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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 337/89.

T.A.No.

Date of Decision : 14.2.1992

P.Sivasankara Rao

Petitioner.

Shri N.Rammohan Rao

Advocate for the
petitioner (s)

Versus

The Chairman, Central Water Commission,

Respondent.

Govt. of India, 309, Seva Bhavan,

R.K.Puram, New Delhi & another

Shri N.V.Ramana, Addl. CGSC

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. R.Balasubramanian : Member(A)

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*

2. To be referred to the Reporter or not ? *Y*

3. Whether their Lordships wish to see the fair copy of the Judgment ? *Y*

4. Whether it needs to be circulated to other Benches of the Tribunal ? *N*

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
M(A).

W
HCJR
M(J).

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

(36)

L.R.A./M.A./C.A. NO.

ORIGINAL APPLICATION NO. 337 OF 1989

TRANSFER APPLICATION NO.

OLD WRIT PETN. NO.

CERTIFICATE

Certified that no further action is required to be taken
and the case is fit for consignment to the Record Room (Decided)

Dated: 17/2/92.

Countersigned.

Section Officer/Court Officer.

pvm.



Signature of the
Dealin' Assistant.

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Pre-delivery judgment in O.A.No.337/89

prepared by Hon'ble Shri R.Balasubramanian,
Member(A) for concurrence pl.

To

Hon'ble Shri C.J.Roy,

Member(J).

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12/11/92

For Despatch on 14 $\frac{2}{9}$

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.337/89.

Date of Judgment 14.2.1992

P.Sivasankara Rao

.. Applicant

Vs.

1. The Chairman,
Central Water Commission,
Govt. of India,
309, Seva Bhavan,
R.K.Puram, New Delhi.
2. The Chief Engineer,
Central Water Commission,
Shantinagar, Hyderabad. .. Respondents

Counsel for the Applicant : Shri N.Rammohan Rao

Counsel for the Respondents : Shri N.V.Ramana, Addl. CGSC

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri C.J.Roy : Member(J)

[Judgment as per Hon'ble Shri R.Balasubramanian, Member(A)]

This application has been filed by Shri P.Sivasankara Rao under section 19 of the Administrative Tribunals Act, 1985 against the Chairman, Central Water Commission, Govt. of India 309, Seva Bhavan, R.K.Puram, New Delhi & another with a prayer that the respondents be directed to post him as Extra Asst. Director/Asst. Engineer (EAD/AE for short) with effect from the same date on which his juniors were promoted and also for granting all consequential benefits.

2. The applicant joined the Central water Commission as Supervisor in Group 'C' Engineering Service in May, 1972. His services have been regularised in that category. The applicant was selected for being deputed to the National Water Development Agency (NWDA for short), a Govt. of India society under the Ministry of Water Resources. He joined this organisation in March, 1984 as AE and continued there till February, 1988 when he was repatriated back to his parent department. While the applicant was on deputation, the 1st respondent through his order dated 19.6.86 has appointed

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several Junior Engineers (JEs for short), junior to the
to applicant, /the grade of EAD/AE in the scale of pay of
Rs.650-1200. Even while he was on deputation, when his juniors
were promoted, the applicant started representing to the
1st respondent for treating him as promoted in the parent
organisation. It is to be noted that he was already an AE
in the NWDA. However, on his repatriation to his parent
department he was posted only as a JE while several of his
juniors are functioning in a higher capacity. He had been
representing continuously from 12.4.88 onwards and not getting
a favourable reply he has approached this Tribunal with this
application.

3. The respondents have filed a counter affidavit and
oppose the application. The facts of the case are not
disputed. It is submitted that this Bench of the Tribunal
in their judgment dated 17.11.87 in O.A.No.262/86 filed by the
Association of Junior Engineers held the prescribed quota of
50% under Rule 2(2) as invalid. It was further directed
that "promotions made after 7.8.86 only would have to be
reviewed in accordance with the said judgment as if there
exists no quota system from 7.8.86 onwards". No official
has been promoted to the grade of EAD/AE on regular basis
or adhoc basis in Central Water Commission after receipt
of the said judgment. It is submitted that Shri Nageshwar
Prasad and other Graduate EADs (adhoc) reverted to the
feeder post of Design Assistant had filed SLP No.7166/88 and
CMP No.14379/88 on the file of the Hon'ble Supreme Court
against the judgment of the Tribunal dated 17.11.87. The
Hon'ble Supreme Court granted stay and orders of reversion
to the feeder post in respect of Shri Nageshwar Prasad
and others. Subsequently, the Central Water Commission
Graduate Engineers Association & Shri Bipin Kumar Sinha
and others also filed SLPs against the judgment dated
17.11.87 of this Bench. All these petitions were clubbed

with the SLP of Shri Nageshwar Prasad and others and was heard by a Division Bench of the Hon'ble Supreme Court on 6.2.89. The Hon'ble Supreme Court had passed final orders on 6.2.89 directing that no officer shall be reverted pursuant to the order of the Tribunal till further orders. It was also directed that fresh rules be framed in accordance with the previous judgment of the Hon'ble Supreme Court. It is submitted that the Commission had not amended the recruitment rules. It is stated that in view of this situation only adhoc promotions are contemplated and that a proposal for promotion of 10 JEs including the applicant for promotion as EAD/AE on adhoc basis was sent to the Ministry for approval and the same is awaited. The Chairman, Central Water Commission being the cadre controlling authority is competent to promote officers to the grade of EAD/AE. It is submitted that besides the applicant there are other JEs who also await such adhoc promotions and as on date there are no vacancies for effecting adhoc promotions of these JEs including the applicant. It is pointed out that the adhoc promotions were ordered when the applicant was not available for such adhoc promotion being on deputation with another agency. Since there were no vacancies when he was repatriated, if he is to be promoted someone else junior to him who is ^{WCA} already promoted will have to be reverted. It is stated that when the proposal for promotion of 10 JEs on adhoc basis is approved the applicant would also be promoted on adhoc basis. It is further pointed out that the question of proforma promotion does not arise because the promotion of his juniors is not on regular basis but only on adhoc basis.

4. We have examined the case and heard the learned counsels for the rival sides. The adhoc promotions of juniors to the applicant were all ordered in June, 1986 when the applicant was not available for such promotion. He returned to the parent organisation only in April, 1988. It is stated by the respondents that at that time there were no vacancies to

accommodate him on adhoc promotion. If his claim for adhoc promotion was to be accepted it meant reversion of someone else which the authorities were not agreeable to. It is agreed that the question of proforma promotion does not arise in the case of adhoc promotions as the very name connotes. But then, when the applicant became available in April, 1988 the respondents ought to have seen that he was given adhoc promotion, if need be by reverting the juniormost adhoc promotee. The respondents have failed to do this. We, therefore, hold that the applicant has a right for promotion on adhoc basis from the day he reverted back to the parent organisation in April, 1988.

5. The respondents have referred to a judgment of this Tribunal in O.A.No.262/86 and a decision thereon of the Hon'ble Supreme Court. These are not related to ^{the} this issue ~~before us~~ because the cases covered in the judgments referred to above are all regarding certain provisions in the recruitment rules for regular promotion. The question before us is ~~is~~ one of adhoc promotion and there is no need to mix up these two.

6. Under these circumstances, we direct the respondents:

- To treat the applicant as notionally promoted on adhoc basis from April, 1988 if ~~on that day~~ ^{at that time} his juniors had been functioning in a higher capacity on adhoc basis.
- To actually promote him on adhoc basis within a period of two months from the date of receipt of this judgment. If, by that time, the permission to promote 10 JEs on adhoc basis is not received from the competent authority, the respondents may even revert the juniormost adhoc promotee.
- On such promotion, to fix his pay as if he had been promoted on adhoc basis w.e.f. April, 1988.
- There shall be no arrears payable to him till the date he actually shoulders the higher responsibility on adhoc basis. This is in accordance with ~~with~~ several judgments

of the Hon'ble Supreme Court.

7. With the above directions we dispose of the application with no order as to costs.

R.Balasubramanian

(R.Balasubramanian)
Member (A).

C.J.Roy
(C.J.Roy)
Member (J).

Dated 14th February, 1992.

SS/2/92
Deputy Registrar (J)

To

1. The Chairman, Central Water Commission,
Govt. of India, 309, Seva Bhavan,
R.K.Puram, New Delhi.

2. The Chief Engineer, Central Water Commission,
Shantinagar, Hyderabad.

3. One copy to Mr. N.Ram Mohan Rao, Advocate, CAT.Hyd.

4. One copy to Mr.N.V.Ramana, Addl. CGSC. CAT.Hyd.

5. One copy to Deputy Registrar (J) CAT.Hyd.Bench

6. One spare copy.

7. Copy to All Reporters as per standard list of CAT.Hyd

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15/2/92