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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD

OA No.5/90.

Date of Judgment: 24-12-1990.

T.V.Subba Rao

...Applicant

Vs.

1. The Chief Commissioner of Income Tax, Andhra Pradesh, Ayakar Bhavan, Basheerbagh, Hyderabad.
2. The Commissioner of Income Tax, Andhra Pradesh-I, Ayakar Bhavan, Basheerbagh, Hyderabad.
3. Sri B.K.Vijayakumar, Head Clerk, Office of the Assistant Director of Income Tax (Investigation), Ayakar Bhavan, Tirupati.
4. Sri T.Narayana, Head Clerk, Income Tax Office, Proddatur, Cuddapah.
5. Sri M.Subrahmanyam, Head Clerk, Income Tax Office, Circle-III, IV Floor, Ayakarbhavan, Basheerbagh, Hyderabad.

...Respondents

Counsel for the Applicant : M/s Duba Mohan Rao, G.V.R.S.Varaprasad & Sivakumar Duba.

Counsel for the Respondents : Shri E.Madan Mohan Rao, Addl.CGSC

CORAM:

THE HON'BLE SHRI B.N.JAYASIMHA : VICE-CHAIRMAN

THE HON'BLE SHRI D.SURYA RAO : MEMBER (JUDICIAL)

(Judgment of the Division Bench delivered by Hon'ble Shri D.Surya Rao, Member (J)).

The applicant herein is working as U.D.C. in the ^{Temporary} Income-tax department, Andhra Pradesh [Charge]. He claims that he belongs to Benthia Oria Community which is declared as one of the Scheduled Tribe. His grievance is that he has not been considered for promotion to the post of Head Clerk

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The applicant further states that 31 candidates were promoted by order No.257 in C.R.No.51/Estt/89 dated 24-7-1989, issued by the 2nd respondent to the cadre of Head Clerks and in the said list Respondents 3, 4 and 5 are juniors to the applicant. Aggrieved by his non-promotion, the applicant made representation on 3-8-1989 requesting the 1st respondent to promote him also as Head Clerk and to restore him his seniority. He was informed by the 1st respondent by his memo dt.28-8-1989 that his request will be examined and the decision taken will be intimated. The applicant contends that arbitrarily he has been denied the promotion and no reasons given as to why he was denied the promotion. Applicant seeks a direction to declare the respondents order dated 24-7-1989, whereby his juniors were promoted as illegal and further seeks a direction to the 1st respondent to consider the case of the applicant in preference to respondents 3, 4 and 5.

2. A counter has been filed on behalf of the respondents stating that the respondents had a doubt about his social status, since the vacancies to which he has to be promoted is earmarked for S.T.Category, that unless the verification in regard to his caste is completed, he cannot be given promotion. Verification is permissible by O.M.No.36011/16/80-Estt dated 27-2-1981. It is stated that the case of the applicant has been referred to the Director of Tribal Research Institute, Hyderabad for verification and that pending the

receipt of the report the respondents have adopted the sealed cover procedure as laid down in O.M.No.22011/2/86-Estt.(A) dated 12-1-1988. It is stated that after the enquiry is over, in regard to determination of the social status of the applicant, the sealed cover will be opened and an appropriate decision will be taken. It is therefore prayed that the application maybe dismissed.

3. The applicant has filed a reply stating that sealed cover procedure can be adopted only if disciplinary proceedings are initiated after a charge memo issued to the applicant. Since no charge memo so far has been issued, it is contended that it is not open to deny him the benefit of promotion.

4. We have heard Shri G.V.R.S.Varaprasad, learned counsel for the applicant and Shri E.Madan Mohan Rao, learned standing counsel for the Respondents. The main contention of the learned counsel for the applicant is that no charge memo has been issued to him nor has any disciplinary action been initiated against him. In K.Ch.Venkata Reddy Vs. Union of India (ATR 1987,page-1 CAT547) a Full Bench of this Tribunal has held that the promotion cannot be denied if disciplinary proceedings have not been initiated. Where a disciplinary action has not been initiated by way of issue of a charge memo denial of promotion on the ground of contemplated proceedings would not be proper. In the instant case, the matter is still under verification and no disci-

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plinary action has been initiated. In the circumstances, the applicant is entitled to be considered for promotion along with others and the sealed cover procedure cannot be adopted in this case. We therefore direct the respondents to open the sealed cover and if the applicant is found fit for promotion, he should be promoted from the date his immediate junior was promoted with all consequential benefits including arrears of salary. The application is accordingly allowed. This order passed by us will not however preclude the respondents from getting the caste of the applicant verified and taking further action as a consequence of such verification. No order as to costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
Vice-Chairman

D. Surya Rao
(D. SURYA RAO)
Member (J)

Dated: 24th December, 1990.
Dictated in Open Court.

Deputy Registrar (J)

To

1. ^{av1/} The Chief Commissioner of Income Tax,
A.P. Ayakar Bhavan, Basheerbagh, Hyderabad.

2. The Commissioner of Income Tax, A.P.I Ayakar Bhavan,
Basheerbagh, Hyderabad,

3. One copy to Mr. Duba Mohan Rao, Advocate
69/3RT, Vijayanagar Colony, Hyderabad.

4. One copy to Mr. E. Madanmohan Rao, Addl. CGSC. CAT. Hyd.

5. One spare copy.

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CHECKED BY
TYPED BY

APPROVED BY
COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH ATHYDERABAD.

THE HON'BLE MR.B.N.JAYASIMHA : V.C.
AND

THE HON'BLE MR.D.SURYA RAO : M(J)

AND

THE HON'BLE MR.J.NARASIMHA MURTY : M(J)

AND

THE HON'BLE MR.R.BALASUBRAMANIANLM(A)

DATE : 24/12/90

~~ORDER~~ / JUDGEMENT :

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

in

T.A. No.

W.P. No.

O.A. No. 5190

Admitted and Interim directions
issued.

Allowed.

Dismissed for default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction. 24/12/90

M.A. Ordered/Rejected.

HYDERABAD BENCH.

No order as to costs.

