irregular. The applicant has been appointed through an established procedure by way of an open, transparent and fair selection process. She has been appointed on the approval of the competent authority who is no less than the Chairman of the Central Administrative Tribunal. Different Benches of the Tribunal have consistently



held that employees who are appointed against sanctioned posts on regular basis by resorting to a transparent selection process have a bona fide claim for regularization.

31. We recall that just a few days back, a Co-ordinate Bench of this Tribunal in which one of us was a Member, in **OA No. 2525/2023** titled **Anita Kumari vs. Municipal Corporation of Delhi & Anr.**, has considered the principle and issue of regularization of a contract/adhoc employee threadbare. The applicant therein was a Primary Teacher appointed on ad-hoc basis in the Municipal Corporation of Delhi (MCD). She too had claimed regularization, and in that case, amongst other grounds, one of the grounds taken by the respondents was that the applicant had been engaged in a Society and not MCD per se. Even against that background and circumstances, the Tribunal had held the applicant to be entitled for regularization w.e.f the date of her initial appointment. While deciding the OA, the primary considerations which the Co-ordinate Bench had given weightage to were:

(a) the applicant had been continuing in service for nearly twenty years,



(b) she was performing all such duties and responsibilities as are discharged by regular employees,

(c) there was no adverse comment with respect to her conduct and performance.

32. Accordingly, it had been held that since the duties and responsibilities were akin to those performed by regular employees, denial of regularization and consequential benefits would be violative of the principle of equality as enshrined in the Constitution of India. It would be pertinent to quote paragraph 25 of the said order:

“25. To cut a long story short, we would reiterate that the applicant has been continuing to hold the post of Teacher (Primary) in MCD since 11.09.2003, i.e., more than a good 21 years now and as mentioned above, this engagement has been uninterrupted even though there may have been a technical/artificial break. It would be pertinent to mention that during this period, the applicant has also been transferred from Sadar Paharganj Zone to South Zone in September, 2007. It has not been explained as to how a contractual employee engaged for a limited period could be transferred from one zone to another when the order of engagement of contract has been issued by the Education Officer of the concerned zone. This fact, too, establishes that the term of engagement may have been mentioned as contractual, however, such engagement/appointment was of a regular and continuous nature. Merely for the reason that the applicant’s initial engagement was not through the DSSSB but directly by the respondents themselves through open advertisement and due selection process on merit, the same cannot be



construed as ‘illegal’ as held by the Hon’ble Apex Court in Uma Devi (supra).”

33. In addition, the Tribunal in the said judgment had also relied upon the judgment of the Hon'ble Apex Court in the matter of **State of Karnataka and Ors. v. M.L. Kesari and Ors.** to establish that the engagement of the applicant should not be termed as irregular or illegal as defined by the Co-ordinate Bench of the Hon'ble Apex Court in Uma Devi's (supra) case. So would be the case in the present OA.

34. Against the background of what has been discussed and outlined above, we have no hesitation in holding that the OA deserves to be allowed, and that too with consequential benefits. We reiterate that we cannot, under any circumstances, allow a situation where the order/decision, even though administrative, of the Chairman, CAT who “is or has been a judge of a High Court” to be overruled by an official of the Government as has been in this case. Further, we take strong objection to the contentions of the respondents that directions issued to Ministries and Departments of the Government are to be followed by the Tribunal. We are at loss to absorb that the deposition of the Tribunal in the



affidavit conveys surrender to executive control in blatant disregard to the constitutional principles as interpreted by the Hon'ble Supreme Court.

35. Therefore, we allow the Original Application with following order(s) and directions:-

(i) We hold and declare the engagement of the applicant as Stenographer Grade-D on ad-hoc/contract basis with intermittent break, as arbitrary and violative of the provisions of Articles 14 and 16 of the Constitution of India;

(ii) Consequently, we direct the competent authority amongst the respondents to pass an order for the regular appointment of the applicant as Stenographer Grade-D with effect from the date of her initial appointment/engagement i.e. 22.11.2012.

(iii) To fix the pay of the applicant as a regular Stenographer Grade-D on 22.11.2012 and grant annual increment(s) as admissible, and also to consider her for promotion/grant of benefits under ACP/MACP scheme(s) as per the extant rules and instructions in this regard; and further to award her other entitlements such as leave, medical cover etc; besides the rest of the consequential benefits arising out of this order



36. The aforesaid directions shall be complied by the respondents within six weeks of receipt of a copy of this order.

37. The respondents shall undertake a review, if required, of the relevant and extant rules to ensure that none of the provisions in the rules are such as compromise judicial independence and dignity.

38. We state, once again, that while facts of OA No. 1987/2023 have been recorded, these directions shall apply to all the three OAs, without any reservation.

39. However, in the facts and circumstances, there shall be no order as to costs.

(Tarun Shridhar)
Member (A)

(R.N. Singh)
Member (J)

/NS/