

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD :

D.A.No.109/89.

Date of Judgment: 2-2-90.

I.V.S.R.K.Sarma

....Applicant

Versus

1. The Accountant General (Accounts & Entitlement),
Andhra Pradesh, Hyderabad.

2. The Deputy Accountant General (Admn),
Office of the Accountant General (A&E),
Andhra Pradesh, Hyderabad.

....Respondents

COUNSEL FOR THE APPLICANT : SHRI V.VENKATESWARA RAO, ADVOCATE.

COUNSEL FOR THE RESPONDENTS : SHRI G.PARAMESHWAR RAO, Standing Counsel
for Indian Audit and Accounts Department.

CORAM:

HONOURABLE SHRI D.SURYA RAO : MEMBER (JUDL)(I)

HONOURABLE SHRI R.BALASUBRAMANIAN : MEMBER (A)

(Judgment prepared as per Shri D.Surya Rao,
Member (J))

The applicant herein is now working as Accountant
in the Office of the Accountant General, Andhra Pradesh.

It is his case that he was initially appointed as Group-D
employee. He became eligible to the post of L.D.C. in the
year 1979. His promotion was however ignored on the ground
that certain Disciplinary Proceedings ^{were} commenced against him.

He filed Writ Petition No.4865/80 in the High Court of Andhra
Pradesh. The High Court allowed the writ petition and direc-
ted the respondents to consider him for the promotion of LDC
with retrospective date. Accordingly he was promoted as LDC
with effect from 29-12-1979. He was passed the Departmental
Examination and became eligible for the promotion to the
post of Accountant in the month of July, 1984. He was again

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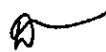
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overlooked for the promotion of Accountant and his junior was promoted. He had to file Writ Petition No.1172/85 for the promotion to the post of Accountant with effect from the date when his immediate juniors were promoted. Pursuant to the Interim Directions of the High Court, the applicant was promoted as Accountant with effect from 1-3-1985. Subsequently the order of promotion was given effect to from 29-12-1984. The Writ Petition No.1172/85 was transferred to this Tribunal and numbered as T.A.No.854/86 and disposed of on 18-8-1988. It is stated by the applicant that the defence of the respondents in T.A.No.854/1986 in seeking to deny the applicant promotion as an Accountant was that Disciplinary Proceedings were pending against him. The applicant contends that in WP No. 985/82 the High Court (Cmndt) ^{or} held that the CCS (GAR) Rules are not applicable to the employees of the Office of the Accountant Generals and this Judgment was confirmed in Writ Appeal No.754 of 1982. He therefore contends that there are no charges pending against him and that he is fully eligible for the next higher promotion of the Senior Accountant. But the same is being denied to him on the ground that the Disciplinary Proceedings alleged to be pending against him. He states that the appointment to the post of Senior Accountant is to be made from among Accountants who qualified in the Departmental Examinations ^{TR} on basis of the seniority subject to rejection of unfit by a DPC. He contends that he is eligible and should be promoted on the basis of seniority

subject to rejection of unfit. His representation requesting that he be considered for promotion to the post of Senior Accountant dated 09-01-1989 proved futile. It is contended that denial of the promotion is violative of Articles 14 and 16 of the Constitution of India. He therefore seeks a direction to consider him for promotion to the post of Senior Accountant in the grade of Rs. 1400-2600 with effect from 17-1-1989 on which date his immediate juniors were promoted in the category of Accountant.

2. On behalf of the respondents a counter has been filed stating that ~~simee~~ six months have not passed since his making representation and therefore the application is premature. So far as the Disciplinary Proceedings commenced against the applicant, it is admitted that despite the pendency of the same he was promoted first as LDC and later as Accountant. It is however stated that these orders are passed pursuant to the orders of the High Court. So far as the decision of the High Court in Writ Petition No.985/82 as confirmed in the Writ Appeal No.754/82 that the CCS (Conduct) Rules not applicable to the employees under the control of Comptroller & Audit General are concerned, it is contended that the aforesaid Judgment has been stayed by the Supreme Court on 04-04-1989 in SLP (C) No.222/1988. In

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view of the pendency of the SLP and inview of the pendency of the Disciplinary Proceedings the case of the applicant for promotion to the category of Senior Accountant and the findings of the Departmental Promotion Committee are kept in a sealed cover. It is stated that the charges against the applicant are grave and punishable with a Major penalty. It is therefore contended that the applicant cannot be promoted and keeping his case in a sealed cover is not violative of articles 14 and 16. It is stated that the applicant's case will be considered after completion of the Disciplinary Proceedings.

3. We have heard the learned counsel for the applicant Shri V.Venkateshwar Rao and Shri G.Parameshwar Rao, Standing Counsel for Central Government. The question that arises for determination is whether the pendency of Disciplinary Proceedings when he was a Class IV employee should be bar to his promotion as Senior Accountant. Admittedly the Disciplinary Proceedings were commenced some time in the year 1979 when the applicant was working as Class-IV employee. The pendency of the said Disciplinary Proceedings have not hindered or prevented his promotion to the higher categories i.e. LDC and Accountant. No doubt the respondents have in the past pleaded that the Disciplinary Proceedings are pending against him and he should not be promoted. However inview of the long delay which has taken place in completing the Disciplinary Proceedings, the High Court of Andhra Pradesh had issued orders that the Disciplinary Proceedings should not come

in the way of the promotions of the applicant. At every stage when he was due for the promotion the courts have been directing that the applicant should not be denied. This is because a complicated question of the law had arisen in regard to interpretation of Doraiswamy's case reported in AIR 1981 SC page 783. A single Judge of the High Court and a Division Bench of the High Court have held applying the said decision that the employees under the control of Comptroller & Audit General of India are not governed by the C. C. S. (Conduct) Rules and the rules are not applicable to them. No doubt the Supreme Court had stayed the order passed by the High Court in Writ Petition 985/1982 as confirmed in W.P.No.754/1982. In view of the stay it follows that it cannot be held that the charges have been quashed and that the enquiry is not pending against the applicant. However it is not known when the case will be decided by the Supreme Court. The Government of India has issued instructions directing ad-hoc promotions in cases wherein there would be long delays in completion of Disciplinary Proceedings. These instructions are contained in Govt. of India Department of Personnel & Training O.M.No.2205/2/86/Estt.(E) dated 10.4.1989. These instructions provide that there should be six monthly review of sealed cover cases. It is however contended by the learned counsel for the Department that this six months review would not apply to the case of the applicant since the DPC met only on January, 1989. The six months review can be taken by

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the Department only 2 years after the DPC had first met.

We are unable to agree that the case of the applicant should not be considered till 2 years from January 1989 viz., the date of the first meeting of the DPC. Obviously the charges framed in 1979 have not stood in the way of the applicant in getting promotion in various lower categories. Equally so the charges should not be a bar or hinder him from getting a promotion in the category of Senior Accountant. The 2 year period referred in the instructions would refer to normal case of delay and not to a case of extraordinary delay in completion of the Disciplinary Proceedings as in the instant case. In cases where the Disciplinary Proceedings have been pending long prior to the meeting of the DPC the instructions can be read down to mean that the case of the applicant can be considered within six months of the meeting of the DPC provided 2 years have expired from the date of framing of the charges. We will accordingly direct that the case of the applicant be considered in terms of Government of India, Ministry of Personnel & Training O.M.No.22015/2/86 (E) by opening the sealed cover on dated 10-4-1989 and if the applicant is found fit and suitable for promotion, promotion may be accorded to him. The question of retrospective promotion from the date of his junior can be considered only after the conclusion of the Disciplinary Proceedings in the event of the Supreme Court holding in favour of the respondents on the question of the

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applicability of the CCS (Conduct) Rules to the employees under the control of the Comptroller & Accountant General of India. This order however ^{passed by us on} ~~however~~ will not preclude the respondent from imposing any punishment in the category of Senior Accountant in the event of the charges being maintainable and employee being found guilty. With these directions the application is allowed. No costs.

D. Surya Rao

(D.SURYA RAO)
Member (J)

R. Balasubramanian

(R.BALASUBRAMANIAN)
Member (A)

Dt. 2nd February 1990.

S. Venkateswara Rao
DEPUTY REGISTRAR (P.R.S)

To

1. The Accountant General (A&E), Andhra Pradesh, Hyderabad.
2. The Deputy Accountant General (Admn.), Office of the Accountant General (A&E), Andhra Pradesh, Hyderabad.
3. One copy to Shri V.Venkateswara Rao, Advocate, H.No.1-1-287/27, Chikkadpally, Hyderabad.
4. One copy to Mr.G.Parameswara Rao, CGSC, CAT, Hyderabad.
5. One spare copy.

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(D.SURYA RAO)
MEMBER(JUDL.)

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(R.BALASURAMANIAN)
Member (Admn.)

CERTIFIED TO BE TRUE COPY

Date. COURT OFFICER.

Court Officer

Central Administrative Tribunal

Hyderabad Bench

Hyderabad.

1. The Accountant General (A&E), Andhra Pradesh, Hyderabad.
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Office of the Accountant General (A&E),
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