

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.657/91

Date of Order:2.5.95

BETWEEN:

Gatta Sambasiva Rao

.. Applicant.

A N D

1. The Officer-in-Charge,
EME Records,
Trimulgherry PO,
Secunderabad-21.
2. The Director General of EME,
Directorate General of EME,
Army Headquarters,
DHQ PO, New Delhi-11.
3. Shri M.T.Kunhi Kannan
4. Shri O.Phillipose
5. Ziaul Hasan Ansari
6. Shri Laxman Ganpat Jadav

.. Respondents.

Counsel for the Applicant

.. Mr.N.Raghavan

Counsel for the Respondents

.. Mr.N.R.Devraj

CORAM:

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

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

Judgement

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

Heard Sri N. Raghavan, learned counsel for the applicant and Sri N.R. Devaraj, learned counsel for the respondents.

2. This OA was filed praying for a direction to R-1 and R-2 to promote the **applicant** as Stenographer ~~Grapher~~ Gr.II on the basis of his seniority in the post of Grade III and to restore his seniority in Gr.II in the scale of Rs.1400-2300 and for a consequential direction to R-1 and R-2 to pay him in the pay scale of Rs.1400-2300 from the date of promotion of his juniors.

3. The applicant is working as stenographer Gr.III in the R-1 office. He was promoted on the basis of his seniority as Stenographer Gr.II with effect from 1-12-86 and posted to 512 Army Base Workshop at Pune vide letter No.3494/58 CA III dated 29-11-86 (Annexure-I). But the applicant tendered unwillingness certificate for promotion and the same was accepted by the competent authority on 30-1-1987. The DPC which met in 1987 considered the case of promotion from Stenographer Gr.III to Gr.II Stenographer in regard to vacancy upto ³¹⁻¹²⁻⁸⁷ ~~3-12-1987~~. ~~Then R-3 to R-6 were promoted~~ Then Sri J. Ramani, Sri Gurbir Singh, Sri R.N. Arora and Sri Mohandass were promoted with effect from 31-10-1987, while K. Venkat Raman was promoted with effect from 4-11-1987. It is stated for R-1 and R-2 that as per Deptt. of Personnel & AR OM No.22034/3/81 Estt(D) dated 1-10-81 (Annexure II) refusal of promotion by an individual entails that no ~~such~~ offer of promotion would

be issued to him for a period of one year and as there was an embargo in regard to promotion of the applicant upto 29-1-1988 his case was not considered ^{for} ~~in~~ the vacancies which existed upto 31-12-1987. The further case of R-1 and R-2 is that such an embargo with regard to Sri K. Vankat Raman was over by 3-11-1987 and ^{as such} his case for promotion to Steno Gr. II was considered for the vacancies upto 31-12-1987 and hence he was given promotion with effect from 4-11-1987 eventhough he was senior to all the other four who were promoted with effect from 31-10-1987.

4. After the embargo for promotion in regard to applicant ~~is~~ ^{was} over on 29-1-1988, the applicant was given promotion as Gr. II Stenographer and posted to HQ Technical Group EME, Delhi Cantt. vide letter No. 3494/02/CA. III dated 29-3-88. As the said posting was also outside Secunderabad and as the applicant is interested in insitu promotion i.e. posting after promotion at the very place where he is working, he did not move from Secunderabad to join the promotional post. But even on 29-3-1988, probably anticipating promotion and posting to Delhi the applicant submitted an application ~~dated 29-3-88~~ requesting for his posting at Secunderabad on promotion as Stenographer II. The same was forwarded to the Army Headquarters by Capt. (JS Handa) Record Officer, for OIC Records ^{Noted} by letter No. 3494/X/CA ~~III~~ ^{III} dated 13-3-89 that pending receipt of reply from Army HQ the promotion orders issued in respect of the applicant herein and two others may be held in abeyance. It may be noted that besides applicant S/Sri M. Satyamarayana Reddy, and SA Nageswara Rao, also requested that they too may be retained at Secunderabad on their promotion from Stenographer Gr. III to Stenographer Gr. II.

5. But even before letter dated 13-3-89 referred to supra was issued, the applicant was informed by letter No. 3494/124/CA.III dt. 17-3-88 that he had to move on ~~promotion-cum~~ posting at HQ at Delhi, as withholding movement order pending clarification from Army HQ is not ^{an} appropriate action. The applicant was further informed that if he is not interested in promotion he is free to give his unwillingness certificate. It is further stated for R-1 and R-2 that the promotion of the applicant as per proceedings dated 17-3-1988 was held to be correct by the Army HQ as per their letter dated 19-5-1988 and the same was communicated to R-1 office by letter dated 13-6-88 with a request ~~to~~ move the applicant on promotion on ~~to~~ to get unwillingness certificate from him. But the applicant stated that if his request is not going to be acceded to he will move the Court and application dated 22-7-88 was submitted to the said effect and it was forwarded to Army HQ by R-1 by letter dated 8-8-88. R-1 informed R-2 by letter dated 8-10-1988 that the applicant and Sri M. Satyanarayana Reddy were issued show-cause-notices ^{to explain} as to why disciplinary action should not be taken for not rendering willingness/unwillingness to move on promotion from the post as ordered by EME Records. Then the applicant and the others ^{submitted} ~~informed~~ that they are unable to give the certificate due to non-receipt of satisfactory reply from Army HQ i.e R-2.

6. Then the applicant submitted application dated 27-2-1989 that the promotion of his juniors M/s Mohandass, Gurbir Singh, and B.N. Arora are in violation of the norms for promotion, and he had been promoted much latter than others and the same affected his promotion prospects and until

the seniority question is clarified he cannot give his willingness/unwillingness certificate. The applicant had again submitted an application dated 17-8-1990 and the same was also forwarded to Army HQ by R-1 as per letter dated 27-9-1990.

7. The DPC had drawn ~~xxxxxx~~ in February, 1991 a panel of Stenographers Gr.III for promotion to Stenographer Gr.II for the existing vacancies and R-3 to R-6 herein are in the panel. They were promoted with effect from 28-2-1991. Out of the above four, two had given unwillingness certificate and the remaining two were given postings in places other than Secunderabad on that promotion. This application was filed on 4-7-1991.

8. It is evident that the applicant was promoted as Stenographer Gr.II by letter dated 29-11-1986, when his turn had come. It is not the case of the applicant that even by then, his juniors were considered for promotion to the post of Stenographer Gr.II.

9. As the applicant was posted to Pune on promotion in 1986, and as he was interested in his posting at Secunderabad on his promotion, he had ~~to~~ give unwillingness certificate for his promotion in 1986. The said unwillingness certificate was given on 30-1-1987 and the same was accepted by the competent authority. As per OM dated 1-10-1981 referred to supra, the case of an individual for promotion cannot be considered for one year if he refused promotion. Accordingly, his case for promotion can be considered only for vacancy that may arise on or after 30-1-88. Hence, it is stated for R-1 and R-2 that the case of the applicant was not considered for promotion for the vacancies

upto 31-12-1987. If the embargo in regard to promotion of the applicant expired even by 31-12-1987, his case could have been considered for posting at Secunderabad on promotion, for two of the vacancies which had arisen in 1987 were in Secunderabad itself and Sri C. Mohandass and Sri K. Venkataraman were posted in those two vacancies. But subsequent to that year i.e. after 1-1-1988 no vacancy in the category of Stenographer Gr.II had arisen in R-1 office at Secunderabad.

10. Fourteen posts of Stenographers are sanctioned for the office of R-1 in 1978 as per peace committee report and out of them five are in Gr.II and eight are in Gr.III and one is in Gr.I. But out of the Stenographers working in R-1 office, two are in Gr.I, three are in Gr.II, and eight are in Gr.III. Contention for the applicant is that when five posts of stenographer Gr.II were sanctioned for the office of R-1, R-1 is not justified in not filling the remaining two posts of Gr.II and if those two posts of Gr.II are going to be filled up, two more vacancies in Grade II will arise in R-1 office at Secunderabad itself and then the applicant can be accommodated in Secunderabad itself. Such a plea was not raised in the OA filed in 1991. The applicant had come out with that plea by way of additional affidavit.

11. The case of R-1 and R-2 with reference to the above plea of the applicant is as under :

R-1 School was originally headed by a Brigadier. In 1983 it was headed by a Major General and in 1985 it was headed by a Lieutenant General. As per letter dated 1-5-1981 vide No.B.17116/EME/ORG/3/2598/D(CIV-IX) read

with amended letter dated 18-8-1982 vide No.8/17116/EME Org.3/2598/D(Civ.I) (referred to in para 4 of the additional affidavit filed on behalf of the respondents, copy enclosed), stenographer Gr.I has to be allotted to Major General and above, while Stenographer Gr.II has to be allotted to each Brigadier. That letter further states that there should not be any increase in the total number of stenographers sanctioned to the each institute. There is one Lt. Gen., one Maj. Genl. and three Brigadiers in R-1 School. Hence there should be two stenographers Gr.I and three stenographers Gr.II and remaining should be stenographers Gr.III. Hence, one out of the sanctioned posts of Gr.II was upgraded even in 1985 and another out of the five sanctioned posts stenographer Gr.II was down graded to stenographer Gr.III. As such only three posts of Stenographer Gr.II in the school of R-1 are filled while the two posts of Stenographer Gr.I are filled in the same school.

12. It is contended for the applicant that it is not open to the R-1 to alter the sanctioned strength of five Stenographers in Gr.II for their school, as it will be in the nature of amendment of Recruitment rules which can be done only by the Rule making authority. But there is no force in the said contention. Even the Army HQ issued letter dated 1-5-1981 and it is to the effect that there should not be any increase in the total strength of 14 stenographers sanctioned for R-1 school, while making an appointment of Sr.PA to Major General and above which is redesignated as Stenographer Gr.I as per the amendment

in 1982. It may be noted that the provision for Stenographer of higher grade for officer in the &x cadre of Major General and above, was made to have more promotional avenues for Stenographers when it was being represented that there was stagnation. Thus it is not a case of alteration of strength of Stenographer Gr.II by the office of R-1. On the other hand it is being done only on the basis of the instructions that were issued even in 1981 and 1982. Hence, the contention for the applicant that the five posts of Stenographer Gr.II should be maintained in the office of R-1 is not tenable.

13. It is not stated for the applicant as to why his juniors could not be promoted in 1987 when he refused his earlier promotion and thereby he had to forgo promotion for one year as per the OM dated 1-10-1981 referred to supra. In view of the embargo for one year in case of refusal of promotion, he will also lose his seniority if his juniors are being promoted in regard to vacancies which had arisen before the expiry of the embargo in regard to him. Thus it is the one of the applicant losing seniority over his juniors - Sri Gurbir Singh, Sri RN Arora, and Sri C. Mohandass as they were promoted in regard to vacancies which had arisen in 1987 i.e. even before the period of embargo in regard to him expired.

14. The applicant can claim seniority if he joins the promotion post in pursuance of the order dated 29-3-88. In the counter affidavit filed on behalf of the respondents R-1 and R-2 it is stated that in case the applicant

is going to join promotion post in pursuance of order dated 28-3-1988 he will be getting seniority in Grade II and it will be reckoned from 22-2-1988. Probably that is the date on which vacancy might have arisen or the date on which the DPC might have recommended promotion of the applicant. It may be noted that the said order of promotion is kept in abeyance. So, it means that the applicant can join the said post even now. If he is going to join that post his seniority has to be reckoned from 22-2-1988 as referred to in the counter affidavit filed by R-1 and R-2. Thus, even now he will be senior to R-3 to R-6 if he is going to join that promotion post. But if he is going to give unwillingness certificate he will be losing that seniority also.


15. It may be seen that it is stated for applicant that due to the domestic difficulties referred to by him i.e. due to ailment of one of his sons and the condition of his wife, he is not in a position to move out and as such he had given up promotion which was given to him in 1986.

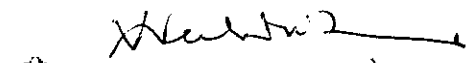
16. In the above view the only direction that can be given by this Court in view of the existing rules is to the following effect :-

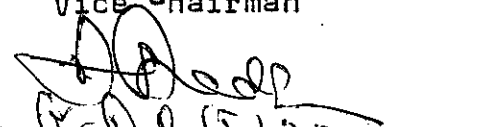
In case the applicant joins the post at New Delhi in pursuance of the promotion-cum-posting order dated 29-3-1988 which is still kept in abeyance, the request transfer back to Secunderabad ~~may be~~ registered as if it were given on 29-3-1988, the date on which the posting order was issued.

17. In the result, the OA is disposed as above, If the applicant is going to join HQ Technical Group, Delhi, as Stenographer Gr.II interms of office order dated 28-3-1988 on or before 30-6-1995, his request for transfer back to Secunderabad has to be registered by treating it as registered on 29-3-1988.

18. The OA is ordered accordingly. No costs./


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman


Dated : May 2, 95
Dictated in Open Court

Dated : May 2, 95
Dictated in Open Court

Dy.Registrar(Judl)

Copy to:-

1. The Officer-in-Charge,
sk. E.M.E.Records,
Trimulgherry P.O.,
Secunderabad-21.
2. The Director General of EME,
Directorate General of E.M.E.,
Army Headquarters,
D.H.Q.P.O.New Delhi-11.
3. One copy to Mr.N.Raghavan, Advocate, CAT, Hyd.
4. One copy to Mr.N.R.Devaraj, Sr.CGSC.CAT.Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

kku.