

(WS)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.447 of 1987

DATE OF JUDGMENT: 26-6-91

BETWEEN:

Mr. Partab Karan

Applicant

AND

1. Union of India represented by
The Secretary,
Personnel, Training,
New Delhi.

2. The State of Andhra Pradesh,
represented by the
Chief Secretary,
Govt. of A.P., Secretariat,
Hyderabad. ..

Respondents

COUNSEL FOR THE APPLICANT: Mr. V.Jogayya Sarma,

COUNSEL FOR THE RESPONDENTS Mr. N.R.Devaraj, Addl.CGSC
Mr.V.R.Reddy, Advocate General
Mr.D.Panduranga Reddy, Spl.
Counsel for the State of AP.

CORAM:

Hon'ble Shri B.N.Jayasimha, Vice Chairman

Hon'ble Shri J.Narasimha Murthy, Member (Judl.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J. NARASIMHA MURTHY, MEMBER (JUDL.)

The petitioner filed this petition for a relief to quash the letter No. 1299/Spl.A/86, dated 9.4.1987 and direct the respondents to include the name of the applicant in the I.A.S. list of 1960 and grant all consequential benefits such as refixation of pay and allowances and the payment of difference of amounts actually paid and to be paid and consequently refix pension, gratuity etc., and pay the difference of amounts actually paid and to be paid. The facts of the case are briefly as follows:-

The applicant entered service in June 1950 to the post of Deputy Collector by way of direct recruitment by the erstwhile Hyderabad Government. Subsequently he was included in the select list in April 1962 for promotion to the I.A.S. For a long time the list did not move and in the meanwhile the select list was being reviewed and revised from time to time and the applicant continued to find a place therein with his original seniority intact and ultimately on 8.11.1965, i.e., after a lapse of three years, the applicant was appointed by the State Government along with other select list officers under the substantial part of Regulation 8 of the IAS (Appointment by Promotion) Regulations, 1955 to officiate in the senior post borne in IAS cadre or equivalent post thereto vide G.O. Rt. No. 2151, dated 22.12.1965. Ever-since, the applicant continued to

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officiate in senior posts without break, without reversion or without being ~~xx~~ on a purely temporary or local arrangement basis, till he was appointed to the IAS in December 1972. He held the posts of, Officer-in-Charge, The Palakol Cooperative Agricultural Industrial Society Limited, Palakol from 8.11.1965 to 6.12.1967; Managing Director, Karimnagar Cooperative Spinning Mills Limited, Karimnagar from 15.12.1967 to 10.2.1968; District Revenue Officer, Nalgonda from 20.2.1968 to 15.9.1971; and Joint Secretary, Board of Revenue Excise, Hyderabad from 20.9.1971 to 1.9.1975. Thereafter, the applicant was given 1968 as the year of allotment incorrectly. The applicant claims his year of allotment as 1960.

2. According to the applicant, one Shri G. Kumara Swamy Reddy was recruited as Deputy Collector by way of direct recruitment through Andhra ~~Rubber~~ Service Commission in the year 1956 and he was included in the select list in 1967 for promotion to IAS. He was appointed to the senior post of District Revenue Officer on 30.6.1968. He was continuously officiating in a senior post. Subsequently, on formal appointment to the IAS he was assigned 1972 as the year of allotment. However, Shri Kumaraswamy Reddy claimed that his year of allotment should be given as 1963 against 1972. He made ^a representation and it was turned down by the Government. Thereupon, he filed Writ Petition No. 3586 of 1979 for issue of a mandamus compelling the respondents for inclusion in the 1963 seniority list and determine his seniority accordingly

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and for other consequential benefits/reliefs. The writ petition was allowed by the High Court of Andhra Pradesh and subsequently the A.P. Government carried the matter in appeal to the Supreme Court and the Supreme Court also confirmed the same and thereafter Shri Kumaraswamy Reddy who is much junior to the applicant herein has got the year of allotment as 1963. Therefore, the applicant claims that his year of allotment should be fixed as 1960 as he is senior to most man to Shri Kumaraswamy Reddy. The applicant made a representation to the Government and the same was turned down by the Government. So, he filed this application for the grant of his year of allotment as 1960 with consequential benefits stated above.

3. The respondents filed a counter with the same ^{to} allegations/that of the counter filed in O.A.No.446 of 1987. The applicant also filed a reply affidavit to the counter affidavit and the contents of the reply affidavit of the applicant are similar to that of the facts mentioned in his ^{the} main affidavit filed in O.A.No 446/87.

4. The learned counsel for the applicant, Shri V. Jogayya Sarma; learned Advocate General, Shri V.R. Reddy; learned Special Counsel for the State of Andhra Pradesh, Shri D.Panduranga Reddy; and Shri N.R. Devaraj, learned Additional Standing Counsel, for the Respondents No.1/ Central Government, argued the matter.

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5. The main contention of the respondents is that the applicant made a representation ^{on} 25.8.1986 reiterating the earlier representation made in 1977 ~~andxxxdateexxxjection~~ which was rejected and that ^{initial} the date of ~~rejection~~ is relevant for the purpose of limitation and subsequent ~~to~~ representation is ~~is~~ nothing but reiteration of ~~earlier~~ representation. Moreover, the case of Shri Kumaraswamy Reddy will not give a fresh cause of action to the petitioner. They also contended that Shri Kumaraswamy Reddy has officiated in the cadre post continuously and so he is entitled to get his seniority basing on his continuous officiation in that cadre post. So, Shri Kumaraswamy Reddy was given the benefit of year of allotment on account of his continuous officiation in the cadre post whereas the petitioner never officiated in the cadre post. So, he is not entitled to get the benefits given to Shri Kumaraswamy Reddy.

6. The question of limitation was fully discussed/ in OA 446/87 and held that there is no limitation in filing the O.A., ~~xxxxxxxxxxxxxx~~ The facts of this O.A., are ~~are~~ similar to the facts in O.A. No. 446 of 1987 and the ^{to this P.W. 1} facts in Judgment in O.A. No. 446 of 1987 is applicable to decide the question of limitation in this case.

7. Insofar as the seniority of Shri Kumaraswamy Reddy is concerned, the petitioner herein also held senior

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posts viz., Officer-in-Charge, The Palakol Cooperative Agricultural Industrial Society Limited, Palakol from 8.11.1965 to 6.12.1967; Managing Director, Karimnagar Cooperative Spilling Mills Limited, Karimnagar from 15.12.1967 to 10.2.1968; District Revenue Officer, Nalgonda from 20.2.1968 to 15.9.1971; and Joint Secretary, Board of Revenue Excise, Hyderabad from 20.9.1971 to 1.9.1975. He held these posts continuously without any break. Moreover, their lordships while allowing the writ petition filed by Shri Kumaraswamy Reddy, gave a direction that seniority of seniors to Shri Kumaraswamy Reddy must also be considered on par with Shri Kumaraswamy Reddy. Shri Kumaraswamy Reddy was given 1963 as the year of allotment though he was not completed 8 years of service by that time. The Hon'ble High Court as well as the Hon'ble Supreme Court are much conscious about the rights of the seniors to Shri Kumaraswamy Reddy, so they gave a direction in the Judgment that seniority of the seniors to Shri Kumaraswamy Reddy also should be considered on par with Shri Kumaraswamy Reddy. This aspect also was discussed fully in the Judgment in O.A.No.446 of 1987 and the Judgment in O.A.No.446 of 1987 may be read as ^a/part of this judgment to appreciate various facts/contentions raised by the respondents in this case. The principles of natural justice require to show that the petitioner herein and others similarly placed are entitled to the same benefits as in the case of Shri Kumaraswamy Reddy and the claim

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of the petitioner for fixing his year of allotment as 1960 is a genuine claim when compared to Shri Kumaraswamy Reddy's case. So, the petitioner has claimed to assign 1960 as the year of allotment and he is entitled to the same. So, we set-aside the Memo No.1299/Spl.A/86, dated 9.4.1987 of the Chief Secretary to Government of Andhra Pradesh communicating the decision of the Govt. of India in letter No.14014/27/86-AIS(I), dated 9.4.1987. We hold that the petitioner is entitled to get 1960 as the year of allotment.

8. The next question for consideration is that consequent to the above finding, the benefits that accrue to the applicant. Admittedly, the applicant had filed this application after he had retired from service. The question of the applicant working in the higher post does not arise. The question whether, in such a case the arrears of pay and allowances is payable or not, has been considered by the Full Bench of this Tribunal in O.A.No.767/1989 (on the file of the Madras Bench). The Full Bench in answering the question that had arisen, held as follows:-

"We are of the view that the applicants are not entitled to enhanced pay and allowances for the period from 5.11.1976 to the date of their superannuation when they did not actually work in the post of Executive Engineer, and

To

1. The Secretary, Union of India,
Ministry of Personnel Training, New Delhi.
2. The Chief Secretary, State of A.P., Govt. of A.P.,
Secretariat, Hyderabad.
3. One copy to Mr. V. Jagayya Sarma, Advocate, CAT.Hyd.
4. One copy to Mr. N.R. Devraj, Addl.CGSC.CAT.Hyd.
5. One copy to Mr. V.R. Reddy, Advocate General, High Court of A.P.Hyd.
6. One copy to Mr. D. Panduranga Reddy, Spl. Counsel for State of A.P.
7. One copy to Hon'ble Mr. J. Narasimha Murty, Member (J)CAT.Hyd.
8. One spare copy.

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consequently they are also not entitled to the difference in pay and allowances between the two posts of Assistant Executive Engineer and Executive Engineer. Hence the question of payment of arrears of pay and allowances does not arise."

Following the above decision, the applicant is entitled only for a notional fixation of his pay ^{and} on the basis of that pay he is entitled for refixation of pension from the date of filing of this application. Accordingly, we direct the respondents to fix the pay of the applicant notionally on the basis of his getting the year of allotment as 1960 and pay him the arrears of revised pension from the date of filing of this application. This shall be complied with within a period of three months from the date of receipt of this order.

9. The application is accordingly allowed. There is no order as to costs.

B.N.Jayamha
(B.N.JAYASIMHA)
Vice Chairman

M
(J.NARASIMHA MURTHY)
Member (Judl.)

Dated: 20/6/ June, 1991.

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Deputy Registrar (A)