

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 432/91.

Dt. of Decision : 5-10-94.

Syed Imam

.. Applicant.

vs

1. The Regional Provident Fund Commission-I, Barkatpuraq, Hyderabad-500 027.
2. The Regional Provident Fund Commissioner-II, Lakshmiapuram, Guntur-522 007.
3. V. Satyanarayana
4. C. Ramaiah
5. D.R.K. Murthy
6. T. Yesudas
7. K. Rani Prameela
8. G. Janardhan Rao
9. Laxminarayana
10. M.C. Subbarayudu
11. M. Saidulu
12. K.C.B. Narasimha
13. G. Sundaraiah
14. M. Rajaratnam
15. R. Bhasker Rao
16. G. Dayaker
17. V. Sudhakara Rao
18. K. Ramanujam
19. K. Murali Rao
20. P. Sudershan Rao
21. R.V. Nanda
22. P. Shiva Kumar
23. C. Jamakiram
24. Ch. Someswara Rao
25. N. Srinivas
26. A. Venugopal
27. A. Prakash Rao
28. A.S. Babu
29. G. Bhaskara Rao
30. Laxman Mansabdar
31. M.A. Shukoor
32. B. Danaiah
33. B. Narasimha
34. V. Kamala
35. G. Papa
36. C. Chandravathy
37. P. Nageswara Rao
38. K. Showry
39. S. Hamsaveni
40. K. Mahendra
41. C. Shivraj
42. V. Muralidhar
43. K. Seshagiri Rao
44. A. Vijaya Kumari
45. D. Sathi Reddy
46. T. Laxminarayana
47. B. Venkata Rao
48. G. Balagangadharan
49. B. Hardev Singh
50. A. Koti Reddy
51. G.R.K. Murthy
52. Sreeram Satyanarayana
53. V. Venkata Ramana

.. Respondents.

Counsel for the Applicant : Mr. C. Suryanarayana

Counsel for the Respondents : Mr. Vilas Afzulpurkar, SC for Provident Fund.

CORAM:

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

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

OA.432/94

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman)

Heard Sri C. Suryanarayana, learned counsel for the applicant and Sri Vilas Afzulpurkar, learned SC for Provident Fund.

2. This OA was filed praying for direction to the respondent to protect the applicant's seniority amongst the Head clerks by granting him retrospective promotion with effect from the date from which his immediate junior i.e. R-3 was promoted and to grant him all other benefits which were incidental and consequential to promotions such as promotion as Enforcement Officer or as Asstt. Accounts Officer, ^{consideration for} ~~as~~ ^{by} declaring that the punishment imposed on the applicant has to be ignored as it is vitiated.

3. The facts which give raise to this OA are briefly as under :

When the applicant was working as UDC, his juniors were promoted as Head clerks by order dated 20-10-1982. Chargememo was given to the applicant on 31-7-1984. After due inquiry, order dated 13-3-1986 was passed imposing the punishment of withholding of one year increment. On 28-10-1986 the applicant submitted a representation that he should be given promotion as Head Clerk from the date on which his immediate junior was promoted. On 7-9-1987, an order was passed promoting the applicant as Head Clerk.

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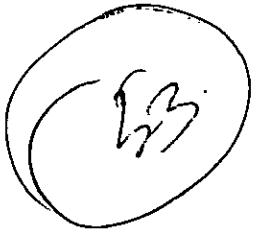
But the said promotion was not given with retrospective effect. On 29-9-1987 the applicant again submitted a representation claiming promotion from the date on which his junior was promoted as Head clerk with all consequential benefits. The said claim was negatived by order dated 24-9-1990. Being aggrieved, the applicant filed this OA on 22-4-1991.

4. The contentions for the official respondents are that as under:

- i) This OA is not maintainable as he had not chosen to challenge the order dated 20-10-1982 whereby the juniors of the applicant were promoted as Head Clerks.
- ii) He is estopped from ~~the benefit of~~ claiming promotion with retrospective effect when he joined the post of Head Clerk on promotion by order dated 7-9-1987 without protest..and
- iii) It is barred by limitation.

5. Though it was pleaded in the counter that the case of the applicant was not considered for promotion to the post of Head Clerk in October, 1982 as the disciplinary proceeding was contemplated, ^{but} the same had to be repelled in view of the judgement of the Supreme Court in Janakiraman's case ATR 1992(1)SC173 (Union of India vs. J.V. Janakiraman). It is clear from the facts stated that charge memo was given long after the date on which the junior of the applicant was promoted as Head Clerk. It is stated in the Janakiraman's case that sealed cover procedure had to be followed if disciplinary proceeding is pending by the date of consideration for promotion. As the said inquiry ultimately

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ended by way of minor penalty, the said charge cannot be held as grave so as to defer the consideration for promotion even though the charge memo was not issued. Hence it has to be held that action of the respondents in not considering the case of the applicant for promotion in October, 1982 merely on the ground that disciplinary proceeding was contemplated against him is not in accordance with law.

6. It is stated for the applicant that he could not make representation earlier to 1986 as disciplinary proceeding was pending against him. As it was even stated for the respondents that even by October, 1982, a disciplinary proceeding was contemplated against the applicant, the latter would not have felt of making representation for consideration for promotion under the impression that the concerned authority may view adversely against him. The applicant submitted representation within eight months after the order of appointment was issued. Hence it can be stated that the delay in submitting the representation is explained. In fairness to the applicant, it has to be stated at this stage that it is submitted that he will give in writing to the concerned authorities not to consider his case for further promotion so as not to affect the further promotion of his juniors who were promoted as Head Clerks in 1982. But it is stated for the applicant that if his turn for promotion as Enforcement Officer/Assistant Accounts Officer on the basis that he was promoted as Head Clerk on 7-9-1987, comes, his case may be considered for such promotion.



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8. The question of estoppel does not arise merely because the applicant had not protested on 7-9-1987 when he accepted promotion as Head Clerk, for his representation dated 28-10-1986 was already there, and he reiterated it by representation dated 28-9-1989.

9. There is no need for the applicant to challenge the order dated 20-10-1982 whereby his juniors were also promoted as Head Clerks for he has not challenging the seniority list and his grievance is only to the effect that there was no justification for not considering his case for promotion in October, 1982. Hence, the said contention also is negatived.

10. This Bench is granting the monetary benefit in case of continuing right from one year prior to the date of filing of the OA. Hence monetary benefit has to be given to the applicant only from 1-4-1990 only (this OA was filed on 22-4-1991).

11. In the result, the date of promotion of the applicant as Head Clerk has to be advanced from 7-9-87 to the date on which his junior promoted as per order dated 20-10-1982 assumed charge as Head Clerk, and on that basis the notional pay of the applicant in the grade of Head Clerk as on that date has to be fixed, and on that basis the arrears from 1-4-1990 have to be paid to the applicant. As we are giving monetary benefits only from 1-4-1990, the question of permitting the respondents to recover difference in regard to withholding of increments during the period in which the punishment was suffered does not arise. The applicant has to give in writing to the concerned authority that his
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case for promotion as Enforcement Officer or Assistant Accounts Officer may be considered only on the basis that he was promoted as Head Clerk only on 7-9-1987 and not on the basis that he was notionally promoted on the date his junior promoted as per order dated 20-10-1982 joined the post of Head Clerk.

12. The OA is ordered accordingly. No costs.

Me

(R. Rangarajan)
Member (Admn)

Neeladri
(V. Neeladri Rao)
Vice Chairman

Dated : October 5, 94
Dictated in Open Court

Amulya
Amulya
Deputy Registrar (J) CC

To

1. The Regional Provident Fund Commission-I,
sk Barkatpura, Hyd-27.
2. The Regional Provident Fund Commissioner-II,
Lakshmiapuram, Guntur-7.
3. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd.
4. One copy to Mr.Vilas Afzulpurkar, SC for P.F. CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

pvm

Dec 10/94