

(18)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

CA 277/91.

Dt. of Order: 6-11-92.

D. Vijay Kumar

....Applicant

Vs.

1. Union of India, rep. by
Secretary, Ministry of Personnel,
New Delhi.
2. Union Public Service Commission,
re. by its Chairman, New Delhi.
3. Government of A.P., rep.
by its Chief Secretary,
Secretariat Building,
Hyderabad.
4. S. Umapathi S/o Suryanarayana Naidu,
aged 38 years, Occu: Principal, Police
Recruits School, Amberpet, Hyderabad.
5. A. V. Narayana S/o A. Motaiah
aged: 42 years, Addl. A.P.
(Intelligence) Begumpet,
Hyderabad.

....Respondents

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Counsel for the Applicant : Sri G.V.L. Narasimha Rao

Counsel for the Respondents : Sri Naram Bhaskar Rao for AR 1 & 2
Sri D. Pandu Ranga Reddy for AR 3
Sri G. Raghuram for AR 4 & 5
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CLERK:

THE HON'BLE SHRI R. BALASUBRAMANIAN : MEMBER (A)

THE HON'BLE SHRI C. J. ROY : MEMBER (J)

(Order of the Division Bench passed by
Hon'ble Sri R. Balasubramanian, Member (A))

(19)

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(Order of the Division Bench delivered by
Hon'ble Sri T. Balasubramanian, Member (A)).

The prayer in this Original Application is for a direction to the Respondents 1 to 3 to select the applicant to include him in the select list published by the Government of Andhra Pradesh as on 1-4-90.

2. When this case was taken-up Sri G.V.L. Narasimha Rao, took us to letter dt. 10-3-92 from the Chief Secretary to Government of A.P. to the U.P.S.C., wherein along with two other officers S/Sri K.L. Reddy, ^{and} A.R. Vaman Rao he had recommended consideration of case ^{Shri} of Vijay Kumar also for inclusion in the select list from 1982 to 1991 but subject to the outcome of CA Nos. 3636 to 3638/91 pending before the Andhra Pradesh Administrative Tribunal. While Sri G.V.L. Narasimha Rao argues that there is no impediment to Sri Vijaya Kumar being considered in the same manner as S/Sri K.L. Reddy and A.R. Vaman Rao in respect of whom this Bench had issued orders on 10-8-92 in CA 628/91, Sri Raghu Ram appearing for the party respondents took us to the order dt. 17-3-92 passed by the Andhra Pradesh Administrative Tribunal in CA 1672/92, wherein the applicant herein i.e. Sri D. Vijay Kumar figures as Respondent No. 3. He took us to the operative portion of the order which states as follows :-

"pending further orders, Respondents 1 and 2 are directed not to treat the Respondent No. 3 as approved probationer in the Category-II of Police Service merely on the basis of G.O.

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Ms.No.141 dt.11-4-88 without the
Respondent No.3 (Sri J. Vijay Kumar)
commencing and completing probation
in accordance with Rule-8 of Special
Rule for the A.P. Police Service."

He vigorously contended that Sri J. Vijay Kumar
not even being eligible according to this order, does not
merit any consideration and that this order is subsequent
to letter dt.10-3-92 of the Chief Secretary to the Govt.
of A.P.

3. The eligibility or otherwise of Sri J. Vijay Kumar
for being considered depends on the case pending before
the A.P. Administrative Tribunal. We are not in a position
to give a categorical direction to the Respondents. At the
same time if the applicant is not considered by this S.C.
along with others, he being 52 years old, there is a possibility
of his missing promotion to I...S ^{altogether} ~~forever~~, becoming over-
aged. Under these circumstances the balance of convenience
has to be taken into consideration. Accordingly we pass the
following order :-

Following the order dt.10-3-92
in CA 628/91 and suitably modifying,
we direct the Respondents to place
the case of Sri Vijay Kumar also
before the same review committee
before which the cases of applicants
in CA 628/92 i.e. S/Sri KL Reddy and
Mr Vaman Rao are placed for review
of the case of Sri Vijay Kumar for
the years 1982 to 1990-91 and place

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CERTIFIED TO BE TRUE COPY
 [Signature]
 16/11/04

1. Officer
2. Mr. A. K. Prasad
3. Mr. A. K. Prasad
4. Mr. A. K. Prasad
5. Mr. A. K. Prasad

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G.V.L.N. MURTHY
ADVOCATE

7615735
"SRINIVAS"
H. No. 2-1-566/B1,
SHANKARMUTT
NALLAKUNTTA
HYDERABAD-500044.

Date 20-5-1997.

To

The Registrar,
Central Administrative Tribunal,
Hyderabad.

Sir,

In page 2 of the Judgement, in O.A.No.277 of 1991 filed by my client D.Vijay Kumar, the date of order passed by the A.P.A.T. O.A.No.1674/92 was mentioned as 17-3-1992. But in the page 4 of the judgement, the date is mentioned as 17-3-1991. I request that the date mentioned in page 4 may please be corrected to read as 17-3-1992. I request that necessary correction may please be issued at an early date.

Yours faithfully,

G.V.L.N. MURTHY
(G.V.L.N. MURTHY)

Counsel for Applicant.

Recd Comptroller on 21.5.97
for correction the date as 17.3.92 in
para 4 (5)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: ADDITIONAL
BENCH: AT HYDERABAD.

O.A.NO. 277 OF 1991.

Between:-

D.VIJAY KUMAR.
S/o Yadagiri Rao, Hindu,
aged about 51 years,
r/o Police Lines,
Yousufguda, Hyderabad. A.P.

.. APPLICANT.

and

Union of India, rep by its
Secretary, Ministry of Personnel,
New Delhi, and others.

.. RESPONDENTS.

REPLY AFFIDAVIT FILED BY APPLICANT

I, D. Vijay Kumar, son of Yadagiri Rao,
Hindu, aged about 51 years, resident of Police Lines,
Yousufguda, Hyderabad do hereby solemnly affirm and
sincerely state on oath as follows:-

- 1) I am the Applicant herein and as such I am well acquainted with the facts of the case.
- 2) I submit that I have read the Counter affidavit filed on behalf of the third Respondent: State Government of A.P., and as it does not disclose any fresh questions of law or facts it is liable to be rejected as untenable and inconsistent.
- 3) I submit that the facts averred in para 4 at pages 2 + 7, of the counter affidavit are substantially correct. But the non-compliance by the Selection Committee of the interim direction of the Hon'ble A.P. Administrative Tribunal, dated 15-3-1992 merely on the

1st page.

Corr;

Attestor

Nayan

[Signature]
Deponent.

ground that it was received in the afternoon of that day was unjust and improper and therefore bad in law.

4) In reply to averment with reference to grounds 1 and 2, it is submitted that the Respondents erred in hastily deleting the name of the Applicant from the seniority List as per the Hon'ble A.P. Administrative Tribunal's direction dated 29-1-1991, since the same Hon'ble A.P. Administrative Tribunal in its subsequent direction given on 15-3-1991 directed that the claims of the applicant be processed in accordance with the rules without reference to the interim stay order granted by the Tribunal dated 29-1-1991. Therefore, the action of the Respondents in not considering the case of the Applicant is violative of Articles 14, 16 and 21 of the Constitution of India, and it is not a bonafide exercise of statutory power by the Selection Committee.

5) It is respectfully submitted that while the adjudication of matter pertaining to fixation of date of regularisation and seniority in the cadre of Deputy S.P., Category-2, of the State Police Service is within the jurisdiction of the Hon'ble A.P. Administrative Tribunal, the appointment to I.P.S. of the Applicant based on the placement at Sl.No.1 in the State Police Service which has not been so far disturbed is definitely well within the jurisdiction of this Hon'ble Tribunal and it therefore open to this Hon'ble Tribunal to dispose of this Application in favour of the Applicant taking into consideration the date of regularisation fixed for the Applicant as 31-12-1964 and seniority given to him at Sl.No.1 in the category

2nd page.

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of Deputy S.P., Category-2 which is in existence as at present. In this connection, it may be pointed out the Chief Secretary to State Government of A.P., in his letter dated 10-3-1992, addressed to the Secretary, Union Public Service Commission, has admitted the above stand (last para), while he commending the inclusion of the name of the Applicant in I.P.S. Select List for 1982 to 1990-91.

6) It is submitted that the averments made in Ground 4 at Pages 8-9, of the Counter Affidavit are all concocted to cover up the hasty action of the Respondents in denying the Applicant the opportunity of being considered for inclusion in the Select List prepared on 15-3-1991, by the Selection Committee in its meeting held on that day. It is unthinkable and absurd to say that every thing was closed and could not be re-opened in a matter of one or two hours even when there is a "Infinite direction of the Honourable A.P.Administrative Tribunal issued to consider the case of the Applicant. It is nothing but wilful and malafide disobedience to the direction of the Hon'ble A.P.Administrative Tribunal, since the Respondents did not obtain further directions from the Hon'ble A.P.Administrative Tribunal for non-compliance of its directions for considering the case of the Applicant at the mattering on 15-3-1991.

3rd page.

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Deponent.

7) It is respectfully submitted that the State Government was quick to implement the direction of the Hon'ble A.P.Administrative Tribunal to the prejudice of the Applicant while the same is not found in complying with the subsequent directions of the Hon'ble A.P.Administrative Tribunal which is in favour of the Applicant. The State Government and the Selection Committee are both guilty of disobedience of the directions of the Hon'ble A.P.Administrative Tribunal dated 15-3-1991 which would have been complied with since the date of meeting of Selection Committee was also 15-3-1991 only and the gap of one or two hours cannot be taken to the prejudicial interest of the Applicant especially when the Respondents did not obtain further orders of the Hon'ble A.P.Administrative Tribunal for non-compliance with its directions on 15-3-91. Had the Selection Committee implemented the directions of the Hon'ble A.P.Administrative Tribunal, the Applicant being placed in Sl.No.1, would have been appointed to I.P.S. from the Select List of 1990-91, itself on par with his juniors. Hence the contention of the Respondents is untenable.

8) It is respectfully submitted that the subsequent events that are taking place in the Hon'ble A.P.Administrative Tribunal or else where after the filing of the O.A.No.277/91, before this Hon'ble Tribunal by the Applicant based on the facts and circumstances, then existing are irrelevant and cannot be considered for the disposal of the above O.A, pending in this Hon'ble Tribunal having due regard to the

4th page.

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position as it then existing. If however, any fresh cause of action arises for any party, it will be open to them to approach appropriate forum at the relevant time. It is therefore hypothetical to aver that unless these cases are finalised, it may not be appropriate to consider the case of the Applicant for inclusion in the Select List for appointment to I.P.S.

9) It is also respectfully submitted that the State Government is taking inconstant stand in the counter affidavit ignoring the views expressed by the Chief Secretary in his letter dated 10-3-1992, addressed to the Secretary, U.P.S.C. recommending the inclusion of the name of the Applicant in Select List of I.P.S. Officers from 1982 - 1990 - 91.


10) For the reasons submitted above, the Applicant prays that this Hon'ble Tribunal may be pleased to reject all the contentions of the Counter affidavit, as being inconstant, untenable and far fetched and to allow the O.A. No.277/91, as already prayed for and pass such other orders or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Solemnly affirmed on this
the 22nd day of Sept.1992,
at Hyderabad.

5th & last page.
Corr.


Deponent.

Before me.


Advocate/Hyderabad.