IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. No. 53/91. Dt. of Decision : 6-10-94.

1. B. Kripanandam
2. P. Sundarkumar
3. K.V. Ramanachary
4. Rajendra Mohan Gonela .. Applicants.

Vs

1. Union of India rep. by its Secretary, Dept. of Personnel and Training, Administrative Reforms and Public Services, New Delhi.

2. Union Public Service Commission, rep. by its Secretary, Dholpur House, New Delhi.

3. The State of AP. rep. by Chief Secretary to Government, (G.A.D.)(Sec) Department, Secretariat Building, Hyderabad.

4. T. Vijaya Kumar
5. L.V.Subramanyam
6. Shekar Prasad Singh
7. M.G. Gopal
8. B.P. Acharya
9. Randeep Sudan
10. Dinesh Kumar
11. Binoy Kumar
12. Ajeya Kallam
13. Bhanwarlal
14. Vinod Kumar
15. T. Radha
16. P. Subramanyam
17. Busi Sam Bob
18. Smt.Rajeev R.Acharya
19. Smt. Preeti Sudan
20. V. Nagi Reddy
21. J. Raymond Peter
22. M.Sambasiva Rao
23. Anil Chandra Punetha
24. Shailendra Kumar
25. A.R.Sukumar
26. Smt. Nilam Sawhney
27. Ajaya Mishra
28. A.Vidyasagar
29. Dr. Premchand
30. A.P.Sawhney

.. Respondents.

Counsel for the Applicants : Mr. Y. Suryanarayana

Counsel for the Respondents : Mr. N.R.Devaraj, Sr.CGSC.(R-1&2)
Mr. D. Panduranga Reddy, SC for A.P. (R-3)
Mr. V.S.Rao, R-12,20,22,28,30 & 31
Mr. D.V. Seetharama Murthy for Rs 4,5,6,7,8,10,16,18,

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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(47)

O.A.No.53/91. Date: 6.10.1994.

J U D G M E N T

(as per Hon'ble Sri R.Rangarajan, Member(Administrative))

Heard Sri Y.Suryanarayana, learned counsel for the applicants, Sri N.R.Devaraj, Sr.Standing Counsel for the Central Government, Sri D.Panduranga Reddy, Standing Counsel for the State Government, and Sri V.V.S.Rao, learned Counsel for Respondents 12, 20, 22, 28, 30 & 31, and Sri D.V.Seetharama-Murthy for R-4 to 11, 13, 15, 16, 18 & 19.

2. This OA was filed praying for quashing the Memo No. 2419/Special-A/90-1 dt. 14.12.1990 and for consequential direction to Respondents 1 & 2 to determine 1982 as the year of allotment of the applicants and to place their names immediately below Sri K.Pradeep Chandra the last of the direct recruits belonging to 1982 batch or in the alternative to direct the respondents 1 & 2 to determine the year of allotment of the applicants as 1983 and place them immediately below Sri Busi Sam Bob (R-17).

3. The facts which are not in controversy are as under:-

The names of the applicants herein were included in the select list for the year 1986 prepared for promotee officers of A.P.State cadre into IAS. The applicants were posted in cadre posts on 20.4.1987, and they were continued in those posts till 22.9.1987. The said officiating appointment of the applicants was terminated with effect from 23.9.1987 on the basis of a wireless message dt. 8.9.1987 issued by the Central Govt. The applicants were again appointed in the said posts from 1.10.1987 and continued in those posts till 1.7.1988 the date on which they were promoted to Indian Administrative Service (IAS).

...3/-

4. If the officiating service of the applicants from 20.4.1987 has to be reckoned, they have to be given 1982 as the year of allotment in view of the extant rules as by then the junior-most direct recruit who was officiating in the senior scale post was of 1982. But if the officiating service of the applicants has to be reckoned from 1.10.1987 then the year of allotment will be 1983 as by then the junior-most direct recruitee who was officiating in the senior scale is of 1983 batch. It is urged for the applicants that artificial break was given to the applicants from 23.9.1987 till 30.9.1987 so as to deprive them the benefit of earlier year of allotment.

5. It is submitted for the respondents that Sri M. Tukaram a promotee officer to the IAS from the A.P.State Govt. was having ranking higher to the ranking of the applicants as per the select list for the year 1986 and as Sri Tukaram was given 1984 as the year of allotment in accordance with rules, the applicants cannot claim earlier year of allotment on the basis of the officiating service prior to the appointment even assuming that the break in service from 23.9.1987 to 30.9.1987 is ignored, in view of Rule 3(4)(e) of IAS Regulation of Seniority Rules, 1987 which came into effect from 6.11.1987.

6. It is next urged for the respondents that the proviso to Rule 9(2), and Rule 9(3) of IAS Cadre Rules envisage that a non-select officer or a select officer who is not next in order in the select list, shall be appointed to a cadre post only with the prior concurrence of the Central Government, and when it was brought to the notice of the Central Govt. that the appointment of the applicants in the cadre posts from 29.4.1987 is in violation of the said proviso, instructions were given to the State Govt. to terminate the

...4/-

officiating appointment of the applicants and hence the officiating service upto and prior to 22.9.1987 cannot be reckoned for the purpose of determination of the year of allotment of the applicants.

7. The seniority rule 3(3)(ii) deals with assignment of year of allotment in regard to officers promoted to Civil Service of the State Government. It was amended on 18.1.1988. The said amended rule reads as under:-

> "(ii) The year of allotment of a promotee officer shall be determined in the following manner:-
>
> (a) For the service rendered by him in the State Civil Service upto twelve years in the rank not below that of a Deputy Collector or equivalent, he shall be given a weightage of four years towards fixation of the year of allotment;
>
> (b) he shall also be given a weightage of one year for every completed three years of service beyond the period of twelve years, referred to in sub-clause (a) subject to a maximum weightage of five years. In this calculation, fractions are to be ignored.
>
> (c) the weightage mentioned in sub-clause (b), shall be calculated with effect from the year in which the officer is appointed to the service;
>
> Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier select list."

8. The first question that arises for consideration is whether the termination of the officiating appointment of the applicants on 22.9.1987 is for extraneous reasons.

...5/-

9. Sub-Rule 9(2) of the IAS (Cadre) Rules, 1954 reads as under:-

> "Where in any State a person other than a cadre officer is appointed to a cadre post for a period exceeding three months, the State Government shall forthwith report the fact to the Central Government together with the reasons for making the appointment.
>
> Provided that a non-select list officer or a select list officer who is not next in order in the Select list, shall be appointed to a cadre post only with the prior concurrence of the Central Government."

The above rule makes it clear that an Officer who is lower in the rank in the select list cannot be appointed to a cadre post without the concurrence of the Central Government when the senior in the select list is not appointed to a cadre post. When the applicants who were in the select list were appointed to cadre posts by the State Government while their senior in the select list was not so appointed, and when the Central Government was informed about it by the State Govt., the Central Government instructed the State Government by wireless message dt. 8.9.1987 for terminating the officiating appointment of the applicants in the cadre posts. Thus the termination of the officiating appointment of the applicants in regard to cadre posts on 22.9.1987 is in accordance with the relevant rules and it is not for extraneous reasons. Hence, the break from 23.9.1987 to 30.9.1987 in the officiating posts cannot be ignored.

10. Further, Rule 3(4)(e) of Seniority Rules, 1987 reads as under:-

> "An officer who occupies a lower rank in a select list shall not be given the benefit of such officiation in a senior post/ex-cadre post from a date earlier to the date from which such benefits are admissible to an officer who is higher in rank in that select list."

...6/-

A promotee officer cannot claim the benefit of officiating service under Rule 3(4) of seniority Rules, 1987 if thereby he is going to get year of allotment earlier to the year of allotment of the senior. Admittedly Sri M.Tukaram was having higher rank than the rank of the applicants in the select list. The year of allotment that was given to Sri M.Tukaram in accordance with Rule 3(3)(ii) as amended on 18.1.1988 is 1984. Hence, if on the basis of officiation the year of allotment to be given to the applicants comes to 1982, they cannot get that benefit in view of Rule 3(4)(e) of seniority rules. Hence, even on that basis, the applicants are not entitled to 1982 or 1983 as the year of allotment.

10. Hence, for the reasons stated above, it is concluded that the applicants were rightly given 1984 as the year of allotment and they are not entitled to be given 1982 or 1983 as the year of allotment as claimed by them. Hence, this OA has to be dismissed.

11. Accordingly, the OA is dismissed. No costs.

(R.Rangarajan)
Member(Admn.)

(V.Neeladri Rao)
Vice Chairman

Dated 6th October, 1994.

26-10-94.
Deputy Registrar(J)CC

Grh.

To

1. The Secretary, Dept.of Personnel and Training, Union of India, Administrative Reforms and Public Services, New Delhi.
2. The Secretary, U.P.S.C. Dholpur House, New Delhi.
3. The Chief Secretary to Govt.(GAD) Sec) Dept., State of A.P. Secretariat Buildings, Hyderabad.
4. One copy to Mr.Y.Suryanarayana, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
6. One copy to Mr.D.Panduranga Reddy, Spl Counsel for A.P.Govt.CAT. Hyd.
7. One copy to Mr.I.V.S.Rao, Advocate, ~~CAT.Hyd.~~ Plot no. 15, Aravinda nagar Hyd.
8. One copy to Mr. D.V.Sitaramamurthy, Advocate, 1-1-591 Gandhinagar, near Canara Bank, Hyderabad.
9. One copy to Library, CAT.Hyd.
10. One spare copy.

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TYPED BY CHECKED BY

COMPARED BY APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR.R.RANGARAJAN : M(ADMN)

DATED: 6 - 10 - 1994

~~ORDER~~/JUDGMENT

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

in

O.A.No. 53/91.

(T.A.No. (W.P.NO

Admitted and Interim directions Issued.

Allowed.

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected

No order as to costs.

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