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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 829/1989
T.A.No.

Date of Decision : 13 - 11-1991.

R.Balaiah

Petitioner.

Advocate for the
petitioner (s)

Versus

Respondent.

Advocate for the
Respondent (s)

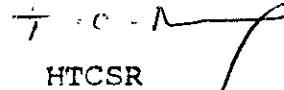
CORAM :

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? Yes
2. To be referred to the Reporter or not? Yes
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)


HRBS


HTCSR

O.A. No. 829/89

Judgment as dictated by
the Hon'ble Shri R.Balasub-
ramanian, Member (A) is enclosed
for approval please.


p.s. 8/11/81

HRBS
HTCSR

seen


11/11/81


11/11/81

Postp 
12/11/81

(33)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABADBENCH
AT HYDERABAD.

O.A. No. 829/1989

Date of order: 13-11-1991.

Between

R.Balaiah

... APPLICANT

A N D

1. The Telecom. District Engineer,
Mahaboobnagar.
2. The Director, Telecom.,
Hyderabad Area,
C.T.O. Compound, Secunderabad.
3. The Chief General Manager,
Telecom., A.P., Hyderabad.
4. The Union of India, rep. by
the Director-General, Telecom.,
New Delhi.

... RESPONDENTS

Appearance:

For the applicant : Shri C.Suryanarayana, Advocate
For the Respondents : Shri N.Bhaskara Rao, Addl.CGSC

CORAM:

The Hon'ble Shri R.Balasubramanian, Member (Admn.)

The Hon'ble Shri T.Chandrasekhar Reddy, Member (Judicial)

JUDGMENT

(of the Bench delivered by the Hon'ble Shri R.Balasubramanian, Member (Admn.)).

...

This Application filed by Shri R.Balaiah under Section 19 of the Administrative Tribunals Act, 1985 against the Telecom. District Engineer, Mahaboobnagar and three others, seeks a direction to the Respondents to regulate ^{the} applicant's

contd...

transfer from Nizamabad to Mahbubnagar as a transfer in the cadre of 'cable splicer' and to regularise his services as a cable splicer in the Mahbubnagar telecom. Telecom. district. The applicant, who joined the Nizamabad/Division in March 1975, was duly promoted as Cable Splicer from 10-1-1980. On 10-11-1986, he applied for a transfer under rule 38 from Nizamabad to Mahbubnagar Division. The Telecom. District Engineer, Nizamabad, by his letter dated 26-1-1987 informed him that his request for the said transfer was registered at Serial No.1. Subsequently he sent reminders and by letter dated 10-4-1987, the Telecom. District Engineer, Nizamabad intimated the official that according to the letter dated 2-4-1987 of the 2nd Respondent, the applicant's request for transfer to Mahbubnagar under Rule 38 was recorded since the cadre of cable splicer was a 100 per cent promotional cadre and no Rule 38 transfers are permissible. The applicant, therefore, requested the 2nd Respondent to revert him as a 'Lineman' stating "it may please be noted down that I am asking for reversion so that I can get transfer to Mahbubnagar." Thereupon, he was transferred to Mahbubnagar Division as a Lineman. Thereafter, the applicant submitted a representation on 21-11-1988 seeking regularisation of his transfer to Mahbubnagar as a cable splicer. It is also averred that when his case was considered for transfer from Nizamabad to Mahbubnagar Division, some posts of Cable Splicer were available in the Mahbubnagar Division which the Department could not fill up by departmental promotees. It is now contended that since there were vacancies which could not be filled up by the departmental promotees, he should have been taken to Mahbubnagar in the cadre of cable splicer itself. The Telecom. District

V

Engineer, Mahbubnagar, by his letter dated 17-8-1989 addressed to the Sub-Divisional Officer, Telecom., Mahbubnagar with a copy to the applicant, has finally turned down the request of the applicant for absorption of the applicant in Mahbubnagar Division as a Cable Splicer on the ground that such a transfer is not permissible under Rule 38 of the P&T Manual, Volume-IV. ~~It is~~ against this, that the present application has been filed.

2. The Respondents have filed a counter affidavit and opposed the application. It is their case that the applicant sought for reversion to the cadre of Lineman on his own volition to secure a transfer to Mahbubnagar and he cannot at this stage ask for absorption as cable splicer. It is submitted that the Rule 38 of the P&T Manual Vol.IV does not permit the transfer in the cadre of cable splicer.

3. We have examined the case and heard the learned counsel, Shri C. Suryanarayana for the applicant and Shri N. Bhaskara Rao for the Respondents.

4. By letter dated 26-1-1987 the Telecom. District Engineer, Nizamabad informed the applicant that his request has been registered at Sl.No.1. However, by letter dated 10-4-1987, the Telecom. District Engineer conveyed the decision of the Director, Telecom., Secunderabad stating that the cable splicer cadre is a 100 per cent promotional cadre and Rule 38 transfers are not permissible in such cases. He also informed that the request of the applicant had been recorded. The applicant was in desperate need of transfer to Mahbubnagar. When he was informed that the rules do not permit such a transfer in the cadre of Cable splicer itself, he sought

for voluntary reversion to the cadre of Lineman so that he could be posted to Mahbubnagar which materialised. In the course of the hearing, we asked the learned counsel for the Respondents to show the rule which specifically forbids transfer under Rule 38 in the cadre of Cable Splicer. He could not show any specific rule which as such forbids transfer under Rule 38 which is on a bottom seniority basis, that is, an applicant going in a particular cadre from one unit to another, under this rule, takes the lowest position in that cadre in the new division so that his coming into the new division does not affect the interests of those who are already in the division. The learned counsel for the applicant drew our attention to the statutory recruitment rule for the cadre of cable splicers. He pointed out that there is an element of direct recruitment also in this cadre. We have seen the rule and find that while the cadre of cable splicer ~~has~~ to be filled up by promotion failing which by direct recruitment. There are other columns of the recruitment rules which lay down requirements for direct recruitment. This would mean that normally the cadre of cable splicer is to be filled up by promotion from the feeder cadre and if sufficient number are not available to fill up the vacancies, then recourse could be taken to ~~the~~ direct recruitment also. The respondents are not able to show any rule which specifically forbids transfer to this cadre from one unit to another and there is scope for direct recruitment when required number of promotees are not available.

AB Under these circumstances, we hold that the Respondents'

stand to deny transfer merely on the ground that it is 100% by promotion is not sustainable. If there are vacancies which could not be filled up by promotion such vacancies should be made available to transferees under Rule 38 of the P&T Manual Volume IV also.

5. Another argument of the respondents was that the applicant having sought for voluntary reversion, is estopped from asking for the original post. Was the reversion sought for by the applicant voluntary at all? The applicant was told that transfer under Rule 38 in the cadre of Cable Splicer was not permissible under the rules and his application was, therefore, recorded. He was under compulsion to go to Mahabubnagar. If he had been aware that transfer to Mahabubnagar in the cadre of Cable Splicer itself was possible, he might not have opted for reversion. The reversion that he sought for, was in the face of a wrong stand decision conveyed to him and under compulsion of circumstances. There is, therefore, no bar to his seeking restoration to the original cadre when there is no rule against it.

6. Under these circumstances, we direct the respondents to restore the applicant to the cadre of Cable Splicer against the existing vacancy, if available, which they had not filled up by promotion. If, however, no such vacancy is readily available, the applicant shall be restored to the cadre of Cable Splicer as and when the next vacancy in that cadre arises which the Department cannot fill up by promotion. He does not have to undergo any test or training since he had already been duly selected and had functioned in that cadre for over six years. The application is, thus, partly allowed with no order as to costs.

R.Balasubramanian
(R.Balasubramanian)
Member(A).

Dated

13th November 91

T. Chandra Sekhar
(T.Chandra Sekhar Reddy)
Member(J).

8/11/91
Deputy Registrar (S)

To

1. The Telecom, District Engineer, Mahaboobnagar.
2. The Director, Telecom., Hyderabad Area,
C.T.O. Compound, Secunderabad.
3. The Chief General Manager, Telecom, A.P.Hyderabad.
4. The Director General, Telecom, New Delhi.
5. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd.
6. One copy to Mr.N.Bhaskar Rao, Addl. CGSC, CAT.Hyd.
7. Copy to All Reporters as per standard list of CAT.Hyd.Bench.
8. One spare copy.

pvm.

Recd 15/9

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

AND

THE HON'BLE MR.

M(J)

AND

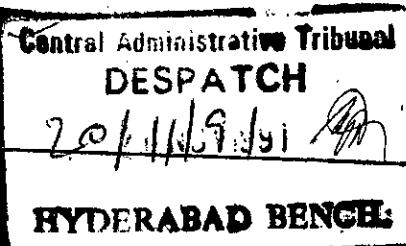
THE HON'BLE MR. R. BALASUBRAMANTAN : M(A)

AND

THE HON'BLE MR. T. Chandrasekhar : M(J)

DATED: 13-11-1991

ORDER JUDGMENT:



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

O.A. No. 829/89

T.A. No.

(W.P. No.)

Admitted and Interim directions
Issued.

Allowd. in part

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

No order as to costs.

pvm

5/11/91