

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

DA 46/91.

Dt. of Order: 18-11-93.

V.R.N.Iyer

...Applicant

vs.

1. The Secretary to the Govt. of India, Dept. of Atomic Energy, C.S.N.Marg, Bombay-400 039.
2. The Chief Executive, Nuclear Fuel Complex, ECIL P.O., Hyd-500 762.

...Respondents

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Counsel for the Applicant : Mr. S. Surya Prakasa Rao

Counsel for the Respondents : Mr. N. V. Ramana Addl. C. S. C.

CORAM:

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

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

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.....2.

O.A.No.46/91

Dt.of decision: 18-11-1993.

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Judgement

As per the Hon'ble Justice Sri V. Neeladri Rao
Vice Chairman

The applicant joined service as L.D.C. in Bhabha Atomic Research Centre (for short BARC) at Bombay in 1963 and he was promoted as UDC in 1968. He was transferred to Nuclear Fuel Complex (NFC) at Hyderabad in 1970. The UDC was in the pay scale of Rs.130-350 which was subsequently revised to Rs.330-560. On 17-10-73 the applicant was promoted to the next higher post as Assistant on adhoc basis and it was in the scale of pay of Rs.210-530 which was later revised to Rs.425-800 w.e.f. 1-1-73. The applicant appeared for written examination and also interview in March and June in 1976, as the promotion to the post of Assistant is by way of selection on the basis of assessment ^{and} merit in the departmental examination to be conducted and interview to be held. The applicant was empanelled on 28-6-76 for appointment as Assistant on regular basis. But the applicant was not given any order promoting him regularly to the post of Assistant. The applicant was, however, continued as Assistant till 6-4-77, the date on which he was reverted to the post of UDC in the pay scale of Rs.330-560. As on the date of reversion the basic pay of the applicant was Rs.470/- in the pay scale of Rs.425-800. On the reversion of the applicant, his pay was fixed at Rs.380/- in the pay scale of Rs.330-560. On 19-10-77 the applicant was appointed as Asst. Accountant on adhoc basis. The pay scale of Asst. Accountant at the relevant time was slightly less than

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the pay scale of Assistant i.e. Rs.425-700, but higher than the pay scale of UDC. On 16-4-79 the applicant was appointed as Selection Grade Clerk (Sr. Clerk) and then his pay was fixed at the minimum of the pay scale of Rs.425-640. The applicant filed OA.302/86 on the file of this Bench praying for a direction to the respondents to (a) to appoint him in the post of Assistant in the pay scale of Rs.425-800 on regular basis from 28-6-76 i.e. the date of his empanelment for the post of Assistant and to give further promotion on that basis, or in the alternative, (b) to direct the respondents to give the applicant the benefits of increments drawn by him in the grade of Assistant while appointing him in the grade of Assistant Accountant and Selection Grade Clerk, and (c) for all consequential monetary and service benefits. The same was disposed by an order dated 1-12-87. The operative portion therein is as under:

" As discussed above, once he is deemed to be a regular Assistant and when he was in fact appointed as Assistant Accountant though thereafter he worked for a period of nearly 6 months as UDC that should not affect his pay. Admittedly, these two pay scales of Asst. Accountant and Assistant were treated as equivalent even by the 4th Pay Commission. Even otherwise the fixation of the applicant's pay at Rs.470/- as UDC do not exceed the maximum of the pay scale of an Assistant Accountant or UDC. Hence, the pay of the applicant in the grade of UDC should have been retained at Rs.470/- when he was subsequently appointed as Asst. Accountant and as Selection Grade Clerk. The pay in these respective posts also should have been fixed in that basis. The applicant is entitled to a declaration to that effect and would be entitled to all consequential benefits.

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This application is accordingly allowed. There will be no order as to costs."

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2. It is thus manifest that only the alternative relief, as prayed for, was granted and the relief as for (a) i.e. prayer for the appointment of the applicant in the post of Assistant from 28-6-76 throughout was not granted.

3. O.M.No.20/4/2/88-CCS/754 dated 6-7-90 was issued to the effect that the combined service rendered in the grade of Assistant and Sr. Clerk will be taken to determine the eligibility for promotion to the post of Asst. Personnel Officer (for short APO) on seniority-cum-fitness basis. The applicant alleges that even the Sr.Clerk is eligible for promotion to the post of APO.

4. This OA was filed on 7-1-91 praying for (a) a direction to the respondents to appoint the applicant as Assistant on regular basis w.e.f. 28-6-76 in NFC by holding that the decision taken on 25-3-77 to abolish the posts of Assistants in NFC, and denial of the appointment of the applicant as Assistant is illegal, arbitrary and unconstitutional; — (b) to direct the respondents to consider the adhoc service of the applicant as Assistant from 17-10-73, for the purpose of fixation of his seniority in the grade of Assistant; — (c) to direct the respondents to publish the seniority list of Assistants who are eligible to be considered for promotion to the post of APO/Section Officer against the seniority-cum-fitness quota, and to ^{include} impede the name of the applicant ^{in the} to list at the appropriate place, and (d) to direct the respondents to consider the case of the applicant by conducting a fresh DPC for appointment to the higher post of APO under the seniority-cum-fitness quota, ^{after} and the finalisation of seniority list.

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5. Even in OA 302/86, the applicant prayed for a direction to the respondents to appoint the applicant ^{as} ~~in the post of~~ Assistant from 28-6-76 throughout. But the said relief was not granted. Then remedy of the aggrieved employee is to challenge ^X by way of an appeal, and another OA under Sec.19 of the A.T.Act for the same relief is not maintainable. As such there is no need to consider for disposal of this OA, ^{the} ~~contentions for~~ the applicant that ~~when the contemplation to take a~~ decision for abolition of down grading the posts of ^{the} ~~the~~ ~~such notice is required it will not give~~ Assistants cannot be acted upon when ~~it is not communicated.~~ As such, there is no need to discuss 1987(3) SLJ.CAT 199, the order of the Principal Bench, and 1991 (15) ATC 3 the order of Ahmedabad Bench, cited in support of the said contention.

6. The applicant was not eligible for consideration for the promotion to the post of Assistant by 17-10-73, ^{the} date on which he was appointed on adhoc basis. As such the period of service from 17-10-73 till 28-6-76, the date of empanelment cannot be accounted for qualifying service referred to in O.M. dated 6-7-90.

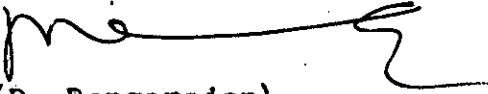
7. It is evident from ^{an} order in OA 304/86 that the services of the applicant from 28-6-76 till 6-4-77 is held as service in the post of Assistant in the regular capacity. So, that period of service counts for reckoning the qualifying period for promotion to the post of APO/Section Officer. At present the applicant is not working as Assistant. The question of directing the respondents to place the name of the applicant in the seniority-list of Assistants does not arise. The only other direction that ^{has} ^{is ICAT to} had to be given i.e. the Senior Clerks are eligible for promotion to the post of APO/Section Officer in regard to

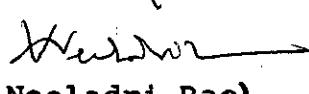
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20% quota on seniority-cum-fitness basis, and if the seniority list of Senior Clerks is not yet prepared, the seniority list of Senior Clerks by placing the applicant in the appropriate place ^{was} ~~had~~ to be prepared.

8. The O.A. is ordered accordingly. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dictated in Open Court
Dt.18-11-1993


Deputy Registrar

To

1. The Secretary to the Govt.of India,
Dept.of Atomic Energy, C.S.N.Marg, Bombay-39.
2. The Chief Executive, Nuclear Fuel Complex, ECIL, P.O.Hyd,
kmv
3. One copy to Mr.S.Suryaprakasa Rao, Advocate, CAT.Hyd. -762
4. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

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

AND

THE HON'BLE MR. A. B. GORTHI MEMBER(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER(J)

AND

THE HON'BLE MR. R. RANGARAJAN MEMBER(A)

Dated: 18-11-1993

ORDER/JUDGMENT:

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

O.A.No. 46 in 91

T.A.No. (W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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