

(71)

Central Administrative Tribunal
HYDERABAD BENCH : AT HYDERABAD

O.A. No. 676 of 1989
~~Ex.No.~~

Date of Decision : 30-5-91

<u>Mr. A.R.Naidu</u>	Petitioner.
<u>Mr. C.Suryanarayana</u>	Advocate for the
Versus	petitioner (s)
<u>Union of India and another</u>	Respondent.
<u>Mr. N.Bhaskar Rao, Addl. CGSC</u>	Advocate for the
	Respondent (s)

CORAM :

THE HON'BLE MR. B.N.Jayasimha, Vice Chairman

THE HON'BLE MR. J.Narasimha Murthy, Member (Judl.)

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

[Signature]
HBNJ
VC

[Signature]
HJNM
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.676 of 1989

DATE OF JUDGMENT: 30-5-1991

BETWEEN:

Mr. A.R.Naidu

Applicant

AND

1. Union of India represented by
the Secretary to Govt. of India,
Ministry of Labour,
New Delhi-1.
2. Shri V.S.S.Srivastava,
Regional Labour Commissioner (Central),
Ministry of Labour,
Govt. of India,
Patna-1.

Respondents

COUNSEL FOR THE APPLICANT: Mr. C.Suryanarayana, Advocate

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

CORAM:

Hon'ble Shri B.N.Jayasimha, Vice Chairman


Hon'ble Shri J.Narasimha Murthy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This petition has been filed by the petitioner for a relief to declare without prejudice to his right to have his adhoc service from 11.9.1973 treated as regular service for all purposes, that he is entitled to have his ~~service~~ service from 1.1.1980 treated as regular continuous service as Grade-V (Group 'A') officer of the Central Labour Service and hence entitled to promotion as Regional Labour Commissioner (Central) retrospectively with effect from 21.2.1989, the date on which the applicant's junior (2nd respondent herein) was promoted with all other incidental and consequential benefits including protection of seniority and salary as Regional Labour Commissioner (Central) with effect from 21.2.1989. The facts of the case are briefly as follows:-

The petitioner while working as a Permanent Labour Enforcement Officer (Central) was appointed on adhoc basis to officiate as Assistant Labour Commissioner (Central) with effect from 11.9.1973 vide orders of the 1st respondent dated 4.2.1974. Consequent on the recommendations of the Union Public Service Commission, the petitioner and two others were appointed as Assistant Welfare Commissioners in the pay scale of Rs.700-1300 vide orders dated 20.12.1979. The petitioner topped the selection list and is the ~~senior~~ most of the three candidates recommended by the Union Public Service Commission. His appointment as Assistant Welfare Commissioner was on regular basis from 1.1.1980.



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2. Two years later, the petitioner and two others were selected for the post of Deputy Welfare Commissioners on the basis of the recommendations of a duly constituted Departmental Promotion Committee but the selection was made on deputation basis on 27.4.1983 vide orders dated 12.3.1979 of the 1st respondent. The petitioner was appointed on regular basis as Assistant Labour Commissioner^{-er} and he assumed charge on 12.12.1983 in the Central Labour Commission's office at New Delhi, vide office order dated 14.12.1983. Within about a week or so, by another office order of the CLC's office dated 23.12.1983, the petitioner was appointed to the post of Welfare Commissioner (Grade-I) in the pay scale of Rs.1500-1800 consequent upon his selection for the appointment on deputation basis. He was relieved on 24.12.1983.

3. Subsequently, by a notification GSR 75(E), dated 3.2.1987, the Central Labour Service Rules, 1987 were made and published in the Gazette of India (Extra ordinary Part-II Section 3(i)). As a result of the above rules, the Group 'A' posts in the cadres of (a) Labour Officer (Central Pool), (b) Assistant Labour Commissioner (Central), and (c) Asstt. Welfare Commissioner, all carrying the same scale of pay of Rs.700-1300 were merged into a single cadre and constituted as Grade-V of the Central Labour Service (Group-A) with effect from the date of notification viz., 3.2.1987. After the said rules were issued, the 1st respondent circulated the interse seniority list^{of officers concerned} for submission of their objections if any within three weeks from the date of the list viz., 4.2.1987. The petitioner submitted his representation on 16.12.1987 raising objections to the seniority assigned to him.



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He also made representations requesting that his adhoc service from 11.9.1973 to 11.12.1983 as Assistant Labour Commissioner should be counted for seniority and that he should be given all consequential benefits. According to the 1st respondent in his letter dated 2.3.1988, the matter is kept pending as a case on the subject is pending before the Tribunal and therefore no further action could be taken by the Ministry. However, the Ministry of Labour gave promotions to Grade-V officers on adhoc basis including to the 2nd respondent and it is still giving such adhoc promotions.

4. Since the representations made were not replied and his seniority was not revised, the petitioner filed O.A.No.673 of 1987 before the Tribunal and it was disposed of on 29.10.87 with a direction to the respondents to dispose of the representations of the petitioner dated 16.2.1987, 9.4.1984, 11.11.1984 and 26.6.1986 within a period of eight weeks from the date of receipt of the said order dated 29.10.1987. But the same have not been disposed of as yet on the ground that a case on the subject is pending before the Tribunal. Meanwhile, the 2nd respondent who was a Labour Officer (Central Pool) with effect from 11.3.1980 joined as Assistant Labour Commissioner on regular basis with effect from 20.7.1984 i.e., nearly a year after the applicant became Assistant Labour Commissioner and was shown at Sl.No.230 of the said tentative seniority list of Grade-V officers while the petitioner's name was shown at S.No.173 thereof. Yet, the 2nd respondent was promoted as Regional Labour Commissioner (Central) with effect from 21.2.1989 ignoring the seniority and claims of the petitioner for promotion earlier than the 2nd respondent. The 2nd respondent was promoted without settling the seniority

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of the petitioner and ignoring the directions of the Hon'ble Tribunal given in O.A.No.673 of 1987. Hence, the petitioner filed this petition for the above said relief.


5. The respondents filed a counter with the following contentions.

On the date of constitution of the Central Labour Service, the petitioner was holding the post of Assistant Labour Commissioner (Central) and his seniority under Central Labour Service Rules was fixed taking into account the date of regular appointment of the petitioner in that grade. The service of the petitioner in the post of Assistant Welfare Commissioner cannot be taken into account for the purpose of fixing the seniority under Central Labour Service Rules as the petitioner was not holding the post on the date of constitution of the service. He was appointed as Assistant Labour Commissioner (Central) on regular basis with effect from 12.12.1983 and the seniority of the petitioner was fixed accordingly. After constitution of the Central Labour Service and circulation of the tentative seniority list, some officers included in the service filed an application before the Principal Bench of the Central Administrative Tribunal challenging the constitution of the service and seniority list framed under the rules. As per the interim orders of the Tribunal, the tentative seniority list is not to be acted upon. Hence, the provisional seniority list circulated by the Ministry of Labour could not be finalised taking into account the various objections raised by the members of the service. For the purpose of fixing seniority under the Central Labour Service Rules, the adhoc service rendered by

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the petitioner from 11.9.1973 to 11.12.1983 cannot be taken into account. As per the directions of the Tribunal in O.A. No.673 of 1987 filed by the petitioner, the representations submitted by the petitioner were replied .

6. The 2nd respondent was appointed to the post of Labour Officer of the Central Pool with effect from 11.3.1980 and he was substantially appointed to that post with effect from 10.3.1982. Subsequently, he joined the post of Assistant Labour Commissioner (Central) with effect from 20.7.1984. While fixing the seniority of the petitioner under Central Labour Service Rules, the date of appointment of the 2nd respondent in the post of Labour Officer was taken into account as he was holding a lien in the said post and the lien would terminate only on his substantive appointment in the post of Assistant Labour Commissioner (Central). In the case of the petitioner, he did not hold any lien in the post of Assistant Welfare Commissioner to which post he was appointed with effect from 1.1.1980. The name of the 2nd respondent was inadvertently included at Sl.No.230 of the provisional seniority list keeping in view his seniority position in the seniority list of Assistant Labour Commissioner (Central) as he was holding that post in temporary capacity. There is no justification for treating the service of the petitioner as regular and continuous with effect from 1.1.1980 for the purpose of fixation of seniority, since he did not acquire any lien in the post of Assistant Welfare Commissioner. The seniority of the officers of the Central Labour Service was fixed under Rule 9 of the Central Labour Service Rules. There is no reasonable cause for any of the reliefs sought by the petitioner^{-er} and the petition is liable to be dismissed.



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7. The petitioner filed a rejoinder with almost similar contentions raised in the petition.

8. Shri C.Suryanarayana, learned counsel for the petitioner and Shri Naram Bhaskar^{Rao,} learned Additional Standing Counsel for the Central Government/Respondents^{argued the matter.} The petitioner as well as the 2nd respondent joined service in the Central Labour Service initially. In the seniority list, officers working in the grade of Assistant Labour Commissioner (Central) as on 1.1.86 were included and according to the list the petitioner joined in service on 12.12.1983 and his serial No. in the list was 56. The 2nd respondent joined service on 20.7.1984 and his serial number was shown at 79 in the list. In the interse seniority list published on 4.2.1987, taking into consideration the length of regular continuous service in the grade at the initial constitution stage in the Central Labour Service, the seniority of the 2nd respondent was shown at Sl.No.230 whereas the name of the petitioner was shown at Sl.No.173. Basing on these two lists, the petitioner appears to be senior to the 2nd respondent not only according to the list but even according to his date of joining also. The respondents stated that particular service from 11.9.1973 to 11.12.1983 as Assistant Labour Commissioner is on adhoc basis. So, that service was not counted to consider the seniority of the petitioner in fixing interse seniority according to the rules framed in 1987. The respondents contended that the seniority list was inadvertantly prepared showing the petitioner as senior to the 2nd respondent. So, the respondents have given promotion to the 2nd respondent ignoring the claim of the petitioner.



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9. In this case, the petitioner joined first in the Department of Labour whereas the 2nd Respondent joined later and the petitioner has been holding regular position from the beginning. From 11-9-1973 onwards, the petitioner was promoted and appointed on adhoc basis and posted as Assistant Labour Commissioner (Central) as per the orders of the 1st Respondent dt.4-2-74. Consequent on the UPSC recommendations, the petitioner and two others were appointed as Assistant Welfare Commissioners in the pay scale of Rs.700-1300 by an order dt.20-12-1979. The petitioner is senior out of the three candidates and he was recommended by the UPSC. This appointment, according to him, is not on adhoc basis but on regular basis from 1-1-1980. Even if the petitioner holds the post on an adhoc basis that cannot be a ground for ignoring his seniority as Labour Enforcement Officer vis-a-vis Respondent No.2. The fact that he was selected for the post of Assistant Welfare Commissioner should not go against him for denying him seniority in the cadre of Assistant Central Labour Commissioner. It has to be presumed that if the applicant had continued in his original post and not been appointed as Assistant Welfare Commissioner, he would have been promoted as Assistant Labour Commissioner according to his seniority in his original cadre. Thus the fact remains that the petitioner joined service earlier than the 2nd Respondent and he was continuously shown senior to the 2nd Respondent. In these circumstances we

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find that the applicant must be remained as senior to the 2nd Respondent.

11. So we hold that the applicant in all respects is senior to the 2nd Respondent since in the seniority list he was shown as senior to the 2nd Respondent and he joined service before the 2nd Respondent. The petitioner is therefore entitled to be considered for promotion when his junior i.e. the 2nd Respondent was considered for promotion. The Respondents will therefore consider the case of the applicant as of the date when his junior was considered and if he is found fit for promotion he will be promoted with effect from the date when his junior was promoted. The applicant is also entitled for the difference in pay. The Respondents will complete the process of consideration within a period of two months from the date of receipt of this order. No order as to costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
Vice-Chairman

J.N. Murthy
(J.N. MURTHY)
Member (J)

Dated: 30. May 1991.

Dr. Ramesh Chandra
Deputy Registrar (5)

vsn/avl

TO

- 1) The secretary to Govt. of India, C.O.-I.
Ministry of Labour, New Delhi - 1
- 2) Sri. V.S.S. Srivastava, Regional Labour Commissioner (Central)
Ministry of Labour, Govt. of India, Patna - 1
- 3) one copy to Mr. C. Suryanarayana, Advocate. CAT, Hyd
- 4) one copy to Mr. N. Bhaskar Rao, Addl. Conc.
- 5) one spare copy
- 6) one copy to Hon'ble Mr. J. Narasimha Murthy, Member (5) CAT, Hyd

RAK
31/5/91
TYPED BY

CHECKED BY

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COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA: V.C.
AND

THE HON'BLE MR. D. SURYA RAO: M(J)
AND

THE HON'BLE MR. J. NARASIMHA MURTHY: M(J)
AND

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

DATED: 30.5.1991.

~~ORDER~~ / JUDGMENT.

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

in

T.A. No.

W.P. No.

O.A. No.

676/89

Admitted and Interim directions
issued.

Allowed. ✓

Disposed of with direction.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

