

(35)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 694/91.

Dt. of Decision : 22.11.94.

B. Narasimha

.. Applicant.

Vs

The Regional Provident Fund Commissioner
Andhra Pradesh, Barkatpura,
Hyderabad - 500 027.

.. Respondent.

Counsel for the Applicant : Mr. N. Ram Mohan Rao

Counsel for the Respondents : Mr. Vilas V. Afzulpurkar
SC for PF.

CORAM:

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

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

OA.694/9491

Judgement

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

Hear d Sri N. Ram Mohan Rao, learned counsel for the applicant and Sri Vilas V. Afzulpurkar, Standing Counsel for the respondents.

2. This OA was filed praying for quashing the order No.AP/Adm.II/HC(Adhoc)/90/1070 dated 22-8-90 to the extent it ^{directly} confirms the date of promotion of the applicant as Head Clerk as on 2-8-1988 instead of 21-8-87 and for consequential direction to the respondent to grant the applicant all consequential benefits and fixation of pay in the category of Head Clerk with effect from 21-8-1987 and for payment of arrears of salary and allowances etc.

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

When the applicant was working as UDC, disciplinary proceedings were initiated against him on 29-10-1986.

On 21-8-1987 the DPC met for consideration for promotion for three vacancies in the cadre of Head Clerks in the seniority quota. Then Sri Syed Imam and the applicant alone were considered for the said vacancies. As the disciplinary proceeding against the applicant was pending by then, sealed cover procedure was adopted in regard to ^{him} them. The DPC again met on 21-9-1987 for consideration for promotion in regard to later vacancies in the category of Head Clerks in the seniority quota. But the case of the applicant was not then considered as sealed cover procedure was already followed at the time of earlier

(32)

consideration and as the disciplinary inquiry was still pending against the applicant. The inquiry against the applicant was dropped on 31-5-1989. The sealed cover was opened on 13-6-1989. It is stated for the respondents that as the DPC which met on 21-8-1987 did not recommend the case of the applicant for promotion to the post of Head Clerk, DPC was again convened on 27-6-1989 and when the said DPC recommended ^{for promotion of applicant} order dated 7-7-1989 was issued promoting the applicant as Head Clerk and then he joined on 12-7-1989. When a representation was made by the applicant that as he was exonerated he should be given promotion with effect from an earlier date, the date of promotion was pre-poned to 2-8-1988 but on notional basis. Being aggrieved the applicant preferred this OA.

4. The findings of Departmental Committee held on 21-8-1987 reads as under :

"Departmental Promotion Committee in its meeting held for considering promotion to the post of Head Clerk on adhoc basis considered the name of Sri B. Narasimha, UDC and having perused the Confidential Reports and relevant papers/records decided not to recommend his name for promotion to the post of Head Clerk on adhoc basis as the disciplinary enquiry is pending against him in connection with his misbehaviour in the Office/Section during office hours, which Departmental Promotion Committee noted was of a grave nature."

Sri B. Narasimha referred to therein is the applicant herein. Disciplinary inquiry referred to therein was dropped on 31-5-1989.

5. It is stated for the respondents that in view of the challenge in regard to the seniority list and as some OAs in regard to the same were pending in this

733

Tribunal, however, promotion to the posts of Head Clerk though ~~regular~~ were styled as adhoc.

6. It may be noted that while sealed cover procedure had to be adopted ^{at the time of} ~~as~~ consideration for regular promotion when a disciplinary proceeding is pending against the concerned official/employee, there was no bar for consideration for adhoc promotion even if disciplinary proceeding is pending if the same was not treated as grave. Further, for consideration of regular promotion, the pendency of disciplinary proceeding is not taken into consideration for determining as to whether the concerned official/employee is fit for promotion.

7. If the findings of the DPC in regard to the applicant which are placed in sealed cover are considered in the ^{light} ~~line~~ of the established principles for consideration for regular promotion vis-a-vis adhoc promotion, it can be stated that the above findings were given by treating the said promotion as adhoc promotion only. But in view of the submission that the same was styled as only adhoc in ^{view of} ~~regard to~~ the dispute in regard to the seniority, we feel that it was a case of consideration for regular promotion and the same will be ofcourse subject to the final determination in regard to his seniority. Thus, it is clear that the DPC ^{which} ~~which~~ met on 21-8-1987 did not consider the case of the applicant by treating it as regular promotion for the post of Head Clerk. As the yard-stick to be followed for regular promotion is different from ^{the yardstick to be followed} ~~adhoc~~ promotion, and as the

To,

1. The Regional Provident Fund Commissioner,
Andhra Pradesh, Barkatpura,
Hyderabad-500 027.
2. One copy to Mr.N.Ram Mohan Rao, Advocate, CAT, Hyderabad.
3. One copy to Mr.Vilas V.Afzulpurkar, S.C. for Provident
Fund, CAT, Hyderabad.
4. One copy to Library, CAT, Hyderabad.
5. One copy spare.

kku.

Handwritten signature and date:
28/11/74

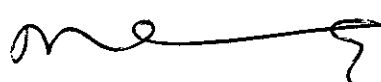
(251)

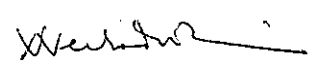
DPC which met on 21-8-1987 proceeded on the basis that it was a case ^{of} ~~an~~ ^{effect} ~~ad hoc~~ promotion while ~~for all~~ ⁱⁿ ~~purposes~~ it was a regular promotion, it cannot be stated that the DPC felt that the applicant was not fit for regular promotion to the post of Head Clerk on the basis of the relevant ACRs.

8. Hence, the following direction ~~had to be~~ ^{is} given :

The respondents have to convene Review DPC for consideration of the case of the applicant for regular promotion to the post of Head Clerk on the basis of the ACRs which were considered by the DPC which met on 21-8-1987, and if the applicant is found fit for promotion to the post of Head Clerk he ~~had~~ ^{has} to be given promotion with effect from the date ~~on~~ which Sri Syed Imam joined the post of Head Clerk. Thus the date of promotion of the applicant has to be preponed to that date and he ~~had~~ ^{on that basis} to be given the monetary benefit. We make it clear that in case DPC which ~~has~~ ^{had} ~~to be~~ ^{has} convened in accordance ^{pursuance to} ~~to~~ this order is going to hold the applicant fit for promotion to the post of Head Clerk, the date to which his promotion has to be preponed is the date on which Sri Syed Imam actually joined the post of Head Clerk but not the notional date from which Syed Imam was given that promotion.

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


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated : November 22, 94
Dictated in Open Court


Dy. Registrar (Judl)

sk

P. J. G.