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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD

D.A.No. 212/89

T.A.No.

Dt. of Decision: 31.3.83.

M.V.V. Subba Rao Petitioner

Advocate for
the Petitioner
(s)

Versus

Respondent.

Advocate for
the Respondent
(s)

CSRAM:

THE HON'BLE MR. Justice V. Neeladri Rao, Vice-Chairman

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
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?
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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HRBS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No. 212/1989

Date of decision: 31.3.1993

Between

M.V.V.Subba Rao

... Applicant

and

1. Senior Divisional Personnel
Officer, South Central Railway,
Vijayawada.

2. Chief Personnel Officer,
S.C.Rly., Secunderabad.

3. Government of India, rep. by
Secretary, Ministry of Rlys.,
New Delhi.

... Respondents

Appearance:

For the applicant : Shri V.Rama Rao, Advocate

For the Respondents : Shri N.R.Devaraj, SC for Railways

CORAM:

The Hon'ble Shri Justice V.Neeladri Rao, Vice-Chairman

The Hon'ble Shri R.Balasubramanian, Member (Administration)

J U D G E M E N T

(Of the Bench delivered by the Hon'ble Shri Justice V.
Neeladri Rao, Vice-Chairman).

The applicant was selected for the post of Assistant
Inspector of Works by Railway Service Commission. He
joined service on 3-11-1959 as Apprentice Assistant
Inspector of Works. At the time of entering into service,
the applicant submitted S.S.L.C. Register and the certi-
ficate issued by a Gazetted Officer to the effect that

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he belongs to Konda Kapu--a Scheduled Tribe and accordingly an entry was made in his Service Register. He was promoted to next higher grade in September 1961 and later promoted as Inspector of Works on 2-12-1963. Both these promotions were granted to the applicant on the basis of special reservation in promotions for Scheduled Tribe candidates. The Vigilance Branch of the Railways made an investigation in regard to the caste of the applicant and when his social status as a Scheduled Tribe candidate was doubted, the matter was referred to the Director of Tribal Cultural Research and Training Institute (TCRTI) Hyderabad. The applicant appeared before the said Director on 22-10-74. By letter dated 15-12-75, the Respondent No.1 intimated the applicant that the said Director opined that the information furnished by him ~~applicant~~ did not substantiate his claim of belonging to an S/T community and he was called upon to submit any representation with valid documentary proof in support of his claim in regard to his social status, within seven days (which was extended from time to time at the request of the applicant), failing which he would be treated as belonging to other caste and his pay would be re-fixed and over-payment will be recovered from him. When the applicant failed to produce the documentary evidence within the stipulated time, the pay of the applicant was regulated in scales Rs.205-280 (AS) and Rs.425-700 (AS) from 1-01-73 and he was reverted as Assistant Inspector of Works with effect from 2-12-63 by treating him as O/C candidate in terms of Sr.D.PO/BZA letter B/P.Con./227/VII/75/22 dated 18-4-1977.

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When the applicant submitted S/T certificate, the Divl. Personnel Officer, by order dated 16-6-77 suspended the enquiry pending investigation. By letter dated 14-9-77, the applicant was directed to produce the community certificate in the standard form mentioned at page 34, para 13 of the Brochure, Revised Edition. By letter dated 17-10-77 the applicant produced the photostat copy of the community certificate. The applicant made a representation dated 27-4-88 to the General Manager praying for refund of Rs.3293.63, the amount recovered between March '76 and March '80 in view of reversion and for re-promoting him by restoring his original seniority by treating him as belonging to Konda Kapu, as ~~for~~ the certificates dated 12-12-44 issued by the Village Munsiff, Dummagudem, Certificate dated 27-3-57 issued by the Head Master and Correspondent, M.C.Laurin High School, Kakinada and the certificate No.L.Dis.579/77 dated 27-2-77 issued by the Tahsildar, Bhadrachalam produced by him would establish that he belongs to S/T community. The General Manager ordered refund of Rs.3293.63. But he negatived the other reliefs claimed. Hence this O.A. is filed praying for a direction to the Respondents to treat the applicant as belonging to Scheduled Tribe and consequently to direct them to promote and regularise his service from 2-12-1963 when he was first promoted as Inspector of Works in the scale of Rs.250-380 after declaring that the order dated 20-9-88 issued by R.2 in pursuance of the order of the General Manager to the extent to which it is against him as illegal, void and arbitrary.

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2. The plea of the respondents is that when during investigation by the Vigilance Branch of the Railways, the social status as claimed by the ^{applicant} ~~the~~ was doubted, the same was referred to the Director, TCRTI, Hyderabad and when the applicant failed to substantiate his case before the said Director, the applicant was required to produce documentary evidence to substantiate his claim in regard to his social status and when the applicant had not produced the documentary evidence even after the period was extended from time to time, the applicant was reverted with retrospective effect, for his promotion was given only in ST quota and the over payment was ordered to be recovered. But later on as per the orders of the General Manager the amount recovered was refunded to the applicant on 11-1-89. The further plea of the respondents is that the District Collector, East Godavari informed the Respondents that the father of the applicant referred his caste as 'Kapu' when the applicant was admitted in the school and even the records available with the Police Department revealed that the father of the applicant belonged to 'Kapu' caste, and as roster was not prepared in 1959 the caste of the father of the applicant was not verified at the time when he joined service in 1959. Though a specific plea was not raised in the counter about the plea of repitition and lapses on the part of the applicant in moving the General Manager about more than a decade after he was reverted, the same was urged at the time of hearing. As the relevant facts are on record, we feel that it is a fit case where the respondents can be permitted to raise those pleas.

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3. The contentions for the applicant are as under:
Even at the time of his joining service, the applicant produced the necessary certificates to show that he belongs to S/T community and an entry is made to that effect in his service record. He was promoted in the vacancy available for ST candidates. If the respondents doubt the social status and thereby want to revert the applicant, it is for them to establish that the applicant does not belong to ST community. The only reason that was conveyed to the applicant for not treating him as belonging to ST community is that Shri K. Ganiraju, a 'Kapu' is related to him. But the said Sri K. Ganiraju is not a relation of the applicant and he was not given opportunity to disprove the same. Thus, the finding of the Director, TCRTI, Hyderabad that the applicant is not an ST candidate is vitiated for non-compliance of the principles of natural justice. Even as early as in 1977 the applicant submitted necessary documents in support of his case and no enquiry was conducted on the basis of those documents and when no final decision was taken by the concerned authority (R.2), he ultimately made a representation to the General Manager in 1988 and even the General Manager without giving opportunity to the applicant to prove his case on the basis of documents produced by him, negatived his plea. This O.A. was filed within one year from the date on which the order of the General Manager was conveyed to him.

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4. It was urged for the respondents that even though time was granted for more than a year to the applicant he had not produced necessary documentary evidence, and as he was informed that the authorities would proceed by treating him as O/C candidate if necessary documents are not produced within the time stipulated, the applicant cannot complain that he was not given opportunity to establish his case. Even the information available with the revenue and the police authorities reveals that the applicant belongs to Kapu caste. Further, there are lapses on the part of the applicant in moving the General Manager, about more than 12 years after he was reverted, and if such stale cases are considered the employees who were already promoted will be effected if the applicant succeeds in his case.

5. The applicant was reverted in 1976. Section 21(2)(a) ~~(1)(a)~~ of the Administrative Tribunals Act, 1985 prescribes period of limitation in regard to the grievances which had arisen prior to 1-11-1985 the date on which the Central Administrative Tribunal was constituted. It lays down that the grievance in respect of which an application was made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under the A.T. Act, in respect of the matter to which such O.A. is not barred by limitation. such matter relates. Admittedly, the order of reversion was passed in 1976 and thus more than three years prior to 1-11-85. But it is stated for the applicant that his representation was disposed by the General Manager in 1988 and hence this application which was filed within one year therefrom is within the period of limitation as referred to under Sec.21(1)(a) of the AT Act.

6. It is evident from the pleadings that even in 1977 the applicant submitted his representation after he was reverted. The same was not disposed of by the concerned authority. When ultimately in 1988 the applicant submitted a representation to the General Manager, that is, an higher authority, his case was considered and it was negatived.

7. The applicant had referred to the following decisions in support of his contention that this O.A. is within time by urging that even in cases where there are repeated representations and if each of them was disposed of on merits, the period of limitation commences from the date of the last order on the representation. In ATR 1988 (2) CAT 250 (Har Binder Lal Vs. Comptroller and Auditor General and anr.) this Bench held that the rejection of the applicant's request for counting the period of service rendered prior to joining the Central Public Sector Undertaking for calculating pension, etc. ^{does not} debar him from coming with another such request and if the latter request is rejected on consideration of merits, the period of limitation commences from that latter order. In 1988(1) CAT 1 (B.Kumar Vs. Union of India & Ors.) the Principal Bench of the C.A.T. held that the period of limitation ~~under~~ under Section 21 starts from the date of rejection of the last representation and not from the date or dates of the rejection of the earlier representations in cases where there is no provision for preferring an appeal. Similar view was expressed by the Madras Bench of the Tribunal

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in 1989(7) SLR 209 (S. Raghuraman Vs. UOI & ors.). But this is not a case where the earlier representation against the order of reversion was rejected. It is a case where it is not disposed of and it is only the latter representation that was considered. Similar case had arisen before the Calcutta Bench of the Tribunal ~~and~~ ATR in 1988(2) CAT 499 (Ananta Kumar Mondal Vs. UOI & ors.). ^{therefore} it was held ~~that~~ when the earlier representations remained unanswered and final decision was taken only on the last representation, the period of limitation commences from the date of rejection of the last representation. Hence it can be stated even in this case that this O.A. is in time for it was filed within one year after his request for re-promotion was negatived by the General Manager and his earlier representation remained unanswered. // Yet another question that arises for consideration is as to whether the applicant has a right to prefer an appeal as envisaged in Rule 19(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 (corresponding to Rule 24(2) of the C.C.S. (C.C. & A) Rules, 1965). If such an order is subject to an appeal, the order of reversion cannot be challenged on the basis of representation and even if such a representation is entertained and rejected on merits, the said act cannot be relied upon by the applicant that he can challenge the order of reversion even without preferring an appeal. It may be noted that ~~the~~ period of limitation is prescribed for preferring an appeal and no such period of limitation arises in regard to representation. Of course, there is a provision whereby the appellate authority can condone the delay in preferring the

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appeal if the circumstances warrant. But in this case, even if the representation to the General Manager can be treated as an appeal, there are no circumstances to hold that the delay of 12 years is explained. Anyhow, there is no need ^{to further} ~~for~~ ~~advertising~~ to the question as to whether the order of reversion is subject to appeal in the view which we are going to take in regard to the ~~la~~ches.

8. The applicant was reverted in 1976. Consequent upon his reversion, another eligible candidate might have been promoted. Further, there would have been a number of promotions to the two categories from which the applicant was reverted. It was held in AIR 1970 SC 470 by the Supreme Court that each person sought to be entitled to sit back and consider that his appointment effected a long back ago would not be and promotion/ set aside after a lapse of a number of years. In Ordnance Factory Workers Union Vs. Secretary, Ministry of Defence, 1990(12) ATC 296, Madras Bench of the Tribunal held that even ^{if} on account of a representation, a matter is within limitation, ^{still} if the Tribunal considers that the subject matter is one dating back to several years, the Tribunal may dismiss the application for ~~la~~ches. The same equally holds good in this case. When the vested right of promotees is going to be affected, if plea of ~~applicant~~ is going to be considered, the same has to be rejected on the ground of ~~la~~ches. Hence even though we held that this O.A. is within the period of limitation, if it is going to be held that an appeal does not lie against the order of reversion and as such the representation is sufficient, still this O.A. has to be

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rejected on the ground of laches. For the above reason, we do not propose to determine whether in the circumstances an appeal lies against the order of reversal of the applicant or whether this is a matter which can be considered on the basis of mere representation. In the result the O.A. is dismissed. No costs.

V. Rao
(V. Neeladri Rao)
Vice-Chairman

R. Balasubramanian
(R. Balasubramanian)
Member (Admn.)

Dated: 31st day of March, 1993.

mhb/

[Signature]
Deputy Registrar (J)

To

1. The Senior Divisional Personnel Officer, S.C. Rly, Vijayawada.
2. The Chief Personnel Officer, S.C. Rly, Secunderabad.
3. The Secretary, Govt. of India, Min. of Rlys, New Delhi.
4. One copy to Mr. V. Rama Rao, Advocate, 3-6-779, 14th Lane Himayatnagar, Hyderabad.
5. One copy to Mr. N. R. Devraj, SC for Rlys, CAT. Hyd.
6. One spare copy.
7. One copy to Library, CAT, Hyd.

pvm

P. N. Rao
1/4/93