

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD.

* * *

O.A. 256/91.

Dt. of Decision : 28.4.1994.

S.R.V.R.Jagapathi Raju

.. Applicant.

Vs

1. The Secretary,
Ministry of Finance,
(Ad.III-A), Department of Revenue,
Govt. of India,
New Delhi - 110 001.

2. The Collector of Customs,
Visakhapatnam - 530 035.

.. Respondents.

Counsel for the Applicant : Mr. C. Suryanarayana

Counsel for the Respondents: Mr. N.V. Ramana, Addl. CGSC.

CORAM:

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

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

JUDGEMENT

{ AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN }

Heard Shri C. Suryanarayana, learned counsel for the applicant and also Shri N.V. Ramana, learned standing counsel for the Respondents.

2. This OA was filed praying for quashing the order of Respondent 1 bearing No. 32018/31/90 dated 6-8-90 by declaring that it is violative of article 14 of the Constitution and that the applicant is entitled to retrospective promotion atleast with effect from 25-3-87, the date on which his immediate senior was promoted as UDC if not from 13-3-87 as the date of his promotion with all consequential benefits of salary as UDC, seniority and service benefits in the grade of UDCs.

2. The facts which are relevant for consideration of this OA are as under:-

The applicant was initially appointed as LDC in the Customs House, Visakhapatnam on 13-3-84. Searchers are LDCs & Women ^{and} eligible for promotion to the post of UDC. 75 per cent of the UDC posts have to be filled up by LDCs & Women searchers on the basis of the seniority subject to rejection of the unfit, ^{further} subject to the conditions that the eligibility period of service for promotion is 7 years and ^{and should} having passed in the qualifying examination.

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25 per cent of the UDC posts are filled up by LDCs and Women Searchers with 5 years^{of} service and having passed in the qualifying examination for promotion with merit standard in accordance with the orders issued by the Central Board of Excise and Customs.

3. One should complete 2 years of service in the cadre of LDC/Women Searchers to appear for the^{qualifying} examination for promotion to the post of UDC. 25 per cent of the posts to be filled on the basis of the merit, will be filled on the basis of the ranks obtained ~~by~~ those who completed 5 years of service.

4. By order dated 28-11-86, the eligibility period of 7 years was relaxed to 4 years for one year from the date of issue of that order. Even though the applicant got the first rank in the Examination that was conducted before 28-11-86, he was not considered for promotion for 25 per cent quota as he ~~had~~ not completed 5 years of service by then. ~~Even~~ though he completed 4 years of service as LDC by then, he could not get promotion on the seniority ^{were} quota as his seniors ^{were} more in number than the posts available in the quota of 75 per cent.

5. By order dated 8-11-88, the qualifying service for seniority quota i.e. 75 per cent quota was again relaxed from 7 years to 4 years ^{in regard to} and the eligibility period for merit quota i.e. 25 per cent, the eligibility period was reduced from 5 years to 3 years ^{upto} ~~for one year~~ (31st December, 1989). The D.P.C. met in 1989 and the applicant and 7 other LDCs were promoted in the merit quota with effect from 31-7-89.

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5. It is contended for the applicant that when the eligibility period of service for the merit quota should be less than the eligibility period for seniority quota, the Respondents acted arbitrarily in reducing the eligibility period of service for seniority quota only as per order dated 28-11-86 from 7 years to 4 years without relaxing the eligibility period of service for the merit quota from 5 to 3 years. It is stated ^{for the respondents} that it has become necessary to relax the eligibility period of service as per order dated 28-11-86 due to the fact that sufficient number of eligible candidates were not available with 7 years of service.

6. Of course, generally, the eligibility period of service for merit quota will be less than the eligibility period of service for seniority quota. But when it is one of the policy matters, it cannot be stated that there would be any discrimination when such relaxation was made only for seniority quota when it was not so made for the merit quota. It cannot be stated that it is necessary to incorporate a recruitment rule to the effect that particular percent ^{-or} of the posts should be filled up by promotion only on the basis of merit quota. The question as to whether all the posts have to be filled up by promotion and if so by seniority only or partly by seniority and partly by merit or whether some of the posts have to be filled up by promotion

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and the rest by direct recruitment or whether all the posts have to be filled up by direct recruitment is one of the policy matters. There is no right for any employee to claim to the effect that particular number of posts should be filled up by promotion on the basis of merit. Hence when the rules postulate that some of the posts have to be filled up by promotion on seniority and the rest on the basis of merit and when relaxation for eligibility period of service is given in regard to the former without giving such relaxation to the latter, the same cannot be held as discriminatory for it is also a policy matter. As such, the contention for the applicant that when no such relaxation for eligibility period of service for merit quota ^{was} ~~is~~ given in 1986 while the same ^{was} ~~is~~ given in regard to the seniority quota, it is violative of article 14 cannot be accepted. // It is not clear from the material placed as to why the promotions were given with effect from 31-7-89 only when the eligible candidates were available even as on 8-11-88, the date on which ^{relaxation in regard to} period of service ^{with reference} ~~relaxation~~ was given ~~in regard to~~ the merit quota also. It can be seen from the particulars referred to in the reply that one of the 8 candidates who were given promotion on the basis of merit with effect from 31-7-89 had not completed 3 years of service as on 11-8-88. If they were given promotion with effect from 31-7-89 only to accommodate that candidate, it can be held as arbitrary. Then it is necessary to

To

1. The Secretary, Ministry of Finance,
(Ed-III-A) Dept. of Revenue,
Govt. of India, New Delhi-1.
2. The Collector of Customs,
visakhapatnam-35.
3. One copy to Mr.C.Suryaharayana, Advocate, CAT.Hyd.
4. One copy to Mr.N.v.Ramana, Addl.CGSC:CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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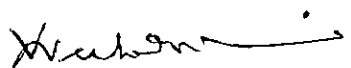
consider as to whether the applicant and those who completed 3 years of service as on 11-8-88 could be given promotion with effect from that date.

7. ^{it} So is just and fair to give the following direction to Respondent 2.

" He has to review the cases of the applicant and the others who ~~are~~ ^{have} given promotion with effect from 31-7-89 as to why promotion was given with effect from 31-7-89 and not from an earlier date. If it is noticed that the promotion was given with effect from that date only to accommodate who has not completed 3 years of service as on 8-11-88, he has to consider about the date from which the promotions have to ~~be~~ given to the applicants and the others who completed 3 years of service as on 8-11-88. If Respondent 2 finds that they have to be given promotion from 8-11-88 or a date subsequent to it but earlier to 31-7-89, the applicant and other similarly situated persons should be given notional promotion from that date and monetary benefit has to be given only from 1-4-91 as this OA was filed on 31-3-92. We make it clear that it is open to Respondent 1 if he feels it just and proper to relax the period of service even with regard to the merit quota from 28-11-86, the date on which such relaxation was given for seniority quota for one year."

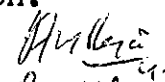
8. The OA is ordered accordingly. No costs.


(R. RANGARAJAN)
Member (Admn.)


(V. NEELADRI RAO)
Vice-chairman

Dated the 28th April, 1994.
Open court dictation.

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Deputy Registrar (JCC)