

(23)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No. 710 of 1993.

(PER HON'BLE SHRI JUSTICE B.C.SAKSENA, VICE-CHAIRMAN,
ALLAHABAD BENCH.

Date: SEPTEMBER, 1996.

Between:

Shaik Harun Rasheed. .. Applicant.

And

Union of India represented by:

1. The Secretary to Government,
Ministry of Finance (Depart-
Board of Customs & Excise),
New Delhi.
2. The Collector of Central
Excise, Basheer Bagh,
Hyderabad.
3. The Collector of Central
Excise, Guntur. .. Respondents.

Counsel for the Applicant: Sri K.S.R.Anjaneyulu.

Counsel for the Respondents: Sri N.R.Devaraj, Senior
Standing counsel for
Respondents.

CORAM:

HON'BLE SHRI JUSTICE B.C.SAKSENA, VICE-CHAIRMAN,
(ALLAHABAD BENCH) MEMBER, J

HON'BLE SHRI R.RANGARAJAN, MEMBER (A)

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We have heard the learned counsel for
the parties. We have been taken through their res-
pective pleadings. The pleadings would be referred
to while dealing with the submissions made by the
learned counsel.

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2. Through this O.A., the applicant challenges the Order dated 26-5-1993 passed by Respondent No.1 on the ground that it is arbitrary and discriminatory and untenable and the respondents be directed to extend the benefit of the Order passed by the Tribunal in O.A.No.689/87 dated 16-2-1989 (Annexure -4) and to ^{further} direct the respondents to fix the seniority of the applicant in L.D.C. Cadre with effect from 13-4-1982, the date on which he was declared successful in the Typewriting Examination with all consequential benefits.

3. The applicant's case in short is that he is presently working as U.D.C., in the Office of the Collector, Central Excise, Guntur. He was initially appointed as Sepoy in the Guntur Central Excise and he was appointed as L.D.C. on ad hoc basis by an Order dated 19-12-1981 (Annexure 1). The applicant further states that he passed the Typewriting Examination conducted on 29-3-1982 as per Collector, Central Excise Guntur Letter d/13-4-1982 (Annexure -2). The applicant asserts that he continuously worked on the post of L.D.C., without any break on ad hoc basis with effect from 19-10-1981 and also drew his annual increments. The applicant was regularly appointed as L.D.C., by an Order dated 2-2-1985 (Annexure -3) against 5% quota reservation for Educationally qualified Group 'D' staff on the basis of Departmental qualifying examination. In short the applicant's claim is that he should be allowed seniority from the date of ad hoc promotion viz., 19-10-1981

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and not from the date of his regular appointment as made by the Order dated 2-2-1985.

4. The learned counsel for the applicant laid great stress on the decision rendered in O.A.689/87 by a Division Bench of this Tribunal. In that decision it was held that the applicant therein was initially appointed against 90% of the vacancies of direct recruits on ad hoc basis. He passed the Typewriting Examination in the month of January, 1983 and thus became qualified to hold the post of L.D.C., against 5% of the vacancies in January, 1983.

5. We have carefully gone through the said decision. In our considered opinion, on the facts of the present case, it is difficult to hold that the applicant ~~could~~ can count his seniority in the cadre of L.D.Cs., from 13-4-1982 when he passed the Typewriting Examination. In this O.A., ^{avermant} ~~no doubt~~, there is an ~~exception~~ that there were vacancies available under 10% quota reserved for Group "D" officials and the applicant would be hoping for a favourable decision to count his seniority from 13-2-1982 in the cadre of L.D.Cs. The Order promoting the applicant on ad hoc basis as L.D.C., has been filed as an Annexure 1 to the O.A., The said Order was passed in terms of orders contained in Board's letter dated 8th July, 1981. The respondents along with their counter-affidavit could not place the said letter dated 8th July, 1981 on record. The

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learned counsel for the Respondents has placed a copy of the said letter for our consideration when the O.A., was being heard. A perusal of that letter clearly shows that since number of vacancies in the cadre of L.D.Cs.,/existed against 90% quota and the Staff Selection Commission was unable to sponsor the requisite number of candidates, the Central Board of Excise and Customs through this letter dated 8th July, 1981 allowed the Cadre Controlling Authorities to fill up these vacancies on ad hoc basis from amongst the educationally qualified Group 'D' employees till such time the regular candidates become available from the Staff Selection Commission. A further condition was stipulated in the said letter that Group "D" employees so promoted will not request for regularisation against the posts to which they were appointed, that an undertaking to abide to the conditions aforesaid, were required to be obtained and the applicant gave such an undertaking. In view of the circumstance that the applicant's ad hoc promotion was against 90% of vacancies meant for direct recruits, would clearly go to show that his ad hoc appointment was not against 5% vacancies meant for Educationally qualified Group "D" employees, since the Order dated 19-10-1981 was in terms of the letter dated 8-7-1981 of the Central Board of Excise and Customs. The conditions stipulated in the communication latter ~~indication~~ of the Board would govern the situation.

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Further, the Order for regular promotion of the applicant under Annexure-3 also goes to show that it was made on the basis of the Departmental qualifying Examination against 5% quota reserved for Educationally qualified Group "D" staff. Thus, the applicant's promotion against the quota meant for Educationally qualified Group "D" employees was considered only after holding the Departmental qualifying examination. His ad hoc promotion in our considered opinion would not ~~count~~ ^{count,} and has not been rightly counted, for purpose of assigning his seniority.

6. The learned counsel for the applicant submitted that when the ad hoc promotion was made there were vacancies available against 10% quota. 5% of vacancies was meant for Educationally qualified officials for the post of L.D.Cs., from group "D" staff. This contention is wholly irrelevant since as noted hereinabove the applicant's promotion clearly has ~~not been~~ ^{been} made since large number of vacancies against 90% quota for direct recruits were available for the reasons aforementioned. The applicant's ad hoc promotion clearly had not been made against 5% quota to which the applicant was entitled.

7. The learned counsel for the applicant cited in support of his submissions for counting ad hoc service towards seniority the decision reported in DIRECT RECRUITS CLASS-II ENGINEERS OFFICERS' ASSOCIATION AND OTHERS vs. STATE OF MAHARASHTRA & OTHERS (1990(2)SLJ.40.)

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The learned counsel specifically relied on proposition (C) indicated in paragraph 44 wherein the proposition of law laid down in the said case have been summed up. Proposition "C" reads thus:

"When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly."

We are unable to appreciate how this proposition could be relied upon for the claim for appointment of ad hoc service towards seniority by the applicant. The quota of 90% for direct recruits and 5% for Educationally qualified Group "D" Employees has, no doubt, been laid down ~~by~~ ~~by~~ executive instructions. The applicant was entitled to promotion only against the aforesaid 5% quota. His ad hoc promotion against ~~5%~~ posts falling within the quota for direct recruitment was clearly not an ad hoc promotion according to rules. Even the proposition (1/3) in the aforesaid decision will not be attracted, ~~Since~~ Since the applicant's ad hoc promotion was not made by following the procedure laid down by the Rules. It is not a case of continuous ~~ad hoc~~ officiating appointment followed by regularisation. The applicant has not been given any officiating promotion but was promoted on ad hoc basis in the administrative exigencies and clearly by reason

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of the availability of vacancies of 90% quota meant for direct recruits. Under the Rules, promotion of Group "D" officials against 5% quota meant for Educationally qualified ~~can be~~ employees ~~was~~ on the basis of Departmental qualifying examination. The applicant passed the Departmental qualifying Examination against the 5% quota and was promoted on regular basis by an Order dated 2-2-1985.

8. The learned counsel for the applicant cited a decision ~~reported~~ in INDERJIT LUTHRA & ANOTHER Vs. UNION OF INDIA & OTHERS (1993(1)ATJ 48.) In the said case reliance was placed on proposition "B" in para 44 of the Supreme Court decision (1990(2)SLJ 40 supra) ~~we find~~ ~~Further he states~~ that the case proceeded on the basis of a decision in O.A. 984/86 (DINA NATH & OTHERS Vs. UNION OF INDIA & OTHERS) decided by the Principal Bench. As a matter of fact in Paragraph 4 of the said decision (1993(1)ATJ 48) the learned counsel for the respondents is ~~was~~ reported to have conceded that the resistance to the claim of applicants would be of little consequence and ineffectual in the circumstances the respondents are placed in. In our opinion therefore, the applicant cannot draw any support from the said decision.

9. The learned counsel for the applicant also cited a decision reported in G.P.DOVAL v. CHIEF SECRETARY, GOVERNMENT OF U.P. (A.I.R. 1984 S.C.1527). In the said case, it was laid down that officiating service prior to

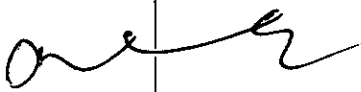
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confirmation cannot be ignored unless contrary rule is shown. The said decision has no application to the facts of the present case. The applicant was neither given officiating promotion nor has been assigned seniority from the date of confirmation.

10. This leaves us with the second contention advanced by the learned counsel for the applicant. The applicant prays that the benefit given by the Order passed in O.A.689/87 be extended to him. We have carefully perused the said decision. But we are unable to agree with the view taken therein. The Typewriting Examination has to be passed within three months by a L.D.C. promoted on ad hoc basis. It is only a requirement for continuing the ad hoc promotion. If the Typewriting Test is not passed, his ad hoc promotion cannot be permitted to continue. As noted hereinabove the applicant passed the Departmental Qualifying Examination, which is the only mode for promotion under the Rules, only in the year 1985. He is entitled to be assigned seniority only from the date of his regular promotion.

11. In view of the above, there is no merit in the O.A. It is accordingly dismissed. No order as to costs.


R. RANGARAJAN,
MEMBER (A)


B.C. SAKSENA, J
MEMBER, J

Date: 10th Sep. 1986.
Pronounced in open Court.

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

Hon Justice B. C. Saxena, J.C.
THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 10/9/96

ORDER/JUDGEMENT ✓
R.A./C.P./M.A.NO.

in
D.A.NO. 710/93

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
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ORDERED/REJECTED
NO ORDER AS TO COSTS.

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Central Administrative Tribunal
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- 7 OCT 1996
HYDERABAD BENCH