

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

O.A.No. 92/91.

Date of Judgment: 4.2.1992.

Between:

P.V. Sriramchand

..

.. Applicant

Vs.

1. The Union of India, rep. by
the Secretary to Govt., and
the Director-General of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110 001.

2. The Chief Postmaster-General,
Andhra Pradesh Circle,
Hyderabad-500 001

.. Respondents

For the applicant

By P.V. Sriramchand,
: Party-in-person

For the respondents

: Shri Naram Bhaskara Rao, Addl.
Standing Counsel for Central
Government.

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

HON'BLE SHRI C.J. ROY, MEMBER (JUDL)

{ JUDGMENT OF THE BENCH AS PER HON'BLE SHRI C.J. ROY, MEMBER (J)

.....

This is an application filed under section 19 of the Administrative Tribunals Act, 1985 to declare the action of respondents in reducing the vacancies of 1/3rd LSG quota and transferring the said vacancies to 2/3rd quota by orders dt. 8.9.1987, 15.9.1987 and impugned order dt. 21.6.1990 bearing No.R&E/49-2/87, as illegal, arbitrary, unjust, opposed to natural justice; and to direct the respondents to promote and appoint the applicant in LSG under 1/3rd quota of vacancies with retrospective effect with all consequential benefits.

.....2.

: 2 :

2. The applicant states that he was recruited as LDC and was promoted as UDC in the year 1974 after passing the departmental examination. The applicant is presently working in the office of the Chief Postmaster-General, A.P.Circle, Hyderabad, and states that he has unblemished and uniformly good record of service having put in 25½ years service in the Department. The applicant states that he is eligible to appear for the examination for 1/3rd quota of vacancies in Lower Selection Grade, hereinafter called 'LSG', but alleges that the procedure for Recruitment to 1/3rd quota in LSG is revised from Qualifying examination to Competitive Examination without issuing any Gazette Notification. The applicant states that a circular bearing No.R&E/49-2/87 dt. 6.7.1987 of 2nd respondent along with instructions issued by 1st respondent in his Lr.No.29-1/86-DE(P) dt. 1.7.1987 was circulated for holding the examination for the vacancies for the year 1982 to 1987 for promotion to the LSG under 1/3rd quota in accordance with the prescribed syllabus etc. inviting the applications from eligible candidates. The applicant also averred that, subsequently 2nd respondent announced five vacancies for 1/3rd quota for the aforesaid examination vide his letter dt. 13.8.1987, but the vacancies were brought down to one by communication dt. 15.9.1987 of 2nd respondent. The applicant alleged that the vacancies for the year 1987 were not computed properly and that the correct total number of vacancies should have been six and not five as announced by the respondents earlier. It is also stated that the date of examination is changed from 25.10.1987 to 29.11.1987.

3. The applicant states that he had applied for the said examination, and states that only 10 to 12 officials appeared in the said examination. The applicant states that he had scored marks more than the qualifying marks in the said examination and that the selection is based on the marks obtained in the examination. The applicant alleged

that the respondent No.2 has filled up only one vacancy as against five vacancies announced earlier, and states that he should have been declared passed and could have been promoted in the vacancies available or at least placed in the wait List. The applicant alleged that the respondents failed to do so.

4. The applicant alleged that the respondents reduced the announced vacancies from five to one, and transferred the said vacancies to 2/3rd quota and filled-up the same by seniority-cum-fitness. He alleged that the said action of reduction and transfer of vacancies is in violation of Circular No.6/40/76/SP.B.II dt. 8.3.1978. It is stated that, in terms of the said circular, the respondents should have carried over the unfilled vacancies earmarked for 1/3rd LSG, till the eligible officials are available. The applicant alleged that the action of the respondents in transferring the posts on the ground of non-availability of eligible candidates in previous years, without conducting any tests is unjust and clear violation of the circulars issued by the department. The applicant further alleged that the respondents should have conducted the examination regularly each year and if none qualified therein, they should have transferred to 2/3rd quota. By not conducting the examination regularly, it is alleged that the chances of applicant to become eligible are deprived. The applicant states that he had represented in the matter by a letter dt. 28.5.1990 and that the same is turned down by the respondents by their letter dt. 21-6-1990 bearing No.R&E/49-2/87 issued by the 2nd respondent stating that there was only one vacancy against which Shri K.Sivaprasad, UDC who secured highest marks in the examination was selected. Hence, filed this O.A.

20/1/91

5. The respondents have filed their counter stating that the examination was conducted on 29.11.1987, results were announced on 22.6.1988, and therefore, the application is time-barred. The respondents contend that it is not necessary to publish a Gazette notification for change in the vacancy position and an executive order was issued on 8.9.1987 showing the transfer of vacancies from 1/3rd quota to 2/3rd quota. It is alleged that as no substantial change is involved in the recruitment policy/ issue of Gazette Notification is not warranted. The respondents state that five vacancies were announced on 13.8.1987 by taking into account the vacancies from the year 1983 to 1987, but subsequently, the examination was restricted to the quota of 1987 only. The respondents state that the Staff Union demanded that the examination be held with reference to the vacancies in the cadre for a particular year only in order to ensure that no hardship is caused to the incumbents working against the posts in the LSG, by way of reversion. The respondents state that no examination could be held from 1983 to 1986 and therefore the vacancies for those years under 1/3rd quota were being manned by the officials on adhoc basis in accordance with their seniority in the grade. The respondents state that the applicant herein secured qualifying marks in each paper, but could not be promoted as one Shri K.Sivaprasada Rao secured highest marks than the applicant. The respondents deny the allegations of hastiness or arbitrariness stating that they had communicated the revised vacancy position well in advance and the same was circulated to all concerned. The respondents also deny the allegations of illegality and justify their action in reducing the number of vacancies in 1/3rd quota and transferring the same to 2/3rd quota stating that the same is at the instance of Staff Union. The respondents also further state that the said demand of staff union was agreed in the larger interest.

Wgv

The respondents allege that the examination was conducted only for a single vacancy and the same was filled up by a person who secured highest marks. It is also averred that the applicant was eligible for the vacancy of 1987 only. It is also stated that the vacancies of 1983 to 1986 cannot be clubbed and carried over to the year 1987 and that the applicant cannot enjoy the undue benefits of the previous years when the examination was held in 1987. The respondents desired the interim directions dt. 28-1-1991 be vacated and the application be dismissed.

6. The applicant filed Annexures A-I to A.X along with the application. Annex. A.I extract of Directorate letter dt.25.7.1986 making the examinations as competitive one, Annex. A-2 dt. 1.7.1987 notification inviting the applications for 1/3rd LSG examination, Annex. A.III dt. 6.8.1974 pertaining to syllabus of examination, Annex. A.IV dt. 13.8.1987 announcing number of vacancies for the said examination, Annex. A.V is marks secured by the applicant, Annex. A.VI dt. 8.3.1978 pertains to carry over of vacancies, Annex. A.VII dt. 8.9.1987 reducing the total number of vacancies, Annex. A.VIII dt. 21.6.1990 orders passed turning down the request of the applicant to appoint him as LSG, Annex. A.IX representation of the applicant dt. 28.5.1990.

7. We heard the applicant herein (party-in-person) and learned counsel for respondents Shri Naram Bhaskara Rao, Addl. Standing Counsel for Central Government and perused the records carefully.

SLAV

8. The two points in the case are -

- (i) Whether the application is barred by limitation?
- (ii) Whether conducting of examination in 1987 for single vacancy leaving the vacancies for the years 1983 to 1986 changing the Recruitment Rules by way of Executive Instructions is proper?

It can be seen that the respondents passed final orders on 21-6-1990 on the representation dated 29-5-1990 submitted by the applicant. Therefore, it becomes a final order within the meaning of section 20 of the A.T. Act. When the respondents themselves choose to reply by their proceedings dt. 21-6-1990 having entertained various applications, this could be treated as a final order and within time under sec. 21 of the Act. Besides, the decision reported in [ATR 1988(1) 142 (CAT, CUTTACK)] it is held that -

"We are of the opinion that the cause of action for the applicant arose on 4-2-1986. It was not disputed at the Bar that the period of limitation has to be computed from the date on which the cause of action arises. The date of disposal of representation being the date on which the cause of action arose, this case cannot be said to have been barred by limitation as it was filed on 6-12-1986."

In the present case the respondents disposed of the representations submitted by the applicant dt. 12-9-1989 and 29-5-1990 by their proceedings dt. 21-6-1990 and that the applicant approached the Tribunal on 24-1-1991. Hence, we have no hesitation to hold that the application is not time-barred and is within limitation.

9. Coming to the second point, we have to see whether any illegality committed by shifting the vacancies from 1/3rd quota to 2/3rd quota. But, we find from Annex. IV to the application (page-16) the break-up of vacancies in

: 7 :

1/3rd quota has been given year-wise and it is further split into OC, SC and ST. According to this, we find that number of vacancies falling in 1/3rd quota are two for the year 1984, two for the year 1986 and one for the year 1987. We do not find any illegality in the vacancy position indicated in the said annexure. In view of the settled legal position we are of the firm opinion that executive instructions cannot prevail over statutory provisions. In this light, we examined the annexure supra, where year-wise vacancies in 1/3rd quota had been given with break-up. We find that there is no transfer of vacancies from 1/3rd quota to the other and therefore are satisfied that no illegality^{is} committed.

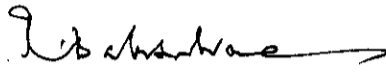
10. We shall now examine the eligibility of the applicant. In the counter the respondents state that the applicant ^{was} eligible for the vacancy of 1987 only, but the applicant claims that he is eligible for the ~~five~~ vacancies in 1/3rd quota which were announced in Annex.IV to the application. We are of the view that the applicant // should be considered against the vacancy in 1/3rd quota for all years for which he is eligible. In view of the conflicting statements before us we are not in a position to decide as to which are the years applicant eligible for 1/3rd quota. We, therefore, direct the respondents to re-examine the matter. If the applicant is eligible for the other four vacancies in 1/3rd quota pertaining to the years 1984 & 1986, and if he comes within the selected range by virtue of the marks he had secured in the examination, he should be accordingly accommodated against 1/3rd quota

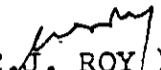
.....8.

26

vacancies of that relevant year placing Sri K.Sivaprasad, who had secured highest marks than the applicant, may also be suitably decided by the respondents.

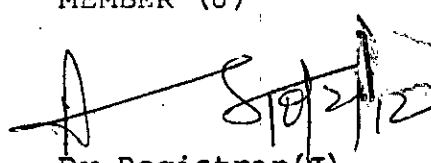
11. With the above directions, the application is disposed-of thus no order as to costs.


(R.BALASUBRAMANIAN)
MEMBER (A)


(C.J. ROY)
MEMBER (J)

Dated:

4-2-1992

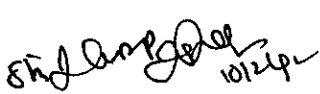

Dy.Registrar(J)

grh.

Copy to:-

1. Secretary to Govt., and the DirectorGeneral of Posts, Union of India, Dak Bhavan, Sansad Marg, New Delhi-110 001.
2. The Chief Postmaster-General, A.P.Circle, Hyd-bad-01.
3. One copy to Shri. P.V.Sriramchand(Party in person), ^{The Chief P.M.G., A.P.Circle, Hyd.} UDe, O/o.
4. One copy to Shri. N.Bhaskar Rao, Addl. CGSC, CAT, Hyd.
5. One spare copy.
6. One copy to D.R. Jetti, CAT, Hyd.

Rsm/-


10/2/92