

(69)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

DA.237/89

dt. of decision : 1-2-95

Between

M.V.S. Ranganadham

: Applicant

and

The Union of India,
rep. by the Secretary
Min. of Planning,
D/o Statistics
Government of India
New Delhi

: Respondent

Counsel for the applicant

: J.V. Lakshmana Rao
Advocate

Counsel for the Respondent

: N.V. Ramana, SC for
Central Government

CORAM

HON. MR. JUSTICE V. NEELADRI RAO, VICE-CHAIRMAN

HON. MR. R. RANGARAJAN, MEMBER (ADMN.)

[AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN]

Heard Shri J.V. Lakshmana Rao, learned counsel for the applicant and also Shri N.V. Ramana, learned standing counsel for the Respondents.

2. The applicant belongs to 1981 direct recruitment batch of Asst. Directors (Gr.IV) of Indian Statistical Service. It is having All India seniority. The promotion from category IV is to Category. III. Rule 8(1)(b) of 1961 rules before amendment in 1989, envisages that all the vacancies in Gr. III shall be filled by promotion from amongst the Gr. IV officers who have completed not less than 4 years of service on a regular basis in that grade. It further states that promotions shall be made in the order of seniority subject to rejection of the unfit by the controlling authority on the advice of the Board. Proviso to the same lays down that if any junior officer in Gr. IV is eligible and is considered for promotion, all officers senior to him in that grade should also be considered for promotion notwithstanding that they may not have completed four years service on a regular basis in that grade.

3. Executive instructions were issued on 27-11-1972 providing reservation for SCs/STs for promotion from Gr. IV to Gr. III. When 10 SC and 1 ST candidates were promoted by order No. 12016/8/87 dated 24-11-87 from category IV to category III by following the executive instructions dated 27-11-1972 in providing reservations to SC/ST.

(H)

One Shri Mohanty who is senior to some of the SC candidates therein filed OA 336/88 (TUSHAR RANJAN MOHANTY Vs. Union of India) for superseding him in promotion to Gr. III. The said OA was disposed of on 28-11-88 and the operative portion therein is as under:

"The applicant, Shri Tushar Ranjan Mohanty will be deemed to have been promoted to Grade III with effect from 24-11-1987 and will be placed above respondent No. 3 to 10 in the seniority list of Gr. III. He will be paid salary in the scale of Grade.III with effect from 24-11-1987 and the arrears of salary will be paid to him within a period of 4(four) months from the date of this order."

4. ISS amendment rules 1989 were framed under Article 309 of the Constitution of India and were published by the notification dated 20-2-1989. Rule 13 of 1961 rules has been substituted by the following:

"13. Reservation for scheduled Castes and Scheduled Tribes, etc. - Appointments to the service shall be made subject to the orders relating to reservation for SCs and STs issued by the Central Government from time to time."

5. Rule 1 (2) of ISS amended rules 1989 provided that those amended rules shall be deemed to have come into force on 27-11-1972.

6. The Union of India preferred CA 3844/89 on the file of the Supreme Court against the judgement of the C.A.T. in OA 336/88. It was contended inter alia before the Supreme Court for the Union of India that the judgement of the Calcutta Bench had to be set aside in view of the amendment as per ISS amendment rules 1989 which was given retrospective effect from 27-11-1972. But the said contention was rejected. In the penultimate para of the judgement their lordships of the Supreme

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court observed as under:

"Respectfully following the law laid down by this court in the judgements referred to and quoted above, we are of the view that the retrospective operation of the amended rule 13 cannot be sustained. We are satisfied that the retrospective amendment of rule 13 of the rules takes away the vested rights of Mohanty and other general category candidates senior to respondent 2 to 9. We, therefore, declare amended rule 13 ~~to~~ the extent it has been made operative retrospectively to be unreasonable, arbitrary and as such, violative of Articles 14 & 16 of the Constitution of India. We strike down the retrospective operation of the rule. In the view we have taken on the point it is not necessary to deal with the other contentions raised by Mohanty."

7. This OA was filed on 23-3-89 praying for quashing the ISS amended rules 1989, ~~to the extent they have~~ made applicable retrospectively from 1972 by holding the same as illegal and void. But in view of the judgement of the Supreme Court in CA 3844/89, the applicant is seeking the following amended relief:

"In view of facts mentioned in para 4, above the applicant prays for the following reliefs:

To quash the amended Recruitment Rules, made applicable retrospectively from 1972 by impugned order No. 11011/4/SS-ISS in notification dt. 20-2-1989 as illegal and void and direct the respondents to promote the applicant from the date his junior with all consequential benefits including monetary benefits and to place the applicants above the junior so promoted in the resultant seniority list of promotional grade(s) of ISS and pass such other order or orders as deem fit and proper in the circumstances of the case.

In this connection, it is submitted that the first junior of the applicant belonging to SC category viz. Shri Amit Jyoti Roy (seniority No. 876) was promoted to Grade III of ISS w.e.f. 24-11-87 and to junior Administrative grade of ISS w.e.f. 29-3-93. Further it is submitted that the first junior of the applicant of general category, viz. Shri D.N. Basak (seniority No. 651) was promoted to Grade III of ISS w.e.f. 23.2.84. Copies of the orders of promotions of these juniors are enclosed as material papers at Annexure-3 page No."

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8. Shri D.N. Basak was promoted to Gr. III of I.S.S. on 23-2-84. He is admittedly junior to the applicant in category IV. Even Shri Basak is of general category. The applicant has not chosen to challenge the promotion of Shri D.N. Basak till MA 028/94 was filed praying for amendment of the relief portion in the OA. No reasons are given for the delay in challenging the promotion of Shri D.N. Basak. The judgement of the Apex court in CA 3844/89 has no bearing in regard to the challenge ^{vs} the promotion of Shri D.N. Basak. We feel that the challenge to the promotion of Shri D.N. Basak after a decade of his promotion has to be ~~dis~~-allowed on the ground of laches.

9. It was held by their lordships in the order in CA 3844/89 that the retrospective amendment of the rule 13 of ISS 1961 rules takes away the vested rights of Shri Mohanty and other general category candidates senior to Respondents 2 to 9 and hence amended rule to the extent it has to be made operative is declared as unreasonable, arbitrary, and as such violative of articles 14 & 16 of the Constitution of India. As such, the judgement of the Calcutta Bench in OA 336/88 was affirmed.

(The extract of the seniority list as on 11-2-86 is annexed ~~at~~ ^{of} page 4 ^{to} the OA). It discloses that the applicant is at sl. No. 559 while Shri Amit Jyothi Roy is at sl. No. 576. Shri Amit Jyothi Roy is at sl. No. 9 of those who were promoted to Gr. III by order dated 24-11-87. The promotions as per letter dated 24-11-87 were challenged by Shri Mohanty in OA 336/88 on the file of Calcutta Bench. As the applicant is senior to Shri Amit

To

1. The Secretary, Ministry of Planning
Dept.of Statistics, Govt.of India, New Delhi.
2. One copy to Mr.J.V.Lakshmana Rao, Advocate
Flat No.301, Balaji Towers, New Bakaram, Hyd.
3. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
4. One copy to Library, CAT.Hyd.
5. One spare copy.

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Jyothi Roy and as the Apex court made it clear in CA 3844/89 that not only Shri Mohanty but all those who are seniors to the SC/ST candidates who were promoted by order dated 24-11-87 have got vested rights for consideration for promotion. It is just and proper to pass an order in favour of the applicant similar to the order passed by the Calcutta Bench in O.A No. 336/88, as it was affirmed by the Supreme Court, ^{and is} for the applicant herein filed this OA immediately after ISS amended rules 1989 were published and the time gap between the OA filed by the applicant herein and the applicant in OA 336/88 of the Calcutta Bench is only about one year.

9. In the result, the OA is disposed as under:

(i) The applicant will be deemed to have been promoted to Grade-III with effect from the date his junior in Grade-IV was promoted to Grade-III and he has to be placed above that junior in the seniority list of Grade-III. He has to be paid salary in the scale of Grade-III with effect from the deemed date of his promotion to Grade-III and arrears thereon have to be paid to him.

(ii) If his junior in Grade-III was promoted to the next higher category, the case of the applicant has to be considered for such promotion and if he is selected for such promotion he has to be given promotion with effect from the date on which his junior was promoted to the said category, and he has to be paid salary in the said cadre from that date and arrears thereon have to be paid to him.

No costs./

(R. Rangarajan)
Member/A

(V. Neeladri Rao)
Vice-Chairman

Dated: 14th day of February 1995.
Dictated in open court

NS/MHB

D.R. (S) CC

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APPROVED BY

IN THE

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE

JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

THE HON'BLE

ARAJAN : M(ADMN)

DATED: 1-2-1

ORDER/JUDGMENT:

M.A./R.A/C.A.No.

in

O.A.No.

T.A.No.

(w.l)

Admitted and Interim direct
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

Dvm

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