

(65)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD

D.A.No. 136/89

XXXXXX.

Dt. of Decision: 11.11.89

Mr. S. Bhadrappa

Petitioner

Mr. C. Suryanarayana

Advocate for
the Petitioner
(s)

Versus

Director, PMPP, Survey of India and 2 ors.

Respondent.

Mr. N.R. Devaraj

Advocate for
the Respondent
(s)

CORAM:

THE HON'BLE MR. R. Balasubramanian, Member (Admn.)

THE HON'BLE MR. C.J. Roy, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the judgment? *my*
2. To be referred to the Reporters or not? *my*
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*
5. Remarks of Vice-Chairman on Columns 1, 2, 4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

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[Signature]
HRBS
M(A)

[Signature]
HCJR
M(J)

(56)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.136 of 1989

DATE OF JUDGMENT: 11th NOVEMBER, 1992

BETWEEN:

Mr. S.Bhadrappa

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Applicant

AND

1. The Director,
Pilot Map Production Plant,
Survey of India,
Hyderabad.
2. The Surveyor General Of India,
Survey of India,
Dehra Dun - 248 001.
3. The Secretary,
Dept. of Science & Technology,
(representing Union of India),
New Delhi-1.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. C.Suryanarayana

COUNSEL FOR THE RESPONDENTS: Mr. N.R.Devaraj, Sr.CGSC

CORAM:

Hon'ble Shri R.Balasubramanian, Member (Admn.)

Hon'ble Shri C.J.Roy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI C.J.ROY, Member(Judl.)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant claiming a relief to declare that the applicant should be deemed to be continuing as Negative Keeper even after his posting as Store Keeper and that he is entitled to all incidental and consequential benefits.

2. The facts in brief are as follows:-

The applicant was recruited in 1965 as Trainee Type 'B' (Reproduction) and after training he was classified as Negative Keeper Grade-V w.e.f. 1.7.1966. He was promoted as Negative Keeper Grade-IV on 1.1.1968. He states that on a direction by the Manager, Map Reproduction Division, he gave option for redesignation as Store Keeper (Reproduction) on 1.4.1970 stating that he was prepared to accept to change his designation on a condition that his service seniority and further grade promotions as Negative Keeper are protected. But, the Manager asked him to revise the option to make it appear that the applicant wanted to change his trade on his own volition. But even in his revised option, he did not withdraw the condition that there should be no hindrance for

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his service seniority and further grade and seniority promotions vide Annexure A-3 dated 2.7.1970. The applicant was accordingly redesignated as Store Keeper Grade-IV (Rep) evidently without his consent and he was directed to appear for the Trade Test for promotion as Store Keeper (Rep) Grade-III. However, the applicant appeared in the trade tests for promotion to both the Negative Keeper Grade-III and Store Keeper (Rep) Grade-III posts. Withholding the result for promotion as Negative Keeper Grade-III, the result for promotion as Store Keeper (Rep) Grade-III was published as successful and he was given promotion as Store Keeper (Rep) Grade-III ignoring the condition in his option that there should be no hindrance for his service seniority and further grade and seniority promotions in the Negative Keeping Trade.

3. Thus, the applicant states that he was reclassified without his consent which is violative of the instructions contained in Para 7 of Circular Order No.439(Admn.) dated 1.8.1950. For the purpose of promotions, the posts of Store Keeper (Topo) and Store Keeper (Rep) are intermixed at the Grade-II level and a common seniority list is prepared for them which does not appear to be just or equitable in view of Appendix I of Chapter X, (VI edition, corrected upto August 1966) Map Reproduction vide Annexure A-5 to this application.

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4. The applicant states that if he has been treated as a Negative Keeper, he would have got his promotion to Gr.II w.e.f. 1.1.1973 and would have been promoted to Division I as Technical Assistant on or before 10.3.1987, the date on which his junior was promoted. In fact, 17 others who are all juniors to the applicant were promoted as Technical Assistants vide Annexure A-10. The applicant states that holding of a DPC and giving a fake promotion as Store Assistant is an exercise in futility. It is not actually a promotion but only a change of designation from Store Keeper Grade-II to Store Assistant. Aggrieved by the same the applicant made a representation on 14.3.1988 vide Annexure A-7 followed by another representation dated 14.7.1988 vide Annexure-A-8. It was replied vide Annexure A-9 dated 21.7.1988 ~~that~~ stating that his representation dated 15.4.1987 has already been replied on 19.2.1988 and he was advised to refrain from further correspondence. It was stated in the reply that since the applicant opted for redesignation as per the rules of the Department and that he was enjoying the privileges of the Trade of Store Keeper etc., his seniority would be shown among Store Keepers only. Hence, this application.

5. The respondents filed a counter stating that when the applicant came to know about the raising of No.104(HB) Ptg.Gropp at Hyderabad, he had submitted an application dated 12.8.1968 offering his voluntary services for the Planned

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Reproduction Unit at Hyderabad. Since the Planned Reproduction Unit had no Negative Keeper Trade at that time, the applicant was transferred to Hyderabad on 19.9.1969 on an understanding that he would opt for reclassification in another trade available and accordingly he offered his voluntary services to the Reproduction Unit and got transferred. When he was due to get the next grade viz., Negative Keeper Grade-III with effect from 1.1.1971, there being no trade of Negative Keeper, the applicant opted for Store Keeper Trade as per his letters dated 1.4.1970 and 2.7.1970 and he was reclassified as Store Keeper Grade-III w.e.f. 1.1.1971. He was later promoted as Store Keeper Grade-II w.e.f. 1.1.1973 after passing the prescribed ~~xxx~~ trade test and he was enjoying all the benefits since then. The applicant made a representation on 15.4.1987 to the Surveyor General asking for Section-in-Charge allowance which is not admissible and the same was accordingly disposed of. This matter was later changed by the applicant to questioning of reclassification to the grade of Store Keeper allegedly against his consent which was also turned down by the Surveyor General of India.

6. The respondents state that the application is not within the limitation. The cause of action for the O.A. arises on 1.1.1971 when he was allegedly compulsorily classified as Store Keeper from Negative Keeper, or in 1973 when the trade of Negative Keeper was created in Hyderabad, or in 1980 when he continuously noted his gradation list and seniority in

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Topo Trade. He did not represent at all regarding the absence of his name in Reproduction Gradation list. Hence, on this point, the O.A. is liable to be dismissed since it is barred by limitation.

7. The applicant while giving option, only wanted ~~by~~ his service seniority to be protected and the same was protected by classifying him in his new trade with Grade-III on 1.1.1971. The consent of the applicant was very much there in his letters dated 1.4.1970 and 2.7.1970. There is no reason and dwell on his trade tests results as Negative Keeper Grade-III, once he had opted for Store Keeper Grade-III which is equivalent cadre with same scale. He was classified with his consent only. The applicant ought to have opted for going back to his original trade of Negative Keeper had he felt aggrieved at his reclassification against his conditions but he did not do so simply because he was happy and contented at the reclassification and prospects available as of then. The applicant had enjoyed all the benefits in the opted position for the last 18 years and the O.A. is highly belated and is liable to be dismissed.

8. The applicant filed a rejoinder to the counter affidavit stating that the averment of the respondents that he offered his voluntary services because the Planned Reproduction Unit had no Negative Keeper Trade at that time is an utter misrepresentation of the facts. The post of

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Negative Keeper was sanctioned for the Reproduction Unit in 1973. Instead of directing the applicant to work ~~as~~ as Negative Keeper, in that Unit, fresh recruitment was made to fill up the posts of Negative Keeper. The applicant states that he was not even given the option to go back as Negative Keeper and work in that Unit. Hence, the applicant states that the averments by the respondents are liable to be rejected.

9. At the time of admitting the O.A., on 23.2.1989, it was made clear by the orders that "any promotion made to the post of Technical Assistant will be subject to the result of this case".

10. We have heard the learned counsel for the applicant Mr. C.Suryanarayana and the learned Senior Standing Counsel for the Respondents Mr. N.R.Devaraj.

11. The short point involved in this case is whether the application is barred by limitation in view of the fact that the cause of action arose to the applicant on 1.1.1971 itself when he was not classified in the original trade as Negative Keeper Gr.III by allegedly withholding the results of the Negative Keeper Gr.III. ~~xxxx~~

12. It was made clear vide letter No.C-9/A-A(S.B.)/Rep. dated 22.2.1988 in reply to the representation of the applicant dated 4.5.1987 that the seniority in service will be counted

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in the same trade i.e., Store Keeper and not in other trades of reproduction side. Thereafter, the applicant made two representations on 14.3.1988 and 4.7.1988 which were replied on 21.7.1988 stating that the applicant had reiterated the same points which were replied on 19.2.1988 itself.

13. The fact that the applicant had offered voluntary services to the Reproduction Unit at Hyderabad on 12.8.1968 and got transferred to Hyderabad is not in dispute. The fact that he opted for reclassification for Store Keeper Trade vide his letters dated 1.4.1970 and 2.7.1970 also is not in dispute. The applicant had the option voluntarily choosing another trade in the absence of the trade of the applicant on 1.1.1971 itself. While giving option for his voluntary services, the applicant only wanted his service seniority to be protected and the same was protected by classifying him in his new trade as SK Grade-III on 1.1.71. The applicant had a plenty of opportunities from 1.1.1971 to 1.1.1973 and even later to represent against the reclassification and go back to his original trade which he did not choose to do.

14. The representation made by the applicant on 23.2.88 for an event ^{which} occurred in early 1971 i.e., 17 years later, that too after enjoying the benefits during the term, is belated one.

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15. The letter ~~xxxxxx~~ dated 12.8.1968 (Annexure -1) ~~xxxx~~ by the applicant addressed to the Deputy Director, Map Publication, Survey of India, Dehra Dun reads as follows:-

"I suplicate your honour to kindly accept my voluntary services for planed Reproduction Unit at Hyderabad, Andhra Pradesh."

16. The applicant addressed a representation dated 1.4.1970 to the Manager, Map Reproduction Division, Survey of India, Hyderabad which reads as follows:-

"As per your verbal instructions that there will be no any Negative Storing Section in our Map Reproduction Division, Hyderabad and therefore I will be absorbed as a Store Keeper (Rep) although I was transferred from 101(HLO), Ptg. Grp., Dehra Dun as a Negative Keeper Grade-IV. I have to say the following few words in this respect please.

"In the interests of the administratiion I am fully prepared to accept the above change, in my designation provided there will be no any hindrance in my service seniority, further Grade Promotions and Seniority Promotions."

I am due for my next higher grade III promotion w.e.f. 1.1.1971 and therefore have to appear for the trade test during this year i.e., 1970. So, I may be permitted to appear in trade test for Store Keeper (Rep) Grade-III this year ie., 1970."

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17. The subsequent letter dated 2.7.1970 by the applicant also states that, "In the interests of the administration, I am prepared to accept the change in my designation as Store Keeper (Rep) provided there will be no any hindrance in my service seniority, further grade promotions and seniority promotion."

18. It is evident from the letters extracted supra, ~~that~~ the applicant himself voluntarily offered his services for Reproduction Unit at Hyderabad and accepted for absorption as Store Keeper (Reproduction). The only plea made by the applicant is that there would be no hindrance if his service seniority, further grade promotions and seniority promotions which were protected by the respondents.

19. The applicant filed a Gradation List of Grade-II Staff (Reproduction) as on 1.1.1987 (Annexure A-10) stating that his juniors, as in the list, were promoted as Technical Assistants wherein his name does not appear. ~~But the~~ Gradation List of Store Keepers as on 1.1.1980 was circulated as long back as on 18.9.1980 itself showing the name of the applicant at Serial No.64. The applicant never chose to represent against the gradation list circulated on 18.9.1980 at that point of time.

20. The Hon'ble Supreme Court in "S.B.Dogra Vs. State of Himachal Pradesh & others (JT 1992(5) SC 667)", held that-

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"when no objection was filed to the provisional gradation list within the prescribed time, the objection filed only after the final gradation list was published becomes belated one and is liable to be rejected outright."

21. Following the decision of the Hon'ble Supreme Court in the case cited supra, we hold that the claim of the applicant is a belated claim and it cannot be agreed to.

22. That apart, the applicant's claim was initially rejected on 19.2.1988 itself which is evident from the letter dated 21.7.1988 of the respondents (Annexure A-9) in reply to the further representations of the applicant dated 14.3.1988 and 4.7.1988. It is pertinent to mention here that, "repeated representations would not extend the cause of action. The subsequent representations do not save limitation as per the decision of the Hon'ble Supreme Court in "S.S.Rathore Vs. State of M.P. (AIR 1990 SC 10).

23. On the examination of the whole record, it is clear that the applicant had come to Hyderabad from Dehra Dun from the trade of Negative Keeper with his full knowledge that there was no trade of Negative Keeper at Hyderabad, as per Annexure-I to the counter affidavit dated 12.8.1968 extracted supra.

24. Besides, having come to Hyderabad, he had earned two ~~three~~ promotions as Store Keeper Grade-III in 1971 and Store

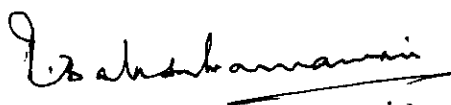
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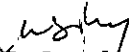
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Keeper Grade-II in 1973. The question is not that it was the request transfer but the question is whether the applicant is ~~to be~~ deemed entitled to be treated as Negative Keeper ~~XXXX~~ now after a long lapse of over 17 years. It is an undisputed fact that the applicant ^{was} continuing in the cadre of Store Keeper when the gradation list was published in 1980 and he did not choose to question the same. So, the relief claimed by the applicant that he should be deemed to be continuing as Negative Keeper even after his posting as Store Keeper with consequential benefits including promotion as Technical Assistant, cannot be acceded to as it is against the equity, good conscious and justice.

25. The case not only fails on merits but also on the point of limitation. Hence, in view of the observations made supra, the O.A. is dismissed with no order as to costs.



(R. BALASUBRAMANIAN)
Member (Admn.)


(C. J. ROY)
Member (Judl.)

Dated: 11th November, 1992.


Deputy Registrar

- To
1. The Director, Pilot Map Production Plant, Survey of India,
 2. The Surveyor General of India, Survey of India, Dehradun-1.
 3. The Secretary, Dept. of Science & Technology, U.O.I. New De
 4. One copy to Mr. C. Suryanarayana, Advocate, CAT. Hyd.
 5. One copy to Mr. N. R. Devraj, SR. CGSC. CAT. Hyd.
 6. One copy to Deputy Registrar (J) CAT. Hyd.
 7. Copy to All Reporters as per standard list of CAT. Hyd.
 8. One spare copy.

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