

83

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.283/92

Date of Order: 9.2.94

BETWEEN:

Ch.Suryaprakasa Rao

.. Applicant.

A N D

Union of India rep. by:

1. The Secretary to Government,
Ministry of Commerce (Imports
and Exports), New Delhi.
 2. The Chief Controller of Imports
and Exports, New Delhi.
 3. The Joint Chief Controller of
Imports and Exports, Royapettah,
Madras.
 - 4- The Assistant Chief Controller
of Imports and Exports, T.S.N.Colony,
Visakhapatnam.
- .. Respondents.

Counsel for the Applicant

.. Mr.K.S.R.Anjaneyulu

Counsel for the Respondents

.. Mr.N.V.Ramana

CORAM:

HON'BLE Mr. A.B.GORTHI : MEMBER (ADMN.)

HON'BLE Mr. T.CHANDRASEKHARA REDDY : MEMBER (JUDL.)

8282

ORDER

¶ As per Hon'ble Shri A.B. Gorthi, Member (Admn.) ¶

The applicant was appointed as L.D.C. in the office of the Joint Chief Controller of Imports & Exports in 1964 at Madras. He was transferred to Visakhapatnam. He was promoted as U.D.C. vide office order dt. 21.9.82. On his promotion, he was posted to Hyderabad.

2. In a circular issued by the Controller (Administration) on June 10, 1977, it was laid down as under:- "It may further be noted that in the event of seniors not willing to go on promotion, the juniors who accept the promotion will gain seniority over their seniors who are not willing".

3. This circular was made known to all persons. The applicant herein and some other employees accepted transfer on promotion and consequently claimed seniority over those seniors who expressed their unwillingness to be transferred on promotion. Claiming such seniority the applicant and 4 other similarly situated UDCs filed writ petition No. 8239/83. The said writ petition was ordered as under:-

"Whatever be the peculiarities of the case, the fact is, the petitioners were assured of seniority. They have accepted the challenge. They indicated their willingness to go and did go, in that sense, they acted upon it. They were induced to do so and if they have done so, they must be entitled to the

fruits of the offer and acceptance and if they are suitable, there is no reason shown as to why the assurance in the circular should not concretise in their favour in ascending seniority. In that view, the Departmental Promotion Committee may test and determine their suitability and if the petitioners are found suitable, as per the assurance that has been tendered to them on October, 8, 1983, their seniority should be fixed according to circular on June 10, 1977. The promotion in favour of the respondents at Sl. Nos. 38, 37, 41, 42 and 54 is set aside. The writ petition is ordered accordingly. No costs.

4. Aggrieved by the above order in the writ petition, the official respondents filed writ appeal (No. 116/84). In the writ appeal, all the petitioners in the writ petition and also private respondents therein were shown in the array of respondents. The writ appeal was allowed on 24.12.87 wherein it was repeatedly observed that the petitioners in the writ petition gained seniority on account of their acceptance of transfer on promotion over those senior colleagues who did not accept transfer on promotion.

5. Relevant extracts from the judgement in the writ appeal are reproduced as below:-

"When the writ petitioners acted upon the said promise and proceeded to Hyderabad and worked as UDCs on an adhoc basis it was, in our opinion, not permissible for the respondents, to go back on the said promise. We do not find anything inconsistent

87

with the rules in the senior L.D.Cs. who were unwilling for the transfer, being treated as having become juniors to the writ petitioners. The closest analogy to the situation is the one relating to transfers on request. It is well known that when a person goes on request transfer from one place to another, he may be validly obliged to forego his seniority on such transfer. Such a loss of seniority is, however, not involved if the transfer is purely on administrative grounds. In the present case, the position was that the administrative transfer was not accepted by the seniors in spite of their being told that they would lose their seniority if their juniors opted to go on transfer to Hyderabad. In our view, in the context of the specific warning given in the circular dated 10.6.1977, the seniors must be treated as having voluntarily given up their seniority in the category of L.D.C.s. in favour of such of their juniors who were willing to go to Hyderabad to work as U.D.Cs on an adhoc basis. Looking at the matter from another angle, the case can be treated as a voluntary act on the part of the senior L.D.Cs. giving up their seniority in favour of the writ petitioners. We do not find anything wrong or illegal in the circular dated 10.6.1977 when it stated that senior L.D.Cs. who are unwilling to go on adhoc transfer as U.D.Cs. to Hyderabad would be treated as having foregone their seniority in favour of all their juniors who opt to go on such transfer. Whether the circular dated 10.6.1977 is treated as a promise in favour of the writ petitioners from which the authorities cannot be permitted to go back, or whether the unwillingness

Prash

of the senior L.D.Cs. is treated as a voluntary surrender by them of their seniority in favour of the writ petitioners, there is, in our opinion, nothing illegal or objectionable in treating the writ petitioners as senior to those L.D.Cs. who were unwilling for the transfer.

○ "The reliance by the authorities on the third paragraph in the above said circular dated 10.6.1977 is, as we shall point out presently, wholly inappropriate in the above context."

○ "All that the third paragraph points out is that the period of adhoc service rendered by such transferees in the category of U.D.Cs. will not be counted for their seniority in that category. It has no relevance so far as the seniority in the category of L.D.Cs. is concerned. That question is squarely covered by paragraph 2 of the above said circular dated 10.6.1977 which clearly stipulates that junior L.D.Cs. who go on transfer to Hyderabad on promotion as adhoc U.D.Cs. will be treated as seniors in the category of L.D.Cs. against those senior L.D.Cs. who refused to go on transfer to Hyderabad. The respondents are therefore clearly in error in relying on the third paragraph of the above said circular and in omitting to give effect to paragraph 2 of the said circular. In our view, the effect of paragraph 2 is to give seniority to the petitioners in the category of L.D.Cs. over other L.D.Cs. who were their seniors and who were not willing to go on adhoc transfer as U.D.Cs. to Hyderabad in 1977 subsequently."

○ "If, therefore, the writ petitioners were to be treated as seniors in the category of L.D.Cs. to those L.D.Cs. who were unwilling for the transfer, the department was clearly in error in not sending their names for consideration by the Departmental Promotion Committee in preference to those L.D.Cs. who were unwilling for

P5D2W

to Hyderabad. To the extent that the petitioners became seniors in the category of L.D.Cs. to such others who were not willing to go on transfer, the seniority list, if any, obtaining in the department for L.D.s. was liable to be modified and should have been modified by showing the petitioners as seniors to those L.D.Cs. who were unwilling for the transfer. This modification in the seniority is the result of the circular dated 10.6.1977 and also due to the acceptance by the senior L.D.Cs. to forego their seniority in favour of the petitioners in the category of L.D.Cs. If the names of the petitioners were sent to the D.P.C. in preference to those senior L.D.Cs. who were unwilling for the transfer, the question of reversion of the writ petitioners would not have obviously arisen. We therefore, hold that the reversion of the writ petitioners was illegal and violative of their rights under Articles 14 and 16 of the Constitution of India, to seniority in the category of L.D.Cs.

Therefore, it will now become necessary to send the names of the writ petitioners to the D.P.C. for consideration of their cases for regular appointment as U.D.Cs. As stated above this exercise should have been done much earlier even before the names of the senior L.D.Cs. who were unwilling for the transfer were considered by the Departmental Promotion Committee. During the course of arguments, we were told that the names of two of the writ petitioners have already been cleared by the D.P.C. subsequently. It will therefore be necessary to send the names of remaining writ petitioners to the D.P.C. for their recommendation for regular appointment of those writ petitioners as U.D.Cs. The D.P.C. as well as the respondents shall re-examine the matter on the basis that the writ petitioners are seniors to such of the L.D.Cs. who were unwilling for transfer to Hyderabad. The D.P.C. while giving the ranking to the employees obviously

(88)

considers the seniority in the category of L.D.Cs. as one of the factors apart from suitability. In its previous recommendation, it did not bear in mind that the writ petitioners had become seniors in the category of L.D.Cs. over the L.D.Cs. who were not willing for the transfer. Now the D.P.C. will have to re-examine the matter of ranking (in the category UDCs) by treating the writ petitioners as seniors in the category of L.D.Cs. over such of the L.D.Cs. who were not willing for the transfer. After keeping these aspects in mind, the D.P.C. will give its recommendation for regularisation of the writ petitioners. So far as the length of service in the category of U.D.Cs. is concerned it will be for the department to consider what part of the adhoc service rendered by the writ petitioners in the category of U.D.Cs. is to be taken into account. This question naturally arises because of the fact that even though the names of the petitioners should have been considered by the D.P.C. much earlier, their names were not unfortunately sent to the D.P.C. earlier.

"In the result, we direct that the petitioners should not revert from the category of U.D.Cs. We also direct that the names of such of the petitioners who have not been cleared by the D.P.C. should be sent to the D.P.C. for their recommendation in the light of the observations made above. The ranking of all the writ petitioners as UDCs will be re-examined. So far as the adhoc service rendered by the writ petitioners in the category of U.D.Cs. is concerned, it will be for the department to consider what part of the said service, if any, should be given credit to in the category of U.D.Cs. The writ appeal is disposed of with the above directions. There shall be no order as to costs."

6. From a careful reading of the afore-said judgements of the A.P. High Court it would be more than apparent that the seniority of the petitioners (including applicant herein) over those UDCs who expressed their willingness to be transferred on promotion was clearly upheld. As some of the petitioners in the writ petition were promoted on an adhoc basis a direction was given to the official respondents to the effect that the names of such of the petitioners who were not considered by the D.P.C. should be sent to the D.P.C. for assessing their suitability for promotion. The ranking of the petitioners as UDCs was to be re-examined keeping in view the observations made in the judgement.

7. In compliance with the afore said judgement, the Department prepared the draft seniority list and published the same vide circular dt. 27.3.1989. The name of the applicant figures at serial No. 26 over and above the 6 individuals who were the private respondents in the writ petition. The applicant had no complaint with his position in the draft seniority list because it was fixed in compliance with and in conformity with the judgement of the A.P. High Court in the writ petition and the writ appeal.

8. The applicant's grievance is against the final seniority list published vide circular dt. 15.7.91, wherein the applicant's name is shown at Sl. 65 and that of Sri. K.L. Narasimham and others who were respondents in the writ petition and who were shown as juniors to the applicant

in the draft seniority list published on 27.3.1989 had been shown above that of the applicant at Sl. No.31,32, 33 etc.,

9. The respondents' explanation is that in the matter of fixation of seniority of the employees, the seniority of the employees in the feeder grade was made the basis. Keeping in view the seniority in the feeder grade, the review D.P.C. which was held as directed by the High Court of A.P. found that the applicant was not senior enough to come within the zone of consideration for promotion to the post of UDC on a regular basis. This is rather amazing because in both the writ petition and the writ appeal, which were decided by the A.P. High Court, the applicant was declared as senior to K.L. Narasimham and others. The issue thus stood decided by the pronouncements of the A.P. High Court. We are informed that an SLP filed by the official respondents was rejected.

10. In view of the afore stated, we find no justification whatsoever for the official respondents to traverse beyond what has been ordered by the A.P. High Court in the writ petition and writ appeal. Consequently, we must re-iterate that the applicant shall be deemed to be senior to K.L.Narasimham, G.K.Padmanabhan, T.D.Devaraju, M.S.Mani, B.Ramamurthy, and A.S. Sivaraman who were the private respondents in the writ petition. It was not the case of the department


P9 Jw

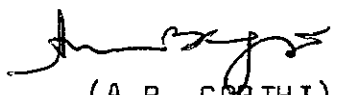
that the applicant was found unsuitable for promotion either to the post of UDC or to the post of Licensing Assistant. The applicant's promotion and his position as a UDC was already determined by the judgement of the A.P. High Court. As regards promotion to the post of Licensing Assistant, it was ordered on an adhoc basis with effect from 5.1.1989. He continued in the post of adhoc Licensing Assistant till 25.2.1992, when the impugned order reverting him as UDC with immediate effect was passed. The reversion of the applicant was ordered for no other reason than that he was not senior enough to hold the post, in view of the final seniority list promulgated vide order dt.15.7.91 as already noted by us. The seniority position of the applicant reflected in the seniority list is contrary to the seniority as determined by the A.P. High Court.

11. In view of the afore-stated, we find that the Department had initially, correctly fixed the seniority of the applicant over that of K.L.Narasimham and others in the draft seniority list circulated vide circular dt. 27.3.87. The respondents are therefore directed to maintain the seniority of the applicant as shown in the draft seniority list dt. 27.3.1989. Keeping in view the seniority position of the applicant, his reversion from the post of Licensing Assistant to that of UDC also cannot be upheld and the same is therefore set aside

with all consequential benefits in accordance with law.

12. The application is allowed as above
no order as to costs.


(T. CHANDRASEKHARA REDDY)
MEMBER (JUDL.)


(A.B. GORTHI)
MEMBER (ADMN.)

Dated : The 9th February 94.
(Dictated in Open Court)

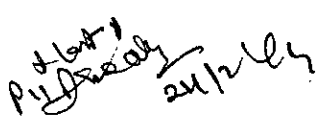

Deputy Registrar(J)C.C.

spr

To

1. The Secretary to Government, Union of India,
Ministry of Commerce (Imports and Exports), New Delhi.
2. The Chief Controller of Imports and Exports, New Delhi.
3. The Joint Chief Controller of Imports and Exports,
Royapettah, Madras.
4. The Assistant Chief Controller of Imports and Exports,
T.S.N.Colony, visakhpatnam.
5. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.
6. One copy to Mr.N.v.Ramana, Addl.CGSC.CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

pvm


24/2/94

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (A)

AND

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

AND

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

Dated: 9-2-1994.

~~ORDER~~ JUDGMENT:

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

in

O.A.No.

283/92

T.A.No.

(W.P.No.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions.

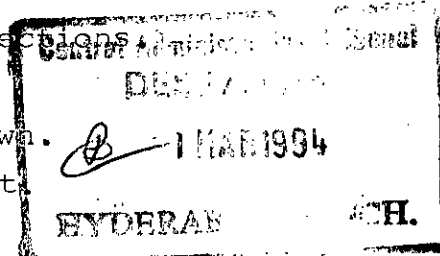
Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.



pvm

*C.O.
Pl. concerning the Coram file
the withdrawal of them with the
last sheet by signature
A. Th.*

*Jan
24/2/94*