

US

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.836 of 1992

DATE OF JUDGMENT: 10th February, 1993

BETWEEN:

Applicant

Mr. SK.Mannan

AND

1. The Regional Provident Fund Commissioner,  
Hyderabad.

2. The Enforcement Officer,  
Employees Provident Fund,  
Nellore.

3. The Assistant Provident Fund Commissioner,  
Cuddapah.

4. The Central Provident Fund Commissioner,  
New Delhi.

5. Mr. O.Y.Rajashekhar Reddy ..

Respondents

COUNSEL FOR THE APPLICANT: Mrs. Sowbhagya Lakshmi

COUNSEL FOR THE RESPONDENTS: Mr. Vilas Afzalpurkar,  
Standing Counsel for PF

CORAM:

Hon'ble Mr. Justice V.Neeladri Rao, Vice Chairman

Hon'ble Mr. R.Balasubramanian, Member (Admn.)

contd...

.. 2 ..

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE  
Mr. JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

While the applicant was working as Messenger in the office of the Enforcement Officer, Employees Provident Fund, Nellore (2nd respondent herein), he was promoted as Daftary by the proceedings dated 3.7.1992 of the Regional Provident Fund Commissioner, Hyderabad (1st respondent herein). The pay scale of the Messenger is Rs.750-900 while the pay scale for the Daftary is Rs.775-1025. By the order dated 3.7.1992, the applicant was posted as Daftary in the Sub Regional Office, Cuddapah. In place of the applicant, the 5th respondent was appointed. The applicant was on leave from 25.8.1992. The 5th respondent joined the post of Daftary in the office of the 2nd respondent on 9.9.1992. This application was filed assailing the order dated 3.7.1992 promoting the applicant as Daftary and to direct the respondent No.2 not to relieve the applicant from the duty as Messenger from Nellore. This application was presented on 21.9.1992. This Court passed the order of status-quo on 30.10.1992.

2. The contentions of the applicant for challenging the order dated 3.7.1992 promoting him as Daftary are, that he is physically handicapped and in 1991 only he was transferred from Cuddapah to Nellore at his request

contd....

2nd 9/12/92

.. 3 ..

and he has aged parents at Nellore and he has to attend on them and hence he is not interest/in having promotion. It is also submitted for the applicant that the applicant was not served with the order dated 3.7.1992 and he was not relieved from the post of Messenger at Nellore.

3. If there is a provision for declining promotion, then it is necessary for the employee to submit to the concerned authority even before his case comes up for consideration for promotion by stating that he is not interested in having promotion and then it is necessary for the concerned authority to consider. But in this case, the learned counsel for the applicant had not brought to the notice of this Bench about making such a representation before 3.7.1992. Hence, on that ground, the order promoting the applicant cannot be assailed as illegal. But, it is also open to the employee to make a representation that he is not interest/in having promotion even before <sup>he joins</sup> it starts in the post to which he is promoted. Then, it is open to the concerned to consider about it and if it is acceded to, the order of promotion can be cancelled. It is submitted that such a representation was made by the applicant on 28.8.1992. If such a representation is there, it is for the concerned authority to decide about it in accordance with the rules. But on the basis of the subsequent representation ie., the representation that was submitted after an order of

contd....

20/8/92

(12)

.. 4 ..

promotion is passed, the same cannot be held as illegal. It will be only one of cancellation of the order of promotion if the concerned authority decides to accede to such a request of the employee and it is the matter for consideration of the authority in this case.

4. This application was submitted after the 5th respondent joined as ~~Maxx Battery~~ <sup>11th November</sup> in the office of the 2th respondent (5th respondent joined in the office of the 2nd respondent on 9.9.1992 while this application was filed on 21.9.1992). The contention for the applicant is that the 5th respondent should not have been allowed to join before he is relieved. But there is fallacy in this contention. The applicant was on leave even by 9.9.1992. It cannot be stated that the person who was appointed in place of an employee who was on leave cannot be permitted to join. It is stated for the applicant that the applicant was on commuted leave from 25.8.1992 to 30.10.1992. In <sup>case</sup> ~~place~~ of the commuted leave, it is for the concerned authority to pass ~~posting~~ <sup>posting after employee reports for duty</sup> orders. But as during the period of leave of the applicant, he was promoted and ~~was~~ as the 5th respondent <sup>was</sup> posted in his place joined, the question of relief does not arise. In such case, if the employee reports for duty after the expiry of the commuted leave, necessary orders have to be passed by the concerned

4/10/92  
JF

contd....

.. 5 ..

authority. For disposal of this application, it is not necessary to consider as to whether the applicant reported for duty in the office of the 2nd respondent, and if so what transpired thereafter. Even the interim order passed by this Court does not come to the rescue of the applicant as only status-quo was ordered.

5. For the reasons stated above, the O.A. is dismissed with no costs.

(Dictated in the open Court).

*Hr*  
(V.NEELADRI RAO)  
Vice Chairman

*R. Balasubramanian*  
(R.BALASUBRAMANIAN)  
Member (Admn.)

Dated: 10th February, 1993.

*8/2/93*  
Deputy Registrar (J)

To  
1. The Regional Provident Fund Commissioner, Hyderabad.  
2. The Enforcement Officer, Employees Provident Fund, Nellore.  
3. The Assistant Provident Fund Commissioner, Cuddapah.  
4. The Central Provident Fund Commissioner, New Delhi.  
4. The Central Provident Fund Commissioner, New Delhi.  
5. One copy to Mrs. T.H. Sowbhagya Lakshmi, Advocate, 16-2-158,  
Palton, Malakpet, Hyderabad.  
6. One copy to Mr. Vilas V. Afzal purkar, SC for P.F. CAT.Hyd.  
7. One spare copy.

pvm

*5th Feb 1993  
pvm*

TIPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V. NEELADRI RAO : V.C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. CHANDRA SEKHAR REDDY  
: MEMBER (J)

AND

THE HON'BLE MR.

DATED: 10-2-1993

ORDER/JUDGMENT:

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

in

C.A. No. 836/92

T.A. No.

(W.P. No. )

Admitted and Interim directions  
issued.

Allowed

Disposed of with directions

Dismissed as withdrawn

Dismissed

Dismissed for default

Rejected/Ordered

No order as to costs.

pvm

