

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

78

O.A. No. 814/89

Date of Decision : 31.10.1991

T.A.No.

Petitioner.

Advocate for the
petitioner (s)
Versus

Respondent.

Advocate for the
Respondent (s)

CORAM :

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

THE HON'BLE MR. T. CHANDRASEKHAR REDDY : MEMBER (J)

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

W
(RBS)
M(A)

T. C. N. f
(TCSR)
M(J)

74

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
HYDERABAD BENCH

OA 814/89.

Dt. of Judgment: 31-10-91.

B.M.Prabhudas

...Applicant

Vs.

1. The Director of Audit,
Posts & Telecommunications, New Delhi.
2. Dy. Director of Audit, Posts & Tele-
communications, Hyderabad.

...Respondents

-- -- --

Counsel for the Applicant : M/s Y.Suryanarayana,
Meharchand Nori
P.Naveen Rao &
V.Ajay Kumar.

Counsel for the Respondents : Shri G.Parameshwar Rao, CGSC

-- -- --

CORAM:

THE HON'BLE SHRI R.BALASUBRAMANIAN : MEMBER (A)

THE HON'BLE SHRI T.CHANDRASEKHAR REDDY : MEMBER (J)

(Judgment of the division bench delivered by
Hon'ble shri T.C.S.Reddy, Member (J)).

-- -- --

This is an application filed under section 19 of the Administrative Tribunals Act, 1985, by the applicant who was working as Asst.Audit Officer in the Posts & Telecommunications Department, Hyderabad. The 1st Respondent in the OA is the Director of Audit, Posts & Telecommunications Office, New Delhi and the 2nd Respondent is Dy. Director of Audit, Posts & Telecommunications, Hyderabad. The applicant has filed this application for the ^{following} ~~falling~~ reliefs :-

- (1) to direct the Respondents 1 & 2 to give the applicant notional promotion to the post of Selection grade UDC Post (now re-designated as Senior Auditor) in the time scale of Rs.425-640

- 2 -

with effect from 31-5-74 and to fix the pay of the applicant in Section Officer cadre in the scale of Rs. 500-900 with effect from 31-5-1974 and with reference to the pay so fixed in Asst. Audit Officer cadre with effect from 1-3-1984;

(ii) to direct the Respondents 1 & 2 to give applicant an opportunity to exercise the option for pay fixation in the cadre of Asst. Audit Officer with reference to the date of increment in the cadre of Section Officer as envisaged in Government of India decision 15 below FR 21(c) and clarifications issued from time to time with all consequential benefits.

A counter has been filed by the Respondents opposing the present application.

2. The applicant had filed writ petition No. 2503/77 on the file of the High Court of Andhra Pradesh for the following reliefs :-

(i) to issue a writ or direction in the nature of writ of mandamus directing the respondents to repatriate the petitioner herein to the posts & Telegraphs Audit Office, Hyderabad, and to promote him to the S.A.S. cadre with retrospective effect from 31-5-1974 with all consequential benefits in the said posts and telegraphs Audit Office, Hyderabad, in pursuance of the order contained in the proceedings No. 17/47/70-SPA-II dt. 29-3-1972 of the Director General, Posts & Telegraphs, New Delhi.

The said writ petition on the file of the High Court of Andhra

Pradesh had been disposed by its judgment dt. 26-7-78. The 3.

said judgment is contained at pages 20 to 26 of the paper book. The said writ petition was allowed and a direction was issued to the Respondents therein to implement the orders contained in letter dt.29-3-1972 referred to above and the writ petition was allowed in terms indicated therein.

3. As could be seen prayer (i) in the present Original Application and prayer in the said Writ Petition No.2503/77 is one and the same. The subject matter in the said Writ Petition No.2503/77 and in the present application with regard to the prayer (i) is one and the same. The Respondents in the present O.A. are also the Respondents in the said Writ Petition No.2503/77. It is an admitted fact that the Writ Appeal^{No.313/78} was filed against the judgment passed in WP 2503/77 and the same was dismissed by a bench of the High Court on 13-6-1984 conforming the ^{said} judgment dt.26-7-78, in

W.P. 2503/77 which was pronounced by the Single Judge. So the fact that the Judgment dt.26-7-78 in WP 2503/77 has become final is not ⁱⁿ dispute in this O.A. So in view of the above said facts we have no hesitation to hold that the applicant cannot have relief with regard to prayer (i) in this O.A. in ^{view} of the principles of resjudicata. As a matter of fact learned counsel appearing for the applicant ^{and} has not pressed for prayer (i) referred to above in this OA as the same hit by the principles of resjudicata. In view of this position

T. C. P.

3rd/8/78

The said

it is not open for us to give ~~any~~ relief and ~~to~~ direct Respondents 1 and 2 to give notional promotion to ~~the~~ ~~for~~ the post of Selection Grade UDC post (now re-designated as Senior Auditor) in the time scale of Rs.425-640 w.e.f. 31-5-1974 and to fix the pay of the applicant in Section Officer cadre in the scale of Rs.500-900 w.e.f. 31-5-1974 and with reference to the pay so fixed ^{to fix the pay of the Applicant} in Asst.Audit Officer cadre with effect from 1-3-1984.

4. The learned counsel appearing for the applicant contends that the applicant has not availed the opportunity to exercise the option for pay fixation in the Asst.Audit Officer cadre and that ~~the~~ atleast the applicant should be permitted now to exercise the said option. As could be seen from the Office Order dt.12-12-1985 (page 37 of the paper book) the Director of Audit, P & T, Delhi, had been pleased to ^{promoted} ~~come out~~ and appoint the applicant as Section Officer of P&T Audit Office, Hyderabad, as Asst.Audit Officer (Group-B) in the scale of pay of Rs.650-30-740-35-880-EB-40-1040 in the very same office w.e.f. 1-3-1984 notionally. As per the Office Order dt.21-2-86 consequent on his promotion to the cadre of Asst.Audit Officer w.e.f.1-3-84 the pay of the applicant was fixed notionally at Rs.775/- under F.R.22(c) in the AAOs scale of Rs.650-30-740-35-880-EB-40-1040 w.e.f. 1-3-1984 with D.N.I. on 1-3-1985. The applicant seems to have preferred representation dt.12-3-87 with regard to the implementation of the Judgment in the WP 2503/77 and WA 313/78 to which reference has already been made. As per

T. S. R.

W.R.

(78)

Office Order dt. 24-7-87 the applicant ^{was} ~~has been~~ informed that the arrears of pay and allowances based on the fixation of pay of the application ^{not} ~~notionally~~ in the SOs cadre and in AAOs cadre had already been communicated to the applicant and the applicant had to be paid the arrears from 31-5-1974 to 22-9-1985 . The fact that the applicant had drawn the arrears in pursuance of the said order dt. 24-7-87 is not in dispute. As already pointed out the grievance of the applicant is that he ^{was} ~~has~~ not given a chance to exercise ^{in order to remove him as an employee} option for fixation of pay. Admittedly ^{may} ~~has to~~ be given option for fixation of pay on promotion as under.

(a) either his initial pay may be fixed in the higher post on the basis of FR 22-C straightway without any further review on accrual of increment in the pay scale of the lower post, or

(b) his pay on promotion, may be fixed initially in the manner as provided under FR 22(a)(i) which may be refixed on the basis of the provisions of FR 22-C on the date of accrual of next increment in the scale of pay of the ~~next~~ lower post.

6. If the pay is fixed under (b) above, the next date of increment will fall due on completion of 12 months qualifying service from the date pay is refixed on the second occasion. ^{has to} Option ~~may~~ be given within one month of the date of promotion. Option once exercised shall be final. No such option was exercised by the applicant for fixation of his

T. C. [Signature]

slg

pay on promotion on the lines as indicated above. No doubt the clarification issued by the central government states in that/the order promoting the government servant it has to be mentioned that the government servant has to exercise option within one month from the date of his promotion. But in the promotion orders of the applicant to the post of AAO from the post of SO, there is no mention that the applicant has to exercise option within one month. ~~It is needless to point out that~~ ^{As} the applicant was a Central Government servant working in the Audit Office, he should have been well aware of the Rules, Regulations and circulars and clarifications issued by the Central Government from time to time. Even though there was no mention in the said order of promotion from Section Officer to Asst. Audit Officer that he has to exercise option with regard to pay fixation within one month, nothing prevented the applicant on his own volition from exercising option for getting the pay fixed on promotion on the lines indicated above. ^{had} Such an option never been exercised by the applicant for fixing the pay in the promotional post. As a matter of fact the applicant seems to have retired from the post of AAO, ^{he} after filed this O.A. in the year 1989. But neverthe-less the applicant had not been diligent enough to get his pay fixed by exercising option within one month from the date of his promotion. So the pay fixation under FR 22-C by the Department ^{had} become final as early as in the year 1985. So we do not find any

blor

valid reason now to interfere with the pay fixation of the applicant in the post of Asst. Audit Officer.

6. We see no merits in this application. Hence the application is liable to be dismissed and we accordingly dismiss the O.A. In the circumstances of the case the parties shall bear their own costs.

R. Balasubramanian *T. Chandrasekhar Reddy*
(R. BALASUBRAMANIAN) (T. CHANDRASEKSHAR REDDY)
Member (A) Member (J)

Dated: 31st October, 1991. *[Signature]*
Deputy Registrar (J)

avl/

To

1. The Director of Audit, Posts & Telecommunications, New Delhi.
2. The Deputy Director of Audit, Posts & Telecommunications, Hyderabad.
3. One copy to Mr. Y. Suryanarayana, Advocate, 40 MIGH Housing Board colony, Mehidipatnam, Hyderabad
4. One copy to Mr. G. Parameshwar Rao, SC for A.G. CAT. Hyd.
5. One spare copy.

pvm

[Handwritten signature]

7

ACB
8/11

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

:V.C

AND

THE HON'BLE MR.

M(J).

AND

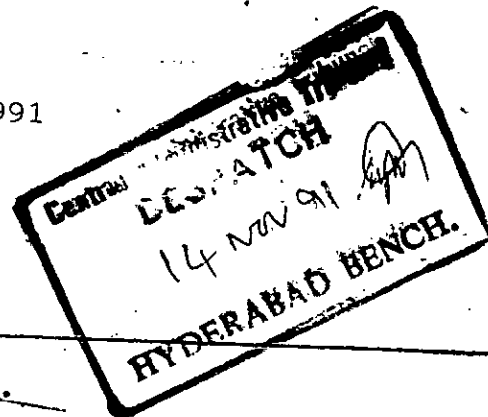
THE HON'BLE MR. R. BALASUBRAMANTAN: M(A)

AND

THE HON'BLE MR. T. Chandra Sekhara M(J)

DATED: 31.10.1991

ORDER/JUDGMENT:



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

O.A.No. 814/89 in

T.A.No.

(W.P.No.)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions

Dismissed. ✓

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

No order as to costs.

pvm

Handwritten signature and date 11/11/91.