

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

36

O.A. No. 131/91.  
~~T.A.No.--~~

Date of Decision : 4<sup>th</sup> Sept 1991

P. Abubacker & another

Petitioner.

Shri K. Sudhakar Reddy

Advocate for the  
petitioner (s)

Versus

The Commandant, HQ Artillery Centre,  
Hyderabad-500031 & another

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)

(57)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

O.A.No.131/91.

Date of Judgment 4/6 Sept. 1991.

1. P.Abubacker  
2. M.Vijaya Kumar .. Applicants

Vs.

1. The Commandant,  
HQ Artillery Centre,  
Hyderabad-500031.  
2. P.R.Venugopalan,  
Office Superintendent,  
HQ Artillery Centre,  
Hyderabad. .. Respondents

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Counsel for the Applicants : Shri K.Sudhakar Reddy

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

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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) }

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This application has been filed by Shri P.Abubacker and another under section 19 of the Administrative Tribunal Act, 1985 against the Commandant, HQ Artillery Centre, Hyderabad-500031 and another.

2. The applicants are working as UDCs and claim seniority over Shri P.R.Venugopalan (R2) who has been promoted as Office Superintendent Grade-II overlooking their claims. It is the case of the applicants that they are senior to R2 as LDCs. It is their case that the applicants and R2 were confirmed as LDCs with effect from the same date viz: 1.4.76. They were also promoted as UDCs with effect from the same date viz: 25.5.74. Such being the case it is contended that the age should determine the final seniority and the applicants being older than R2 should be treated as senior. They quote the Ministry of Personnel letter O.M.No.22011/7/86-Estt(D) dated 3.7.86 in support

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this claim. According to them, the D.P.C. considered ~~the~~ 5 candidates, all <sup>with</sup> ~~of~~ the same grading, and hence by virtue of their seniority applicants 1 and 2 should have been considered for promotion before R2. It is prayed that the order dated 19.7.90 promoting R2 be quashed and that the applicants be considered for promotion.

3. The respondents have filed a counter affidavit and oppose the application. They dispute the contention of the applicants that they are senior to R2. It is argued that ~~as~~ confirmation in the grade of LDCs was made in the order of merit of the candidates in which they were appointed. It is also contended that for promotion to the grade of Office Superintendent, the feeder cadre is UDCs and not LDCs. In the cadre of UDCs, R2 was senior to the applicants and all the candidates secured the same grading and recommendation and hence they had promoted R2. It is also contended that nowhere in the Ministry of Personnel letter dated 3.7.86 has it been stated that where the dates of confirmation are the same the older employee should be given higher seniority.

4. We have examined the case and heard the learned counsel for the applicants and the respondents. We have seen the D.P.C. proceedings also. It is seen that all the 5 candidates considered by the D.P.C. were found fit and recommended. The question, therefore, to be decided ~~as is~~ who is the seniormost among them and the tie is between the applicants on the one hand and R2 on the other. The respondents claim that the D.P.C. considered the seniority list of UDCs and the learned counsel for the applicants argued that they had <sup>not</sup> seen the seniority list in the cadre of UDCs. In fact, even much earlier this Tribunal ordered the respondents to produce a copy of the seniority list in the cadre of UDCs and it was only on the 30th August, 1991 that the learned counsel for the respondents was able to

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produce what is called a copy of the seniority list. There is no covering letter, preamble, nothing whatsoever. We have also seen the "Seniority List of UDCs" which the D.P.C. considered. It is seen from here that all the particulars relevant are with reference to LDCs only. It is seen that the applicants as well as R2 were all confirmed as LDCs with effect from the same date 1.4.76 (column 7). They were all promoted as UDCs with effect from the same date 25.5.74 (column 8). More than anything, in column 9 "Date from which seniority counts in the present grade" it is shown as 1.4.76 which is the date of confirmation in the entry grade viz: LDCs. So, the reference to the present grade therein is also in the grade of LDCs only. Thus, what was considered by the D.P.C. was only LDCs gradation list and not UDCs gradation list. The respondents were not in a position to produce the proper gradation list in the cadre of UDCs.

5. The next question to be considered is, who is senior in the cadre of LDCs <sup>because</sup> LDC to UDC is normally a promotion by seniority-cum-fitness and normally the seniority in the cadre of LDCs is also carried forward to the cadre of UDCs. When it comes to the cadre of LDCs we find that R2 was appointed on 5.6.68 itself whereas the applicants were appointed later - on 12.7.68 and 17.6.68 respectively. Moreover, the respondents contend that though the dates of confirmation are identical the confirmation was in the order of merit of the candidates in which they were appointed. When this distinguishing factor is available there is no need to try any other parameter to decide the seniority. Moreover, the letter dated 3.7.86 of the Ministry of Personnel does not talk about weightage being given to age. Thus, it is clear that R2 was senior to the applicants in the cadre of LDCs.

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6. Such being the case, we find that the promotion of R2 to the post is quite in order and the application is, therefore, dismissed with no order as to costs.

NS

( J.Narasimha Murthy )  
Member(Judl).

R.Balasubramanian

( R.Balasubramanian )  
Member(Admn).

Dated 4<sup>th</sup> September 91

Registrar. 5/9/91

NS

- To
1. The Commandant, HQ Artillery Centre, Hyderabad- 31.
  2. One copy to Mr.K.Sudhakar Reddy, Advocate, CAT.Hyd.
  3. One copy to Mr.N.Bhaskar Rao, Addl.CGSC. CAT.Hyd.
  4. One copy to Hon'ble Mr.J.Narasimha Murthy, Member(J)CAT.Hyd.
  5. One spare copy.

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NS

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TYPED BY  
CHECKED BY  
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: 4 - 9 - 1991

~~ORDER~~ JUDGMENT

Central Administrative Tribunal  
DESPATCH  
27 SEP 1991  
HYDERABAD BENCH

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

in

D.A. No. 131/91

~~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.

13/9/91