

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH::AT HYD.

O.A.No.420/92.

Date of Judgment: 22.7.1992

Between:

Y. Yadagiri .. Applicant

Vs.

The Director,  
Defence Electronics Research  
Laboratory, Hyderabad. .. Respondent

For the applicant : Sri V.R. Bhadraiah, Advocate  
For the respondent : Sri Jagan Mohan Reddy, Addl. CGSC

CORAM:

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

THE HON'BLE SRI C.J. ROY, MEMBER (JUDL.)

.....

{ JUDGMENT OF THE BENCH AS PER HON'BLE SRI C.J. ROY, MEMBER (J) }

This application is filed under sec. 19 of the Administrative Tribunals Act, 1985 for a direction to the respondent to consider the name of the applicant under SC quota for the post of Senior Stores Superintendent on officiating basis in pursuance of the zonal DPC held on 15-4-1992 with all benefits and consequential benefits and for passing such other or further orders.

2. The facts of the case are that the applicant is working as Stores Superintendent in respondent organisation since, 1984 and discharging his duties with utmost satisfaction of his higher authorities. The applicant belongs to Scheduled Caste community. The respondent organisation constituted a Zonal D.P.C. to fill up the vacancies of Senior Stores Superintendent and accordingly a meeting of the DPC was held on 15-4-1992 and in pursuance of the said meeting promotions were given to other candidates. It is stated that the present post is

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to be filled on seniority basis by following reservation policy. It is averred that there are five vacancies of Senior Stores Superintendents and that one Sri Gnaneshwar who belongs to S.C. category is at Serial No.1. It is also stated that his promotion was not considered due to pendency of certain disciplinary proceedings against him and therefore, the said post was kept unfilled by keeping the proceedings of DPC in a sealed cover. The applicant avers that he is the next candidate eligible under the category of S.C. and is entitled to be considered for promotion in place of Sri Gnaneshwar. It is alleged that according to rules in force when a post is kept under sealed cover, the same post may be given to next eligible candidate on officiating basis, till he is exonerated from all the charges. The applicant states that the said disciplinary proceedings against Sri Gnaneshwar are pending since four years and that there is no hope of completing the proceedings in the near future and therefore alleges that he is entitled to get promotion to the said post of Senior Stores Superintendent. It is alleged that the said action of respondent is violative of Articles 15(4) and 16(4) of the Constitution of India. The applicant referred the instructions issued by the Government vide Memo No.39/3/59-Estt.(A) dt. 31.8.1960 wherein it is stated that "in cases of persons where the findings of the Departmental Promotion Committee are kept in a sealed cover because they are under suspension or vigilance enquiries are pending against them, a vacancy should be kept reserved for them and it should be filled only on officiating basis till the finalization of the departmental proceedings against him," and in the light of the said instructions he claims that he being next eligible candidate be given promotion on officiating basis. The applicant alleged that he made representations to the respondent but were turning down. Hence applicant filed the present O.A.

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P. J. M.

3. This O.A. was coming for admission hearing and was listed on 15.5.1992, 8.6.1992, 10.6.1992 and 8.7.1992. While adjourning the matter, the respondent was directed to file counter, but no counter is filed. However, the learned counsel for respondent Sri Jagan Mohan Reddy, prepared to argue the matter without filing the counter and therefore we <sup>have</sup> heard ~~on~~ the rival sides, viz. Sri V.R. Bhadracharya learned counsel for applicant and Sri Jagan Mohan Reddy, learned counsel for respondents.

4. The learned counsel for respondent, oppose the admission itself on the ground that the applicant cannot insist the department to fill-up the vacant post and that it is the discretion of executives whether to fill the post or not <sup>depending upon</sup> ~~depend on~~ various circumstances. It can also be seen that the learned counsel for applicant that he relies on the instructions issued by the Government vide O.M.No.39/3/59-Estt.(A) dt. 31.8.1960 which reads -

"in cases of persons where the findings of the Departmental Promotion Committee are kept in sealed cover because they are under suspension or vigilance enquiries are pending against them, a vacancy should be kept reserved for them and it should be filled only on officiating basis till the finalization of the departmental proceedings. ... "

But no material is placed before us that the department shall fill up the vacancies. But <sup>The applicant</sup> claims that it is binding on the respondent to fill up the vacant post. It is well settled law, as held by various Courts, that it is the sole discretion of the executives <sup>to</sup> to take a decision whether to fill up <sup>the</sup> post or not. ~~In case~~ <sup>however</sup> if they decide to fill-up such vacancies, then it is mandatory on them to fill up the said vacancy on officiating basis as per rules. But, it is not so in the instant case. In the absence of any decision

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Copy to:-

1. The Director, Defence Electronics Research Laboratory, Hyderabad.
2. One copy to Sri. V.R.Bhadraiah, advocate, 1-7-203/12/4/5, Gemini colony Chowrasta, Hyd-bad-48.
3. One copy to Sri.MJagan Mohan Reddy, Adml. CGSC, CAT, Hyd.
4. One copy to Hon'ble Mr. C.J.Roy, Judicial Member, CAT, Hyd.
5. One spare copy.

Rsm/-


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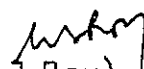
by the employer on this aspect, the question of filling the said post on officiating basis as referred <sup>+</sup>supra, does not arise. However, in such a situation, we cannot direct the Respondent to fill-up the post and intervene in the functioning of executives.

5. It is an admitted fact that the said vacancy is kept unfilled by the eligible candidate due to pendency of certain disciplinary proceedings against Sri Gnaneshwar and also that the proceedings of the DPC were held on 15-4-92; they have adopted the sealed cover procedure. The instructions are also very clear that the said post shall be kept reserved for them, but the hitch is that if they want to fill, they should fill only on officiating basis. More so, the promotion is <sup>and</sup> not a matter of right. The Respondents can fill this post on officiating basis if they choose so.

6. In view of the above, we are of the opinion that the applicant failed to show any material on record that the respondents acted in violation of constitutional provisions. The applicant has not made out any case. This application is devoid of merits.

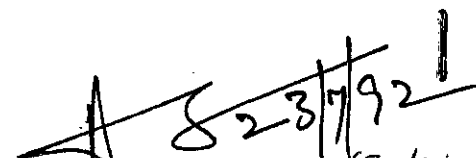
7. Accordingly the O.A. is dismissed at the admission stage. No order as to costs.

  
(R. Balasubramanian)  
Member (A)

  
(C. J. Roy)  
Member (J)

Date: 22nd July, 1992.

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Deputy Registrar (J. U.)

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8/23/92 (5)

O.A. 423/92

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH.

THE HON'BLE MR.

AND

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

AND

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

AND

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

Dated: 22/7/1992

ORDER / JUDGMENT

~~I.A./C.A./M.A. No.~~

in

O.A.No.

423/92 ✓

~~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.

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