

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

D.A.No. 207/90

DATE OF DECISION:- 25.4.1990

T.A.No.

Between:-

S. R. Mallikarjuna Rao - - - - Petitioner(s)

Mr. V. Krishna Rao - - - - Advocate for the
petitioner(s)

Versus

Secretary, Ministry of Defence, New Delhi
- - - - - Respondent.

Mr. E. Madanmohan Rao, Addl. S.G.C.G - - - - Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. B. N. JAYASIMHA, VICE CHAIRMAN

THE HON'BLE MR. J. NARASIMHA MURTHY (MEMBER, JUDICIAL)

1. Whether Reporters of local papers may be allowed to see the Judgment? *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 Tribunals? *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)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH AT : HYDERABAD

O.A. No.207/90

Date of Order: 25.4.1990

BETWEEN

S.R. Mallikarjuna Rao

.. Applicant

Versus

1) Secretary,
Ministry of Defence,
Government of India,
NEW DELHI.

2) Director General,
Electrical & Mechanical Engineering,
Army Headquarters,
DHQ Post Office,
New Delhi.

3) Officer-in-charge,
EME Records,
Secunderabad.

.. Respondents

APPEARANCE:

For the Applicant : Mr. V. Krishna Rao, Advocate

For the Respondents : Mr. E. Madan Mohan Rao, Addl.
Standing Counsel for Central Govt.

CORAM:

HON'BLE SHRI B. N. JAYASIMHA, VICE CHAIRMAN

HON'BLE SHRI J. NARASIMHA MURTHY, MEMBER (JUDICIAL)

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE SRI B.N.JAYASIMHA)
VICE CHAIRMAN

This is an application from an Office Superintendent, Gr.II, EME Records Office, Secunderabad, questioning the order issued by the EME Record Officer, Secunderabad in D.O.Pt.II No.08/EST dt.24.2.90 under which the applicant has been reverted from the Post of Office Superintendent, Gr.II to the post of Upper Division Clerk.

(b/w)

2. The applicant states that he was appointed as a Lower Division Clerk on 7.8.1961 in the Corps of the EME, and was promoted as UDC from 1.11.1976. The Upper Division Clerks with five years of service are eligible for promotion to the post of Office Superintendent Gr.II (Selection Post). According to Govt. of India, Department of Personnel and Administrative Reforms O.M. No.22011/6/76 ESStt(D) dated 30.12.76, the zone of consideration for promotion of Upper Division Clerks to the post of Office Superintendent, Gr.II was 5 to 6 times the number of vacancies expected to be filled during the year. However, the EME Record Office, was considering names upto 3 times to the number of vacancies in contravention of the Govt. orders. The EME Office Records made the selections by considering persons equal to 3 times the number of vacancies during the D.P.Cs held in Jan./Feb. 1981, 82, and 83. Under the instructions from the Director General of EME, the zone of consideration was stretched to 5 times the number of vacancies during Feb. 1984.

3. The applicant came up for promotion in pursuance of the above policy and his name was placed before the DPC in Feb. '88. He stands at S.No.107 in the seniority list of Upper Division Clerks. When the selected panels drawn by the D.P.C in February, 1988 were circulated, the applicant found his name as S.No.1 of the select list. He had superseded 106 persons above him. The proceedings were approved by the Director General of EME and his promotion to Office Superintendent Gr.II was ordered with effect from 22.2.1988 vide EME Records letter No.3494/74/CA III dt.19.3.'88 and he has been working satisfactorily since then.

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4. Aggrieved with the selection held in 1988, two UDCs viz., Sri M.G. Khandappa and George Joseph working in 515 Army Base Workshop, Bangalore filed O.A.No.705 and 706 of 1988 in the Central Administrative Tribunal, Bangalore, challenging the zone of consideration and sought revision of proceedings of the DPC held from 1984 onwards. The applicant was one of the 30 others who were promoted since Feb.1984 and they were impleaded as co-respondents. All the persons affected by this O.A. approached the Director General, EME through EME Records, and requested that their case be defended along with others by the Govt. They also stated that in case they are to appeal in person necessary permission be granted treating the same as temporary duty. The applicant was informed that the applicant need not go to represent his case as the Govt. Army.Hqrs. was already defending their case as stated in letter No. 24250/DPC/EME Civ.1 dt.17.3.'89.

5. The Central Administrative Tribunal quashed the proceedings of the D.P.C held on 31.10.87, 22.2.88 and 9.2.89 and directed the administration to reconsider the case of the applicants in O.As 705 and 706/88 with assistance of a review D.P.C on or before 31.10.89. The Bench, however, allowed the promotees of those D.P.Cs to continue in the posts till the matters are redone, without any right of promotion.

6. The applicant contends that the respondents have violated the order of the Hon'ble Central Administrative Tribunal in respect of allowing the promotees to continue in the higher posts till the matters are redone and have resorted to reversions of the applicant from the original date of promotion itself i.e., 22.2.1988 ignoring the services rendered in the higher post. In pursuance to the judgement of the Hon'ble Central Administrative Tribunal, Bangalore, the Director

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General, EME reviewed the proceedings of the DPCs held on 31.10.87, 22.2.88 and 9.2.89 by considering 3 times the names leaving the DPCs held from Feb.1984 to Feb.1987 untouched. The applicant contends that the action of the Director General,EME, is arbitrary, unjust and illegal. He also contends that the action of the Director General is contrary to the orders of the Central Administrative Tribunal, Bangalore.

7. The applicant submitted a representation to the Director General, New Delhi on 18.11.89 seeking that he should be allowed in the present post of Officer Superintendent,Gr.II He also requested to permit him to seek justice in the Court of Law in case he is reverted. No reply has been given. The applicant further contends that if Administration commits a mistake in not following correct procedure in the matter of promotion it has power to create supernumerary posts and accommodate the persons but cannot revert them. The Hon'ble Central Administrative Tribunal, Bangalore could not quash the earlier selections of the DPCs from 1984 onwards till 1987 on technical grounds of limitation and they cannot be treated as valid selections when the applicant's selection is declared invalid. The Administration is duty bound to rectify its mistake by regularising the promotions. The applicant relies on the judgement of the Hon'ble Supreme Court in P.D. Agarwal Vs. State of U.P. 1987 Sec. (L & S) Page 310 wherein it was observed that "vested rights cannot be taken away by retrospective amendment of the statute or statutory rules arbitrarily and unreasonably. Such amendments are subjected to judicial review". The applicant has filed this present application seeking that his reversion from Office Superintendent Gr.II to Upper Division Clerk, issued in D.O. Pt.II No.08/Est. dt.24.2.1990 be quashed.

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8. We have heard Sri V. Krishna Rao, learned counsel for the applicant, and Sri E. Madan Mohan Rao, Addl. Standing Counsel for the Central Govt., From the foregoing it is seen that the applicant is challenging the decision of the Bangalore Bench in O.A. No.705/706 of 1988. The applicant was a party to the proceedings therein. If the applicant is aggrieved by the decision of that Bench and considers that the decision is not proper either on facts or on law or both, the appropriate remedy for him is to file a review petition before that bench or to file a Special Leave Petition before the Hon'ble Supreme Court. As regards the contention of Sri Krishna Rao, that the Bangalore Bench did not take into consideration the ratio in Agarwal's case, the remedy is only to file review application or to file an SLP in the Supreme Court for modification of the judgement or quashing it. This Bench has no jurisdiction to review or revise the judgement of the Bangalore Bench. (The application is therefore liable to be dismissed as not maintainable. It is accordingly dismissed. No order as to costs.

(Dictated in the Open Court)

B.N.Jayasimha
(B.N. JAYASIMHA)
HON'BLE VICE CHAIRMAN

M.S.
(J. NARASIMHA MURTHY)
HON'BLE MEMBER(JUDICIAL)

Dt. 25th April, 1990

D.R. *utslav*
DEPUTY REGISTRAR (J)

TO:

1. The Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Director General, Electrical & Mechanical Engineering, Army Headquarters, DHQ post office, New Delhi.
3. The Officer-in-Charge, EME Records, Secunderabad.
4. One copy to Mr. V. Krishna Rao, Advocate, 12-11-1444, Boudhanagar, Sec'bad-500361.
5. One copy to Mr. E. Madan Mohan Rao, Addl. CGSC, CAT, Hyd.
6. One spare copy.

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