

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.28/1992

DATE OF JUDGEMENT: 2nd April 1992.

BETWEEN

S.Lazar

.. Applicant

AND

1. The Secretary,  
Min. of Urban Development  
Nirman Bhavan, New Delhi-1
  2. The Superintending Engineer  
Hyderabad Central Circle, CPWD  
Nirman Bhavan, Koti  
Hyderabad-195.
  3. The Executive Engineer  
HCD III, CPWD, Nirman Bhavan  
Kot, Hyderabad-195
  4. Sri VB Sarma, LDC  
O/o The Executive Engineer,  
HCD-II, CPWD, GPOA Bldg.,  
Kendriya Sadan, Hyderabad-195
- .. Respondents

Counsel for the Applicant : Sri Suryanarayana

Counsel for the respondents : Sri NV Ramana, Addl.CGSC

CORAM:

THE HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN)

THE HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

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JUDGEMENT OF THE DIVISION BENCH DELIVERED BY THE  
HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed by the Applicant herein under Section 19 of the Administrative Tribunals Act, to call for the 2nd respondents office order No.6 of 1992 issued in his file No.9(13)/92-HCC/139 dated 9.1.92 and other records connected with it and to quash the same declaring that the order is illegal, null and void.

The facts giving rise to this OA in brief are stated as follows:

1. The applicant was appointed as LDC in the office of the Superintending Engineer, Hyderabad Central Circle, CPWD, Hyderabad. He was confirmed in the post with effect from 4.4.1989 by an order dated 19.7.1991.
2. After the applicant was appointed substantively w.e.f. 4.4.1989, as LDC, the 2nd respondent passed the Office order No.286/1991 on 14.8.1991 posting ~~xxx~~ one Sri P.Job and the applicant herein as LDC-Cum-Cashier in HCD-I and HCD-III of CPWD, Hyderabad respectively. The applicant herein was posted in place of Sri K.Kanthaiah, as the said Sri Kanthaiah had completed his three years tenure as LDC-Cum-Cashier.

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3. A minimum Special Pay of Rs.75/- is paid to the LDC-Cum-Cashiers according to the monthly disbursement of Cash in the office concerned. The applicant was paid Rs.75/- every month accordingly. The said order dated 14.8.1991, appointing the applicant as LDC-Cum-Cashier (HCD II CPWD, Hyd) is exhibited as Annexure A-2 to the OA.

4, While the matter stood thus, after the applicant had served for 5 months, the second respondent again posted the applicant as LDC HCD-II, CPWD, Hyderabad vide order No. 6 of 1992 dated 9.1.92 and appointed the 4th respondent in the place of the applicant as LDC-Cum-Cashier in the office of the third respondents. The said order is exhibited as Annexure A-3 to the OA. (Annexure A-3)  
As indicated above, it is the said order that is questioned in this OA.

5. Counter is filed by the respondents opposing this OA.

6. According to Section 2 - Special Pay - CPWD Manual Vol.I 1972 Edition -Chapter VI,

"Assistants/UDCs/LDCs may be appointed as Cashier at the discretion of the Competent Authority. In the Subordinate offices of the CPWD as a rule, only Lower Division Clerks are employed as cashiers, but, if required, Upper Division Clerks can also be appointed to such a post. The persons who are appointed must be holding either a permanent post or have already been declared quasi-permanent."

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6. It is not indispute, that before appointments as LDC-Cum-Cashiers were made, options were called for from the LDCs working in the Divisions/ Jurisdictions of Superintending Engineer, HCC/CPWD/ Hyderabad for appointing them as LDC-Cum-Cashier for a period of three years. As seen from the Seniority List, there are seniors to the Applicant. Hence, we are not able to understand on what basis the applicant had been selected and appointed as LDC-Cum-Cashier even though seniors to the applicant had also given their option to work as LDC-Cum-Cashier.

7. In the counter filed by the respondents it is clearly pointed out that as many of the Senior LDCs were overlooked and the junior most LDCs were selected for the post and the post of Cashier is a selection one and carries special pay, DPC was conducted for the selection of Cashiers and to rectify the mistake committed in selecting the applicant and another and on the recommendations of the DPC, after cancelling the appointment of the applicant, the 4th respondent herein was appointed in the applicant's place. To say the least, the applicant had been appointed as LDC-Cum-Cashier completely on irrelevant and extraneous grounds. Hence, we hold that the order cancelling the appointment of the applicant as LDC-Cum-Cashier, is valid in the circumstances of the Case.

8. But, in this OA, it is contended on behalf of the applicant that the appointment of the 4th respondent also, extraneous considerations have crept and that in view of this position that the appointment of the 4th respondent as LDC-Cum-Cashier in HCD III, CPWD, Hyderabad is also liable to be set

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aside. Hence, we proceed to consider the validity or otherwise of the appointment of the 4th respondent in the place of the applicant as LDC-Cum-Cashier as per the impugned office order No.6 of 1992 exhibited as Anneuxre.A-3 to the OA.

9. At the outset, we may refer to Page 68 of the extract of CPWD Manual exhibited at R-IV to the Counter filed by the respondents, wherein para 21 reads as follows:

"Inter change of staff between Accounts and correspondent Branches: Upper Division Clerks and Lower Division Clerks, including cashiers serving in a Divisional office shall be interchanged every three years. The period of three years stay in Accounts seat shall be reckoned from 1st April and 1st October of a year. Transfers shall be completed by first May and first November of the year. Such transfers shall be effected by the Superintending Engineer of the Circle concerned. The Superintending Engineers are empowered to grant exemption from Transfers under this rule upto a maximum period of one year where exceptional circumstances warrant."

10. As already pointed out, the applicant had been posted as LDC in the office of the Respondent 3 that HCD III, CPWD, Hyderabad and in his place, the 4th respondent has been appointed. The fact that the 4th respondent had already worked as LDC Cum Cashier in the office of Respondent Nos.2 & 3 for a period of three years is not in dispute in this case. The above said para

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of the CPWD Manual Page 68 enables the Superintending Engineer of the concerned circle to grant exemption from transfer under the said rule upto a maximum period of one year, when exceptional circumstances warrant. No doubt, it is pleaded that the DPC had made selection of the 4th respondent and that the appointment of the 4th respondent was as LDC-Cum-Cashier at HCD III, CPWD, Hyderabad as already pointed out in the place of the applicant. But, what were the exceptional circumstances that had weighed in the mind of DPC in selecting the 4th respondent is not at all pleaded in the counter. Nor any material is placed before us to show that influenced the mind of DPC in selecting the 4th respondent in preference to others even though there were also seniors and juniors to the 4th respondent who had not worked earlier as LDC-Cum-Cashier in the Accounts Branch. So, we are satisfied that the appointment of the 4th respondent also, in the facts and circumstances of the case, is not valid. Hence, the impugned order No.6 of 1992 dated 9.1.92 issued by the Superintending Engineer, Hyderabad Central Circle, CPWD (Respondent 2 herein) is liable to be set aside. || In the result, we set aside the 2nd Respondent's order No.6 of 1992 dated 9.1.92 relating to the 4th respondent's appointment as LDC Cum Cashier in HCD III, CPWD, Hyderabad. But, we make it clear that we <sup>have</sup> not intefered with the order of the second respondent appointing Sri K.Balaiah in the place of Sri P.Job as the said appointment is not questioned before us.

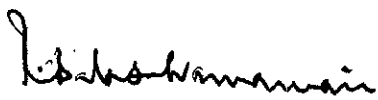
T. C. [Signature]

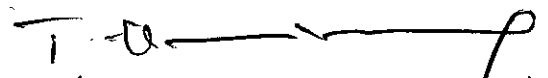
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11. We direct the respondents herein to obtain fresh options from the persons eligible to be appointed as LDC-Cum-Cashier in HCD III, CPWD Hyderabad and appoint a suitable person to the said post in the place of the 4th respondent as per the instructions/Circulars/Rules that govern respondents 1 to 3. The process of appointment for the said post shall be completed within 3 months from the date of communication of this order. Until a fresh appointment is made, we direct the respondents to allow the 4th respondent to continue in the present post at HCD III, CPWD, Hyderabad. The OA is allowed accordingly and in the circumstances of the case, we direct the parties to bear their own costs.

  
(R. BALASUBRAMANIAN)  
Member(A)

  
(T. CHANDRASEKHARA REDDY)  
Member(J)

Dated: 2 APRIL 1992

  
Deputy Registrar, J

To

1. The Secretary, Min. of Urban Development  
Nirman Bhavan, New Delhi-1.
2. The Superintending Engineer, Hyderabad Central Circle,  
CPWD, Nirman Bhavan, Koti Hyderabad-195.
3. The Executive Engineer, HCD III CPWD Nirman Bhavan,  
Koti, Hyderabad-195.
4. One copy to Mr. C. Suryanarayana, Advocate, CAT. Hyd.
5. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT. Hyd.
6. One spare copy.
7. copy to DA (J)

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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

THE HON'BLE MR.

V.C.

AND

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

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY: ✓  
MEMBER (JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

Dated: 2-4-1992. ✓

ORDER / JUDGMENT ✓

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

in

O.A.No.

28/92 ✓

T.A.No.

(W.P.No. )

Admitted and interim directions  
issued

Allowed ✓

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/Rejected.

No order as to costs.

Central Administrative Tribunal  
**DESPATCH**  
10-4-92  
HYDERABAD BENCH.

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