

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

O.A.No. 1134/91

Date of Order: 17.2.94

BETWEEN:

Sri A. Subba Rao

.. Applicant



A N D

1. The Chief Commissioner of  
Incometax, Andhra Pradesh,  
Ayakar Bhavan, Basheerbagh,  
Hyderabad.
2. The Government of India,  
Rep. by its Secretary,  
Departmental of Personnel,  
Ministry of Home Affairs,  
South Block, New Delhi.
3. The Central Board of Direct  
Taxes, represented by its  
Chairman, North Block,  
New Delhi.

.. Respondents.

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Counsel for the Applicant

.. Mr.G.V.R.S.Vara Prasad

Counsel for the Respondents

.. Mr.N.V.Ramana

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CORAM:

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

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

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O.A.No.1134/91

Dt. of decision: 17-2-1994

Judgement

(As per the Hon'ble Sri V. Neeladri Rao, Vice Chairman)

This OA was filed on 9-12-91 praying for declaration that the general principles of seniority contained in O.M.No.9/11/55-RPS, dt.22-12-59 insofar as it relates to fixing of seniority basing on the date of confirmation in the cadre is illegal, arbitrary and to quash the same and for consequential direction to R-1 to refix the seniority of the applicant in the cadre of UDC without reference to the date of confirmation with all consequential benefits.

2. The applicant joined service in the Income Tax Department as UDC on 1-1-70 on being selected as direct recruit. He was confirmed as UDC on 1-10-77. In the seniority lists which were published every year, the names of the juniors of the applicant who were confirmed prior to the date of his confirmation were shown as his seniors. Sri P. Satyanarayana Murthy, the immediate junior of the applicant before their confirmation, was promoted as Head Clerk on 3-8-89. On 21-9-90 the applicant made a representation claiming fixation of seniority in the cadre of UDC ~~only~~ on the basis of entry into that cadre and not on the basis of the date of ~~entry~~ <sup>confirmation</sup> as UDC. Sri B. Sambasiva Rao who had become UDC after the applicant joined service, ~~was~~ <sup>was</sup> promoted as Head Clerk on 11-1-91. The applicant is not yet promoted as UDC.

3. The seniority list was prepared by the various departments of the Central Government on the basis of

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regular entry into the cadre. The seniority list in regard to the same cadre was being revised basing upon the date of confirmation as envisaged in O.A. dated 22-12-59. That latter seniority list is being followed for the purpose of consideration for promotion. The Supreme Court held in 1977 SC 2051 that the linking of seniority with confirmation is <sup>an</sup> violation of the Art.14 and 16 of the Constitution. The same was reiterated in 1990 SC 607. Following the said judgements, we held in OA 381/92 that the OM dt.22-15-59 to the extent it provides linking of seniority on the basis of confirmation is violative of Art.14 and 16 of the Constitution. We also held therein that even though O.M. dt.4-11-92 delinking seniority from confirmation is prospective, the seniority list even prior to 4-11-92 in regard to the applicant therein had to be <sup>fixed</sup> ~~refixed~~ on the basis of regular entry into cadre and not on the basis of date of confirmation.

4. This is a case where the applicant submitted a representation claiming fixation of seniority on the basis of entry into cadre long after Sri P. Satyanarayana Murthy was promoted as Head Clerk. Hence on the ground of laches it is not proper to disturb the promotion of Sri B. Satyanarayana Murthy as Head Clerk on 3-8-89.

5. Sri B. Sambasiva Rao was promoted as Head Clerk on 11-1-91 i.e. about one year after the applicant submitted his representation. As we held that fixation of seniority on the basis of the date of confirmation <sup>has</sup> ~~had~~ to be held as arbitrary, the applicant has to be shown as senior to Sri B. Sambasiva Rao who is junior to the applicant in the cadre of UDC before the dates of their confirmation, <sup>there</sup> ~~the~~ applicant's case has to be considered

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for promotion as Head Clerk and if he is found suitable <sup>for such promotion</sup> as on 11-1-91, he has to be given promotion u.s.f. 11-1-91 with all benefits.

6. In the result, R-1 is required to consider the case of the applicant for promotion as Head Clerk as on 11-1-91 and if he is so selected for promotion he has to be given promotion from that date with all monetary benefits. The OA is ordered accordingly. No costs.

CERTIFIED TO BE TRUE COPY  
*[Signature]*  
 Date..... 19/3/94.....  
 Court Officer  
 Central Administrative Tribunal  
 Hyderabad Bench  
 Hyderabad

To

1. The Chief Commissioner of Incometax, Andhra Pradesh, Ayakar Bhavan, Basheerbagh, Hyd.
2. The Secretary, Govt. of India, Department of Personnel Ministry of Home Affairs, South Block, New Delhi.
3. The Chairman, Central Board of Direct Taxes, North Block, New Delhi.
4. One copy to Mr. G.v.R.S. vara Prasad, Advocate, CAT, Hyd.
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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*11/8/94*  
*11/8/94*

Case Number	CA 1139/91
Date of Judgement	17/12/92
Copy made ready on	17/3/94
Section Officer (I)	