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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 492/91.

Dt. of Decision : 16.11.94.

K. Vijayasarithi

.. Applicant.

Vs

1. The Secretary to Govt. of India
Ministry of Information and
Broad-Casting, NewDelhi.
2. The Director General,
All India Radio, Aakashvani Bhavan,
Parliament Street, New Delhi-1.
3. The Station Director,
All India Radio,
Hyderabad.
4. E.S. Laxman Rao

.. Respondents.

Counsel for the Applicant : Mr. K.Lakshmi Narasimha

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.)

P. J.

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

J U D G E M E N T

Heard Shri K. Lakshmi Narasimha, learned counsel for the applicant and also Shri N.V. Ramana, learned standing counsel for the Respondents.

2. The applicant and ^{R4} ~~R3~~ along with others appeared for the ^{Qualifying} ~~departmental~~ examination for consideration for promotion to the posts of Accountants. It is stated that on the basis of the seniority R4 was promoted on 28-12-79 for the vacancy in the Accountant post under examination quota. The applicant was promoted to the post of Accountant on 31-7-82 in the later vacancy in regard to Accountant in the same examination quota. The seniority list as on 1-1-85 in regard to Accountants was published. Therein the name of R4 was shown above the applicant. R4 was promoted as ^{Administrative} ~~Junior~~ officer in 1988. The applicant submitted representation on 28-7-90 claiming seniority over R4 in the Accountant cadre and hence prayed that he should have been promoted as Administrative officer on the date on which R4 was promoted, to the said post. It was rejected on 17-9-90. This OA was filed on 30-4-91 praying for a direction for advancing the date of promotion of the applicant ^{Accountant} ~~as on~~ 28-12-79, the date on which R4 was promoted to the said post, and for promoting him as Administrative officer on the date on which R4 was promoted in 1988 and for all consequential benefits including the arrears. The applicant retired from service as Accountant on 31-10-1992.

3. The applicant was initially appointed as Clerk Gr. II in A.I.R. Vijayawada (A.P. Zone) on 15-5-1958. He was promoted as Clerk Gr. I on 22-9-71 and posted at Vizag which is also in the same zone.

4. B4 was initially appointed as Junior Grade Stenographer in A.I.R., Vijayawada on ad hoc basis in leave vacancy on 2-3-1966. He was transferred to A.I.R. Sangli in Maharashtra zone on 18-9-1967 and he was appointed as Junior Stenographer. He was regularised in the said post on 9-9-1967. At the request of R4, he was transferred to Doordarshan, Hyderabad on 29-1-1974.

5. Till 1988, 50% of the posts of Head Clerks/Accountants/Sr. Store Keepers were filled up from amongst Clerks Gr. II/Clerk Gr. I/Stenographers (both junior and senior scale) and Storekeepers with a minimum of 5 years service in any of the grades on the basis of qualifying departmental examination, and the remaining 50% on the basis of seniority/fitness from amongst the clerks Gr. I/Store keepers with a minimum of 12 years of service. As it was a case of consideration for promotion on the basis of qualifying departmental examination only, in regard to the 50% of posts those who are in the higher grade have to be preferred to those in the lower grade and as amongst those who are in the same grade, the seniors have to be preferred to the juniors from amongst those who have qualified in the departmental examination.

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6. It is stated for the applicant that as R4 has to be given bottom seniority in the A.P. zone when the transfer was at his request, R4 was junior to the applicant and hence the applicant should have been given promotion in the first vacancy and R4 should ^{have been} ~~be~~ given promotion in the later vacancy. While the applicant was ~~in the~~ Clerk Gr. I ~~post~~ by the time he appeared for the examination, R4 was only in the category of Junior Stenographer by the date of the said examination. When it is merely a case of qualifying examination, the candidates who were qualified in the examination have to be ranked on the basis of the grade and from amongst those in the same grade on the basis of seniority in the said grade. In such a case, the applicant should have been placed over R4 in the select list. Even assuming that the applicant was not confirmed in the post of Clerk Gr. I by the date of the relevant examination, as R4 has come to A.P zone while the applicant was in service in the post of Clerk Gr. II in the said zone, the applicant should have been shown above R4 in the select list.

7. It is urged for the applicant that till 1985 he could not know that R4 was promoted earlier to him and hence he could not challenge it earlier. But there is no explanation for delay of 5 years after the seniority list was published in 1985, for the said representation was made in July, 1990. It may be noted that in his representation dated 14-5-1984 the applicant has not challenged the seniority of R4. But it is explained that as the seniority list of the Accountants was not published, by then, the applicant could not know as to whether R4 was promoted as Accountant even earlier to his promotion.

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1. The Secretary to Govt.of India,
Ministry of Information and Broad Casting,
New Delhi.
2. The Director General, All India Radio,
Aakashvani Bhavan, Parliament Street,
New Delhi-1.
3. The Station Director, All India Radio,
Hyderabad,
4. One copy to Mr.K.Lakshmi Narasimha, Advocate, 16-11-20/13
Saleemnagar-2, Hyderabad.
5. One copy to Mr.N.V.Ramana, Addl.CGSC. CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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8. One of the contentions raised for the Respondents is that this OA was barred by limitation. As there was delay of more than 5 years in publication of the list of Accountants, we feel that the case of the applicant in regard to his seniority in the cadre of Accountants vis-a-vis R4 can be considered. As we already observed that the applicant should have been shown above R4, it is just and proper to give a direction to R1 to R3 to advance the date of promotion of the applicant as Accountant to 28-12-79 and ^{to} notionally fix the pay of the applicant as on that date in the post of Accountant and on that basis the arrears if any from 1-5-90 in the post of Accountant ^{have} ~~has~~ to be paid.

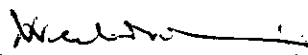
The case of the applicant for promotion to the post of Administrative Officer from the date on which R4 was promoted has to be rejected as the applicant has not chosen to challenge the seniority list of Accountants before R4 was promoted as Administrative Officer.

9. It is needless to say that on the basis of the re-fixation of the pay of the applicant in the post of Accountant he has to be paid the difference in the terminal benefits and also in the pension.

10. In the result, R1 to R3 are directed to ^{advance} ~~advance~~ the ^{date of} promotion of the applicant as Accountant ~~as~~ ^{on} 28-12-79, the date on which R4 joined in the said post, and the applicant has to be paid the arrears from 1-5-90 (this OA was filed on 30-4-91), in the pay and other emoluments as Accountant till the date of his retirement and also the difference in the terminal benefits and pension. Time for compliance is 6 months from this date. OA is ordered accordingly.

No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE-CHAIRMAN

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Dated 16th November, 1994

D.R. (3) CC

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TYPED BY 22/11

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN : M(ADMIN)

DATED: 16-11-1994

ORDER/JUDGEMENT:

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

in

O.A.No. 497/91

T.A.No.

(w.p.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

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