

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 489/90.

Date of Decision : 22.8.99

~~T.A.No.~~

P.Trinadha Rao

Petitioner.

Shri C.Suryanarayana

Advocate for the
petitioner (s)

Versus

The Union of India, represented by

~~The Secretary, Dept. of Personnel & Training,~~
New Delhi-110001 & 4 others

Respondent.

~~Shri N.Bhaskar Rao,~~
Addl. CGSC

Advocate for the
Respondent (s)

CORAM :

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

THE HON'BLE MR. R.Balasubramanian : Member(Admn)

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)

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M(J)

HRBS
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.489/90.

Date of Judgment 22.8.1991.

P.Trinadha Rao

.. Applicant

Vs.

1. The Union of India,
represented by
The Secretary,
Dept. of Personnel
& Training,
New Delhi-110001.
2. The Secretary,
Central Board of
Excise & Customs,
Ministry of Finance,
New Delhi-110001.
3. The Collector of Customs,
Visakhapatnam-530035.
4. D.Manikyam,
Dy. Office Supdt.(Level-II),
Custom House,
Visakhapatnam-530035.
5. M.Nazeer Pasha,
Dy. Office Supdt.(Level-II),
Custom House,
Visakhapatnam-530035. .. Respondents

Counsel for the Applicant : Shri C.Suryanarayana

Counsel for the Respondents : Shri N.Bhaskar Rao,
Addl. CGSC

CORAM:

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

Hon'ble Shri R.Balasubramanian : Member(Admn)

{ Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn) }

This application has been filed by Shri P.Trinadha Rao
under section 19 of the Administrative Tribunals Act, 1985
against the Union of India, represented by the Secretary,
Dept. of Personnel & Training, New Delhi-110001 and 4 others.
Respondents 4 and 5 are private respondents.

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2. The applicant was functioning as a Senior Accountant in the Dandakaranya Project, Koraput (Orissa). He was declared surplus w.e.f. 1.4.88 due to shrinkage in the establishment of the said Project and he was transferred to the Central (Surplus Staff) Cell for further redeployment. A month after the applicant was placed on the said Surplus Cell, the Collector of Customs, Visakhapatnam reported through his letter dated 28.4.88 the number of vacancies in the cadres of UDC and LDC in his office. It is alleged that he did not furnish therein the information relating to the vacancy of Dy. Office Supdt. Level-II (DOS-II for short) with the consequence that the 1st respondent could not nominate any employee in the Surplus Cell to the said post of DOS-II. Before the applicant could actually be transferred to the Customs Department in Visakhapatnam ~~one~~ Shri D.Manikyam (R4) was promoted as DOS-II vide orders dated 14.6.88. Later, by his letter dated 26.9.88 the Addl. Collector of Customs, Visakhapatnam cancelled the posting of the applicant to the Customs Department as UDC but again the orders were revived and finally he was struck off on 4.10.88 by the Dandakaranya Development Authority (DDA for short) directing him to report as UDC in the Office of Collector of Customs, Visakhapatnam. This transfer was in public interest. The applicant was earlier offered a posting as Senior Accountant in the same scale in the Films Division at Delhi. But, since Delhi was not one of the States of his choice the applicant did not accept it and he was eventually offered a job of UDC in the Customs Department at Visakhapatnam. The applicant has been agitating that since he was in ^{the} a post of Senior Accountant in the Dandakaranya Project he must be offered an equivalent post in the Customs Department also since, according to him a post in that grade was available at the time the Customs Department reported the vacancies to the DDA. Apart from

Shri D.Manikyam, another person Shri M.Nazeer Pasha (R5) was also promoted eventually. In response to an earlier representation of the applicant the respondents had replied vide their letter dated 6.1.89 (A.11) that candidates nominated from the Central (Surplus Staff) Cell are to be treated as fresh entrants, in the matter of seniority and promotion in the new organisation. They also held that he was not eligible for consideration for promotion to the grade of DOS-II at that stage since he had not put in qualifying service of 5 years in the grade of UDC. Aggrieved, the applicant prays in this application that the respondents be directed to deem him to have been transferred to the post of DOS-II either from 1.4.88 itself i.e. the date on which the applicant was placed on the Surplus Cell or at least from 14.6.88, the date from which R4 was promoted as DOS-II. He also seeks all consequential benefits.

3. The respondents oppose the prayer. It is contended that the vacancy in the DOS-II grade alleged to have been available was not available since the earlier occupant of that post was only on ad hoc promotion and the resultant vacancy in the DOS-II grade ^{could not} ~~cannot~~ be considered as a regular vacancy. As such, they did not report that vacancy to the DDA. It is also pointed out that the substantive post the applicant was holding was only a UDC post and he was not a substantive Senior Accountant. It is pointed out that according to rules of deployment of ^{Staff of} Surplus Cell

- (1) the officiating pay should be protected, and
- (2) the scale of pay offered to him on redeployment shall not be less than the pay of officer's substantive post.

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It is pointed out that though he was taken as a UDC in the Customs Department the pay which he was drawing before redeployment had been protected. He was also offered the post of UDC which was a substantive post he was holding

earlier. It is also contended that his posting to the Customs Department at Visakhapatnam was a transfer at his request because he had already been redeployed to the Films Division, Delhi which he did not accept and he sought for a posting at Visakhapatnam.

4. The applicant has submitted a rejoinder to the reply in which he has attempted to show that the vacancy in the cadre of DOS-II which Shri S.Jagannatha Raju was originally occupying was a regular vacancy, even on 1-4-88.

5. We have examined the case and heard the learned counsel for the applicant and the respondents. It is the grievance of the applicant that the respondents had suppressed the information about the vacancy in the grade of DOS-II. We do not think so for the following reasons:

Shri S.Jagannatha Reju had been on another ad hoc promotion which was regularised only on 15.2.90. Till then the post cannot be considered to be vacant on a permanent basis and cannot be filled up on a regular basis. It is seen from Annexure A-4 to the application that Shri D.Manikyam (R4) was only promoted to this post on purely ad hoc basis. Shri D.Manikyam (R4) was eventually regularised in this cadre only on 12.7.89. So, till then the post was not available for filling up on a regular basis and, therefore, the respondents were right in not intimating this post in the list of vacancies when they reported the vacancies to the DDA.

6. The substantive post that the applicant was holding in the DDA was only that of an UDC and there can be no grievance when he had been absorbed in the same grade in the Customs Department at Visakhapatnam.

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7. The next question is whether the respondents are right in their stand that the applicant was not eligible for consideration for promotion to the grade of DOS-II since he had not put in the qualifying service of 5 years in the grade of UDC. This was communicated to the applicant by the respondents vide their letter dated 6.1.89 (A-11). The applicant in his reply dated 9.5.89 (A-12) had accepted that his redeployment to the Customs Department could affect him in terms of seniority and that he could be treated as a fresh entrant for the purpose of seniority. But for other purposes he wanted his past service in the DDA to be counted. The learned counsel for the applicant had cited two decisions. One is the Full Bench decision in the case of K.A.Balasubramaniam Vs. Union of India & others reported in (1987) 4 ATC 805 and the other is the decision of the Chandigarh Bench in the case of Tarlok Singh Vs. Union of India & others reported in 1989(9) ATC 491. It had been held that while being transferred from one unit to another while the seniority can be affected the past service rendered by the official cannot be forfeited. Extending the same principle we hold that the service rendered by the applicant in the DDA should not be denied to him. If he has put in total service of 5 years in the grade of UDC including that in the DDA, he should be eligible for promotion according to his seniority and other provisions of the rules. The stand of the respondents that he does not have 5 years of service in the grade of UDC in the Customs Department is not acceptable.

8. We find that Shri M.Nazeer Pasha (R5) had also been later on promoted on a regular basis vide orders dated 31.7.89 of the respondents. The applicant had joined the new organisation and has lost in terms of seniority. R4 and R5 who were already UDCs in the organisation were promoted and the applicant will have to wait

for his turn for promotion in the order of seniority and in accordance with the rules for promotion. Since his pay has been protected, we do not consider him to be subjected to any undue hardship. We, therefore, see no reason for our intervention in the case and accordingly dismiss the application with no order as to costs.

MS

(J. Narasimha Murthy)
Member (Judl).

R. Balasubramanian

(R. Balasubramanian)
Member (Admn).

Dated 22nd August 91

823891
Regd. No.

To

- 1) The secretary, Union of India
Dept. of Personnel & Training, New Delhi - 7
- 2) The secretary, Central Board of Excise & Customs,
Ministry of Finance, New Delhi - 1
- 3) The collector of customs, Visakhapatnam - 357
- 4) one copy to Mr. C. Sreenivasaraya. Advocate, CAT. Hyd.
- 5) one copy to Mr. N. Bhaskar Rao. Addl. C. Sec. CAT. Hyd.
- 6) one copy to Hon'ble Mr. J. Narasimha Murthy, M.C. (CAT. Hyd.)
- 7) one spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

COMPARED BY
APPROVED BY

THE HON'BLE MR V.C.
AND
THE HON'BLE MR. M(J)
AND
THE HON'BLE MR. J. NARASIMHA MURTY: M(J)
AND
THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 22-8 -1991 ✓

~~ORDER~~ JUDGMENT ✓

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

D.A. No. 489/90 ✓

T.A. No. (W.P. No.)

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.

Central Administrative Tribunal
DESPATCH
30 AUG 1991
HYDERABAD BENCH

23/8/91