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CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD.

O.A.No. 247/91.

Date of Decision: 28-7-92

XXXXXXXXXX

G.Radhakrishna Sarma

Petitioner.

Shri N.Rama Mohan Rao

Advocate for
the Petitioner(s)

Versus

Union of India, Rep. by its Secretary to
Govt. of India, Dept. of Economic Affairs,
Min. of Finance, North Block, Central Secretariat,
New Delhi & 2 others

Respondent.

Shri N.Bhaskara Rao, Addl. CGSC &
Shri K.Lakshmi Narasimha for R3.

Advocate for
the Respondent
(s)

CORAM:

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

THE HON'BLE MR. C.J.Roy : Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporters 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.)

Yes.

Yes.

No

HRBS
M(A).

HQJR
M(J).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.247/91.

Date of Judgement 28-7-92

G.Radhakrishna Sarma

.. Applicant

Vs.

1. Union of India,
Rep. by its Secretary to
Govt. of India,
Dept. of Economic Affairs,
Min. of Finance, North Block,
Central Secretariat,
New Delhi.

2. General Manager,
Govt. of India
Security Printing Press,
Mint Compound, Khairatabad,
Hyderabad.

3. Smt. K.Sabita Devi

.. Respondents

Counsel for the Applicant : Shri N.Rama Mohan Rao

Counsel for the Respondents : Shri N.Bhaskara Rao, Addl. CGSC &
Shri K.Lakshmi Narasimha for R3.

CORAM:

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

Hon'ble Shri C.J.Roy : Member(J)

[Judgement as per Hon'ble Shri R.Balasubramanian, Member(A)]

This application has been filed by Shri G.Radhakrishna Sarma under section 19 of the Administrative Tribunals Act, 1985 against the Union of India, Rep. by its Secretary to Govt. of India, Dept. of Economic Affairs, Min. of Finance, North Block, Central Secretariat, New Delhi & 2 others. Respondent No.3 is a private respondent. The prayer herein is to treat the Diary Order No.25 dt. 24.12.90 of the 2nd respondent in so far as it relates to the 3rd respondent as illegal and quash the same. The O.A. further seeks a direction to the respondents to permit the applicant in preference to any other employee who does not have the requisite service of 8 years as LDC.

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2. The applicant was duly appointed as LDC in the Office of the Supdt., (Training), 'Mekhala', Visakhapatnam. He was also given quasi permanent status. In 1986, the Govt. of India decided to wind up the Training Establishment and the applicant was surrendered to the Surplus Cell. His name was on the live register. While so, the respondent organisation wanted some LDCs and the applicant was sent to them on his giving an unconditional undertaking that he would accept the lowest position among the LDCs of the Security Printing Press. In 1990, orders were issued posting some LDCs as UDCs against regular vacancies. Instead of promoting the applicant in accordance with the recruitment rules in force at that time the respondents had given adhoc promotion to two persons vide their impugned order dt. 24.12.90. The applicant is aggrieved that his eligibility condition has been overlooked ^{while ineligible ones were promoted} and hence this O.A.

3. Respondent No.3 Smt. K.Sabita Devi has opposed the application and has filed a counter. Promotion from the cadre of LDCs to UDCs is by seniority and the seniority question has been settled long back and, therefore, it is her case that the O.A. is hit by limitation. She also contends that her promotion is quite in order because she is senior to the applicant in the feeder cadre of LDCs.

4. The official respondents have opposed the application and have filed a counter. In the counter they have taken great pains to show how the seniority question of the applicant in the cadre of LDCs has been settled long back and cannot be reopened now. It is also stated that the promotion ordered in the impugned letter is only an adhoc one and, therefore, the applicant should not feel aggrieved. They justify the adhoc promotion to avoid serious administrative inconvenience and unrest among the senior clerks.

5. We have examined the case and heard the rival sides. The main theme of the ^{official} counter is regarding seniority of the applicant. It deals in great detail of how the applicant had been unsuccessfully fighting for his seniority. The issue of seniority in the cadre of LDCs is a settled issue when the applicant had chosen to join the Security Printing Press on bottom seniority basis though under duress. What is to follow after that is the issue. The scenario in this case is as follows:

In December, 1990 the respondents issued orders promoting 2 LDCs. It is not denied that the promotion of 2 LDCs, admittedly senior to the applicant, had to be adhoc because the two were not eligible for regular promotions according to the Recruitment Rules. The applicant's contention, that the posts filled up in this adhoc manner were regular ones, is not denied. We shall now examine the action of the respondents. A regular vacancy has to be filled up in accordance with the Recruitment Rules.

6. There are adequate instructions of the Dept. of Personnel on when to resort to adhoc promotions. Basically, when the Department is not in a position to make a regular promotion such as when there are no recruitment rules or where there is no judicial interference or when there is no eligible candidate, then, to meet the exigencies of service adhoc promotions for short durations can be made even against regular vacancies. Indiscriminate recourse to adhoc promotions ^{as} ~~is~~ an easy way out ^{of} ~~as the~~ situations for which ^{other} solutions were feasible, had been frowned upon not only by the courts but by the nodal agency, the Dept. of Personnel itself. In the case before us we have only to see whether the ^{situation} ~~case~~ justified adhoc promotions ~~or not~~ or not. In December, 1990 when vacancies had to be filled up it is seen that there was only one eligible candidate viz: the applicant who had put in the required 8 years'

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service in the cadre of LDCs. All the other LDCs who were senior to him did not have the requisite eligibility condition. The respondents considered it necessary to fill up some vacancies and in such a case the respondents ^{ought to} ~~who~~ have followed the recruitment rules, first by promoting the eligible candidate on a regular basis and then the other vacancies could have been filled up on adhoc basis by ineligible candidates eventhough they were senior to the applicant. When it comes to filling up a vacancy, preference has to be given to a candidate who fulfils the eligibility condition and then among the ineligible candidates only senior ^{ity} ~~ity~~ could matter. That was not the ^{case} ~~situation~~ here. In their counter the respondents have contended that if the claims of the applicant are considered for promotion on the basis of his previous service in the other Department, then the direct recruits/ promotees who were already working in the new Department have to suffer (para 12 of the counter). This is just a view taken by the respondents and there is no rule in support of this. At another place (para 13) they have contended that any redeployment (from Surplus Cell) is purely humanitarian in nature and confers the benefit only at the time of appointment i.e., only once but not at every subsequent occasion. The intention of the respondents is not clear whether the applicant who has been rehabilitated as an LDC should remain an LDC for all times to come. Their intention becomes clear from their statement in para 17 stating that if promotion was given to the applicant it would create serious administrative inconvenience and unrest among the senior clerks. Can this be an argument in support of an adhoc promotion ~~denying~~ ^{regular promotion to} the only eligible candidate on that day viz: the applicant when they wanted to effect some promotions? We are not impressed with the argument of the respondents that it would create unrest.

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This cannot be a ground for violating the recruitment rules. The question here is one of choice ^{between} ~~of~~ eligible candidates and ineligible candidates and surely eligible candidates should have preference over ineligible candidates, ~~on that day~~. It is reasonable to presume that the intention of the respondents is to go on ordering adhoc promotions only to those LDCs who are senior to the applicant till they attain the eligibility condition of 8 years service and then in one stroke order them on a regular basis. This would mean ~~to~~ misusing the system of adhoc promotions.

7. While arguing, the learned counsel for the applicant relied on the Full Bench decision of this Tribunal in the case of K.A.Balasubramanian Vs. Union of India [1988(1) ATJ 92], which states that on transfer while a person would become the juniormost LDC in one unit, he does not lose the benefit of his past service in the previous unit for the purpose of his promotion to the cadre of UDC. (~~para~~). It is nowhere disputed that the applicant ^{had} ~~does not have~~ the requisite total of 8 years' service which is the condition of eligibility for promotion from LDC to UDC. Hence, it is not necessary for us to go into this question. The learned counsel for the respondents cited a decision of this Bench dt. 22.8.91 in O.A.No.489/90. We find that this judgement is on a different ~~fixing~~ subject and has no relationship to the case before us.

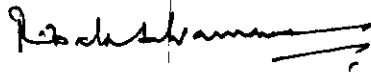
8. In the result, we direct the respondents to consider the promotion of the applicant to the cadre of UDCs in accordance with the recruitment rules alongwith other eligible candidates, if any, ^{as in December 90.} If found suitable in accordance with the recruitment rules, he shall be promoted immediately ^{with effect from that date.} on a regular basis. This order shall be complied with by the respondents within a period of two months from the date of receipt of this order.

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8. The application is disposed of thus with no order as to costs.


(R. Balasubramanian)
Member(A).


(C. J. Roy)
Member(J).

Dated: 28th July, 1992.


Deputy Registrar(J)

To

1. The Secretary to Govt. of India, Union of India,
Dept. of Economic Affairs, Min. of Finance,
North Block, Central Secretariat,
New Delhi.
2. The General Manager, Govt. of India,
Security Printing Press, Mint Compound,
Khairatabad, Hyderabad.
3. One copy to Mr. N. Ram Mohan Rao, Advocate, CAT. Hyd.
4. One copy to Mr. N. Bhaskar Rao, Addl. CGSC. CAT. Hyd.
5. One copy to Mr. K. Lakshmi Narasimha, Advocate for R.3
16-11-20/13, Saleem Nagar, Hyderabad.
6. One copy to Deputy Registrar(J) CAT. Hyd.
7. One copy to Hon'ble Mr. C. J. Roy, Member(J) CAT. Hyd.
8. Copy to All Reporters as per standard list of CAT. Hyd.
9. One spare copy.

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