

27

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 529/89
T.A.No.

Date of Decision : 1.11.90

<u>NVS Sastry</u>	Petitioner.
<u>Mr C Suryanarayana</u>	Advocate for the petitioner (s)
Versus	
<u>Ex. Engineer, Telecom. Elec. Dvn. Hyderabad</u>	Respondent.
<u>Mr E Madan Mohan Rao, ACGSC</u>	Advocate for the Respondent (s)

CORAM :

THE HON'BLE MR. SP Mukerji, Vice Chairman

&

THE HON'BLE MR. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? X →
2. To be referred to the Reporter or not? M
3. Whether their Lordships wish to see the fair copy of the Judgment? M
4. Whether it needs to be circulated to other Benches of the Tribunal? M
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)

SPM
HVC

AVH
HVC

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA-529/89

Date of decision: 1.11.1991.

Between

Mr NVS Sastry
S/o Satyanarayana
C/o Executive Engineer
Telecom Electrical Division
Red Hills, Hyderabad-500 004. - Applicant

and

1. The Executive Engineer,
Telecom. Electrical Division,
Red Hills, Hyderabad-500 004.
2. The Superintending Engineer,
Telecom. Electrical Circle
IInd Floor, GPO Building
Abids, Hyderabad-500 001.
3. The Superintending Engineer,
Telecom Civil Circle,
Hyderabad-500 020.
4. The Chief General Manager,
Telecommunications,
AP Circle, Hyderabad-500 001.
5. The Director General,
Telecommunications,
representing Union of India,
New Delhi-110 001.
6. Sri Ch Salaiah
Head Clerk
Telecommunications Civil Division
No.I, Barkatpura,
Hyderabad-500 027 - Respondents

Appearance:

Mr C Suryanarayana : Counsel for the applicant
Mr N.R.Devaraj, ACGSC : Counsel for the respondents 1.
CORAM: Respd. 6 : Neither appeared in person nor represented by
Advoca

Hon'ble Shri SP Mukerji, Vice Chairman

&

Hon'ble Shri AV Haridasan, Judicial Member

JUDGEMENT of the bench delivered by
Hon'ble Shri AV Haridasan, Judicial Member

In this application the applicant has challenged
the order dated 19/21.12.1988 of the fourth respondent (Anne
xure-A1) cancelling the approval given for promoting the

-2-

applicant as Office Superintendent in the newly created office of the Superintending Engineer, Telecom Electrical Circle, Hyderabad with immediate effect and the order dated 26.6.1989 of the first respondent (Annexure-A2) by which relaxation of service eligibility condition was granted in favour of the sixth respondent, a particular individual for his consideration for promotion to the grade of Office Superintendent.

2. The facts necessary for the disposal of this application can be briefly stated thus. The applicant is a permanent Head Clerk from 1.11.1985 and is senior to the sixth respondent, who started officiating as a Head Clerk from January 1986 onwards. In the seniority list of Head Clerks the applicant is Sl.No.1 and the 6th respondent is shown against Sl.No.4. In October 1988, consequent on the creation of Telecom Electrical Circle at Hyderabad, a post of Office Superintendent in the scale of pay Rs.1600-2660 was created. The first respondent on 10.11.1988 recommended that as no candidate having the requisite qualification in the Scheduled Caste was available for being considered for appointment to the post of Office Superintendent, the applicant who had sufficient experience as a Head Clerk may be appointed to that post with immediate effect. Thereafter, by order dated 11.11.1988 at Annexure-A4, the second respondent promoted the applicant as Office Superintendent in the office of the Superintending Engineer(E) Telecom Electrical Circle,

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Hyderabad in the scale of Rs.1600-2660 on purely temporary and adhoc basis until further orders with a direction that the order would take effect from the date the official actually report for duty as Office Superintendent. The applicant took charge of the post on 15th November 1988.

But the third respondent in his letter dated 19.11.1988 at Annexure-A6 to the 4th respondent condemned the order of the promotion of the applicant as Office Superintendent on the ground that it was done in violation of the norms and requested that the second respondent be instructed to cancel the order of promotion of the applicant. As a copy of this letter was marked to the second respondent requesting to cancel the order of promotion of the applicant, the second respondent on 24.11.1988 sent a letter to the 4th respondent explaining the circumstances under which the applicant was promoted on adhoc basis to officiate in the post of Office Superintendent in the interest of service and also on account of the delay in regularly filling the post and stating that ^auntil new incumbent is posted on a regular basis, the arrangement made in the interest of service would continue. It was in this circumstances that the 4th respondent issued the order dated 19/21.12.1988 at Annexure-A1 which reads as follows:

"The approval given by General Manager(Development) Andhra Pradesh, Telecom. in Executive Engineer, Telecom. Electrical Division file for promoting Shri NVS Sastry, as Office Superintendent in the newly created % Supdtg. Engineer, Telecom. Electrical Circle, Hyderabad stands cancelled with immediate effect. This is in obedience with the Directorate letters No.28-4/86-CSE dated 12.2.88 and 28-4/86-CSE dated 29.7.88."

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Following this order, the 5th respondent issued the impugned order at Annexure-A2 dated 26.6.1989 informing that the request for dereservation of the post of Office Superintendent could not be agreed to, ~~that~~ that the approval of the competent authority for relaxation of service eligibility condition in respect of the 6th respondent belonging to Scheduled Caste category for his consideration for promotion to the grade of Office Superintendent against that vacancy was conveyed. It is averred in the application that after the issue of Annexure-A1 order, from 28.12.1988, though the applicant continues to be working in the post of Office Superintendent, he was being paid only the salary in the scale of Head Clerk. Apprehending reversion as Head Clerk and promotion of the 6th respondent as Office Superintendent against the Recruitment Rules, the applicant has filed this application under Section 19 of the A.T.Act. It has been averred in the application that the impugned order at Annexure-A1 cancelling the permission granted to promote him and the Annexure-A2 order relaxing the qualification prescribed in the Recruitment Rules in favour of a particular individual are void and unsustainable. The applicant therefore prays that these orders may be quashed and that it may be declared that the applicant is entitled to be regularly absorbed in the post of Office Superintendent in view of the recommendation of the DPC for promoting him to that post.

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3. In the reply affidavit filed on behalf of the respondents, the order of the 4th respondent at Annexure-A1 cancelling the approval for promotion of the applicant as Office Superintendent is sought to be justified on the ground that as the vacancy is a reserved one and as approval has been granted for relaxing the qualification in favour of the 6th respondent, it was found necessary to cancel the approval for promotion of the applicant with immediate effect.

4. We have heard the learned counsel for both the parties and have carefully gone through the documents produced. There is a controversy between the parties on the question whether the post of Office Superintendent on which the applicant is officiating is a post reserved for Scheduled Caste community or not. But in view of the other rival contentions in this case, this issue loses importance. From the records produced by the applicant itself, especially, Annexure-A3 the suggestion to promote the applicant was made by the

first respondent in the circumstances that no eligible candidate from the reserved community, who had the required experience of 5 years at the level of Head Clerk post was available and as the applicant had sufficient experience in the level of Head Clerk. Therefore the case of the respondents that the post is one reserved to be filled up by a Scheduled Caste hand appears to be more probable. Be that as it may, the question to be considered is whether the impugned orders at Annexure-A1 and A2 are sustainable in law. Annexure-A1

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was issued by the 4th respondent cancelling the approval given by him for promoting the applicant as Office Superintendent with immediate effect. The 4th respondent who had granted approval for promotion is competent to cancel that approval also prospectively. If the cancellation was with retrospective effect, it could be said that the order was wrong or ineffective because a promotion as approved by the 4th respondent had already been made by the second respondent. But whether to continue the approval or not is to be decided by the 4th respondent. If the applicant is reverted pursuant to the cancellation of the approval by the 4th respondent, then the applicant will be at liberty to challenge the reversion, if not made in accordance with law. In this case, there is only an apprehension in the mind of the applicant that he would be reverted and there is no averment that he has been reverted. The applicant has averred that after 23.12.1988 though he continued in the post of Office Superintendent, he is being paid salary ~~xxxxxx~~ only as Head Clerk but as he has not claimed any relief in that regard in this application, we are not going into that question. The applicant may, if he so chooses resort to appropriate legal remedy in that behalf. So we are not convinced that the applicant is entitled to have the impugned order at Annexure-A1 quashed.

5. The applicant has challenged the legality, propriety and correctness of the impugned order at Annexure-A2 on the

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ground that while according to the Recruitment Rules in respect of the Department of Telecommunication (Civil Wing) Group C (Office Superintendent, Head Clerk and Works Clerk Grade-1) Recruitment Rules 1987, a copy of which is at Annexure-A8, the power to relax any of the provisions of the rules can be exercised only with respect to any class or category of persons relaxation is being given in the impugned order in regard to eligibility condition in favour of Shri Salaiah, the 6th respondent who is an individual and cannot be considered as a class or category of persons. Clause 6 of the Department of Telecommunication (Civil Wing) Group C (Office Superintendent, Head Clerk and Works Clerk Grade-1) Recruitment Rules 1987 at Annexure-A8 reads as follows:

"Power to relax: Where the Central Government is of the opinion that it is necessary or expedient so to do it may by order and for reason to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

It is evident from the above provision in the Recruitment Rules that power to relax can be exercised only in favour by 'any class or category of persons' and not in favour of any particular person. The learned counsel for the respondents argued that if the entire order at Annexure-A2 is properly construed, it could be seen that the relaxation was granted in favour of Scheduled Caste category and not in favour of the 6th respondent particularly. Paragraph 2 of the impugned order at Annexure-A2 reads as follows:

"However approval of the competent authority is hereby conveyed for relaxation of service eligibility condition in respect of Shri Salaiah, Head Clerk, belonging to S.C. Category, for his consideration for promotion to the grade of Office Superintendent against this vacancy."

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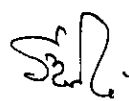
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Telecom, Electrical Division,
Red Hills, Hyderabad. 500 004.
2. The Superintending Engineer,
Telecom. Electrical Circle,
II Floor, G.P.O. Building,
Abids Hyderabad. 500 001.
3. The Superintending Engineer,
Telecom. Civil Circle,
Hyderabad-500 020.
4. The Chief General Manager,
Telecommunications,
A.P. Circle, Hyderabad-500001.
5. The Director-General,
Telecommunications,
representing Union of India,
New Delhi. 110 001.
6. One copy to Shri. C. Suryanaryana, 1-2-593/50,
Srinilayam, Sri Sri Marg, Gaganmahal, Hyd.
7. One copy to Shri. N.R. Devraj, ACGSC. C.A.T. . Hydbad.
8. One spare copy.

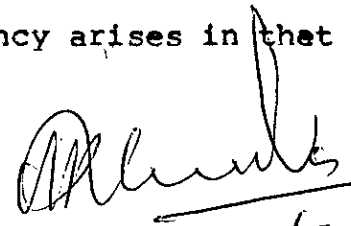
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It is obvious that relaxation of service eligibility condition was granted in favour of Shri Salaiah only and not to any particular category. The words "Head Clerk belonging to Scheduled Caste category" are used only to qualify Shri Salaiah, the words "Scheduled Caste category" occurring in this letter do not indicate that relaxation was granted in favour of Scheduled Caste category. Therefore, we are convinced that the relaxation of service eligibility condition granted in favour of the 6th respondent is against the provision in the Recruitment Rules and is, therefore, bad in law. To that extent, the impugned order at Annexure-A2 is liable to be quashed.

6. In the result, the application is allowed in part. The prayer of the applicant to quash the order of the 4th respondent dated 19/21-12-1988 at Annexure-A1 is not granted. The order dated 26-6-1989 at Annexure-A2 of the 5th Respondent to the extent of approving relaxation of service eligibility condition in respect of the 6th Respondent for his consideration for promotion to the grade of Office Superintendent being against the provisions of the Recruitment Rules is declared unsustainable in law and is quashed. As regards the prayer for declaration that the applicant is entitled to regular promotion to the post of Office Superintendent, we are of the view that no such declaration is required as promotion is to be effected on the recommendation of the DPC as and when regular vacancy arises in that post. There is no order as to costs.


(S.P. Mukerji)
Vice-Chairman


(A.V. Haridasan)
Member (J)

1-XI-91

Dated: 1st day of November, 1991.

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Dy. Registrar. (Judl⁸) 191

O.A. 529/89

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7/11/91

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. S.P. Mukherji

AND

THE HON'BLE MR. A.V. Hordasan

AND

THE HON'BLE MR. R. BALASUBRAMANIAN M(A)

AND

THE HON'BLE MR.

M(J)

DATED: 11/11/1991

~~ORDER~~ JUDGMENT:

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

in

O.A.No.

529/89

T.A.No.

(W.P.No.)

Admitted and Interim directions
Issued.

✓ Allowd.

Disposed of with directions

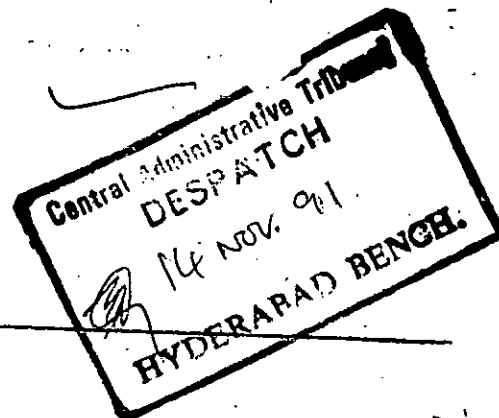
Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A.Ordered/Rejected

✓ No order as to costs.



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14/11/91

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