

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 411 of 1989
~~ExAxxNo.~~

198

DATE OF DECISION 26.6.92

Mr. V. Narasimha Petitioner

Mr. JV Lakshmana Rao Advocate for the Petitioner(s)

Versus

DG, ESIC, New Delhi and another Respondent

Mr. N. Bhaskar Rao Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Member (Admn.)

The Hon'ble Mr. T. Chandrasekhara Reddy, Member (Judl.).

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*.
2. To be referred to the Reporter or not? *yes*.
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*.
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*.

MGIPRND-12 CAT/36-3-12-85-15,000

T. C. R.
HTCSR
M(J)

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HPCJ
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.411 of 1989

DATE OF JUDGMENT: 26th June, 1992.

BETWEEN:

Mr. V.Narasimha

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Applicant

AND

1. The Director General,
Employees State Insurance Corpn.,
New Delhi.

2. The Regional Director,
ESIC,
Hyderabad.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. J.V.Lakshmana Rao

COUNSEL FOR THE RESPONDENTS: Mr. N.Bhaskar Rao, Addl.CGSC

CORAM:

Hon'ble Shri P.C.Jain, Member (Admn.)

Hon'ble Shri T.Chandrasekhara Reddy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI P.C.JAIN, MEMBER (ADMN.)

The applicant was appointed as Groupd 'D' official in the office of the Regional Director, Employees State Insurance Corporation, Hyderabad with effect from 8.7.1978. He was subsequently promoted as Record Sorter which is also a post in Group 'D'. He says that he was recruited as Group 'D' official against a vacancy reserved for the Scheduled Tribe. The reply filed by the respondents on this point is silent. According to the relevant rules of the Corporation, 75% posts ^{in the cadre of LDC} are required to be filled by direct recruitment and 25% by promotion on the basis of a competitive examination held for Group 'D' staff. The applicant appeared for the aforesaid examination held in 1985 and claims to have qualified therein for promotion as LDC. This is not in dispute. He was appointed to officiate as LDC vide Office Order dated 29.11.1985. It is stated in the aforesaid order of 29.11.1985 that the promotion of the applicant had been ordered purely on temporary and on adhoc basis without prejudice to the interest of the seniors and that he was liable to be reverted at any time without any notice and without assigning any reasons therefore. It is further stated that the officiating promotion will not confer upon him any right for continuance in the post for regular promotion in future and that the period of service ^{basis} in the grade on adhoc will count neither for the purpose of seniority in that grade nor for eligibility for promotion

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to the higher grade. By an order issued on 21.3.1986, the applicant was ordered to be reverted to his Group 'D' post. He made representations but the replies did not satisfy him. It is in this back ground that he has filed this OA with the prayer for a direction to the respondents, to "to consider promotion of the applicant a qualified departmental ST candidate for promotion as LDC in ST reserved vacancy adhering to the instructions contained in Memorandum No.6/3/19/68-Estt.1, dated 20.3.1970 with all consequential benefits." The prayer for interim relief made by the applicant was not granted by the Tribunal.

2. The respondents have contested the OA by filing their reply to which no rejoinder has been filed.

3. The learned counsel for the applicant raised two contentions before us. Firstly, it is contended that the applicant could not have been reverted from the post of LDC without giving him an opportunity to show cause. The respondents in their reply have stated that the promotion of the applicant to the cadre of LDC with effect from 2.12.1985 was purely on adhoc and temporary basis and he was liable to be reverted any time without notice, as he was promoted as a stop-gap arrangement pending joining of a regular candidate earmarked for direct quota vacancy.

The fact that the appointment of the applicant on promotion

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to the post of LDC was purely temporary and adhoc and was liable to be terminated without assigning any reason or without any notice, It is itself clear from the order of promotion which has already been referred to above. This is further confirmed by the averment of the respondents in their counter affidavit. This averment has not been controverted. Further, the applicant has not placed any material on record to show that ^{any of} his junior was allowed to continue at the time he was reverted. We, therefore, see no force in this contention of the applicant.

4. Second contention urged by the learned counsel for the applicant is that the applicant belongs to Scheduled Tribe, there was reservation for ST candidates in the 25% quota for Group 'D' staff for promotion to the post of LDC, and that when the applicant was promoted in 1985, a vacancy reserved for ST did exist and, therefore, he should be deemed to have been promoted in 1985 against such reserved vacancy. On the basis of this contention, the learned counsel for the applicant argued that since such a reserved vacancy continued to exist and as the applicant was the only ST candidate who was qualified for promotion, he could not be reverted as he had a vested right to continue in the promoted post. The case of the respondents as presented before us is that there was no reservation after 1976 either for SC or ST Group 'D' staff against 25% promotion quota posts of LDCs and as such the applicant cannot claim any promotion against reserved ⁱⁿ post. It is further their case that the result of the examination the marks obtained in the qualifying examination which was held for the purpose of promotion

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for Group 'D' staff to the cadre of LDC determines their seniority for the purpose of their promotion to the post of LDC, and as the applicant had the lowest marks in that examination with reference to all other candidates who had qualified earlier in 1983 and in the 1985 examination, he could be considered for promotion against promotion quota post only in his own turn and not bypassing those who had obtained higher marks in the qualifying examination. It is further their case that as there was no vacancy in the promotion quota and as there were vacancies in the 75% direct recruitment quota, the applicant was given adhoc promotion as a stop-gap arrangement against^a direct recruitment quota post, and after the persons who were qualified for promotion, and who had obtained higher marks, had been accommodated either against the direct recruitment quota posts as a stop gap arrangement or against promotion quota posts, and when regular candidates became available for appointment to the direct recruitment quota post the applicant who had been temporarily promoted to such a post^{he} was reverted to ^{his} substantive post in Group 'D'. It is pertinent to mention here that most of these submissions at the bar have not been substantiated with reference either to the material available on record or with reference to the documents which were placed before us during the course of hearing which in fact has gone on for three days. In view of this,

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we are not in a position to state whether in terms of the actual facts, what the respondents have stated as above is correct or not. We, therefore, proceed to examine the issue involved in the case before us on the basis of the relevant orders as have been placed on record or otherwise shown to us.

5. The applicant has relied solely on the Memorandum dated 20.3.1970 which is reproduced below:-

"It has been decided in consultation with the Ministry of Home Affairs that there will be reservation of 12½% and 5% of vacancies for scheduled castes and scheduled tribes candidates in the 25% posts of LDCs to be filled on the basis of departmental competitive test confined to class IV employees of the Corporation. Necessary reservations may please be made in these posts accordingly, in future."

A perusal of the above memorandum, does show that as early as in 1970, the Corporation had taken a decision in consultation with the concerned Ministry of ^{the} Government of India to provide for reservation of 12½% for SC candidates and 5% for ST candidates in 25% posts of LDCs to be filled on the basis of the departmental competitive examination

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confined to Class IV employees of the Corporation. We were told in the course of the hearing that there were about 130 posts of LDC and 25% of this number would come to about 32/33 posts. 5% of this number would be atleast one post if reserved for an ST candidate. The learned counsel for the applicant submitted that the applicant was the only ST Group IV employee who was qualified for promotion to the post of LDC and as such he should have been promoted against such a reserved post. The case of the respondents, as disclosed in the counter affidavit, is that as per the orders issued by the Government of India from time to time, until Government of India instructions dated 25-4-1989 were issued, in the matter of promotion from Group-D to Group-C posts there could be no reservation if direct recruitment to the post in Group-C was as high as 75%. As per orders in force prior to 25-2-1976, if the proportion of direct recruitment exceeds 50%, there could be no such reservation. Pursuant to the orders issued in 1976, if the percentage of direct recruitment exceeds 66 2/3%, there could be no reservation. It was only in the O.M. dated 25-4-1989 issued by the Department of personnel and Training, Government of India, the decision of the Government was conveyed that the reservation would apply if the element of direct recruitment does not exceed 75%. The case of the respondents, therefore, is that it is only after the issue of the aforesaid OM of 25-4-89 that there would be posts reserved for SC and ST candidates who have qualified in the prescribed departmental

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examination for promotion to the cadre of LDC. The fact, however, remains that the respondents have not challenged the genuineness of the memo. dated 20-3-1970 which has already been reproduced above and on which the applicant has placed reliance. It has also not been shown to us that the orders contained in the aforesaid memo. were either cancelled or withdrawn or modified. It is not disputed by the respondents that the Corporation under the relevant Regulations has the power to lay down a norm different from the one which is laid down by the Government of India in establishment matters. In view of the existence of this power with the Corporation and seeing the wordings of the aforesaid OM, it is difficult to say that this was not a conscious decision of the Corporation. The learned counsel for the respondents, however, submitted that the orders contained in the aforesaid OM dt. 20-3-70 were never given effect to, and, in any case, they ceased to be effective after the issue of the memo. dated 25-2-1976 by the Department of Personnel and Administrative Reforms, Government of India which was circulated by the Headquarters of the Corporation for information and future guidance. In the aforesaid orders of 25-2-1976, reservation in posts filled by promotion can be made applicable even to the case of a cadre in which element of direct recruitment does not exceed

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66 2/3% as against the earlier ceiling of 50%. ~~*****~~

As the element of direct recruitment to the post of LDC in the Corporation was through out 75%, there could be no reservation, and it was contended that in fact there was no reservation.

6. Regulation 24 of Employees State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 is extracted below:-

"24. OTHER CONDITIONS OF SERVICE:

In respect of all other matters relating to the conditions of service of employees, for which no provision or insufficient provision has been made in this regulation, the rules applicable from time to time to the corresponding category of Central Government servants shall apply, subject to such modification and variation or exception if any, as the Director General may, with the approval of the Standing Committee, by order from time to time, specify.

EXPLANATION:

For the purpose of these regulations, the Director General may, with the approval

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of the Standing Committee, by order specify, the posts under the Corporation which shall correspond to the posts under the Central Government."

Regulation 24-A which was inserted by the notification dated 17.7.1965 is as below:-

"24-A:- COMPETENT AUTHORITY FOR APPLICATION OF CENTRAL GOVERNMENT RULES:

For the purpose of applieation of Central Government rules to the employees of the Corporation under these Regulations, the Standing Committee shall be the competent authority to exercise all the powers and functions which are vested in the President/ Local Government/Ministries or Departments of the Government of India, under the various Central Government rules."

In these regulations we have not been able to find any specific regulation about the reservation for SC and ST candidates. Thus, in accordance with the provisions of Regulation 24, ^{reservation} ~~orders on rese~~ issued by the Government of India would apply. The memo issued by the Corporation on 20.3.1970 can be taken to have been issued by the Corporation under the authority reserved to the Corporation. ~~xxx~~ But after 1976, ^{when} the Government orders were circulated by the Corporation to all its subordinate offices for

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information and future guidance, it would be fair to assume that from that date onwards, the orders issued by the Corporation in March 1970 ceased to be operative even though they are not shown to have been cancelled or modified. Thus, we are of the considered view that when the applicant qualified in the test for eligibility for promotion to the post of LDC against 25% ~~xxx~~ promotion quota posts^{in 1985,} there was no reservation in the category of promotion posts either for the SC or ST. In view of this, as also in view of the fact that the applicant was in fact considered against the direct recruitment quota post as a stop gap arrangement, ^{he said} he cannot ~~/~~ to have had or acquired any legal right either to continue on the post on which he was promoted or to claim promotion against a post on the basis that such a post was reserved for promotion of a qualified Group 'D' ST candidate. What is left then is that after the issue of the orders by the Government of Indiaⁱⁿ April 1989 which permit reservation in promotion quota even if the element of direct recruitment in the cadre of promotion posts is upto & 75%, and which orders are said to have been adopted by the Corporation for implementation, the Corporation would have to take a decision as to what should be the reservation for SC and ST Group 'D' staff who qualify in the prescribed examination/test against the promotion quota post of LDCs.

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To

1. The Director General, Employees State Insurance Corporation, New Delhi.
2. The Regional Director, ESIC, Hyderabad.
3. One copy to Mr. J.V. Lakshmana Rao, Advocate, Flat No. 30, Balaji Towers, New Bakaram, Hyderabad.
4. One copy to Mr. N. Bhaskar Rao, Addl. CGSC. CAT. Hyd.
5. One copy to Hon'ble Mr. T. Chandrasekhar Reddy, M(J) 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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We have not been informed by either party, whether such a decision has been taken by the Corporation or not as yet. If they have already taken ^{a decision} on the lines taken by them in 1970, the applicant shall be entitled to be considered for promotion against a promotion quota to LDC post if any reserved for a ST candidate after such a decision on the point of reservation had been taken after the issue of the April 1989 orders. Needless to state that, whenever he is considered for such promotion, he has to be considered in accordance with his seniority among the ST candidates who are eligible for such consideration in accordance with the ~~marks~~ ^{as} obtained in the departmental test, and we have not been shown that any such reservation post is available for being filled up against promotion quota as on date, we are not in a position to issue any specific directions.

In the light of the foregoing discussion, this OA is disposed of with the observation that if after April 1989 there is a post of LDC in the 25% promotion quota and which is reserved for a ST candidate, the applicant shall be considered along with the other qualified ST candidates of Group 'D' in accordance with the rules. No costs.

(Dictated in the open Court).

T. Chandrasekhara Reddy
(T. CHANDRASEKHARA REDDY)
Member (Judl.)

(P.C. JAIN)
Member (Admn.)

Dated: 26th June, 1992.

VSM

Deputy Registrar (5)