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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

C.A.No. 1111/94

Order No. 102/94

BETWEEN :

P.Raghu Ram

.. Applicant.

A N D

1. The Regional Director,
Employees State Insurance Corporation,
Regional Office. 5-9-93, Hill Fort Road,
Hyderabad, AP,.
2. K.V.R.Prasad, Adhoc Assistant,
C/o. Employees State Insurance
Corporation, 5-9-23, Hill Fort,
Road, Hyderabad.
3. G.Venkateshwar Rao, Adhoc Assistant,
C/o. Employees State Insurance Corporation,
5-9-23, Hill Fort, Hyderabad. .. Respondents.

Counsel for the Applicant

.. Mr. M. Rama Rao

Counsel for the Respondents

.. Mr. N. R. Devraj

CORAM:

HON'BLE Mr. JUSTICE V. NEELADRI RAO : VICE-CHAIRMAN

HON'BLE Mr. R. RANGARAJAN : MEMBER (ADMN.)

(82)

O.A.NO.1442/93.

JUDGMENT

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri M.Rama Rao, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. This OA was filed praying for a declaration that the action of the respondent-I in not promoting the applicant while considering the case of his juniors for promotion to the post of adhoc Assistant/Head Clerk in the category of UDCs which is a feeder cadre for Assistants/Head Clerks^{is illegal} and for a direction to the Respondent-I to promote the applicant to the post of adhoc Assistant/Head Clerk from the date on which his junior was promoted through the proceedings dated 14.7.1993 and for all consequential benefits.

3. The facts which give rise to this OA are as under:-

The applicant stated his social status as Scheduled Tribe in the application which he filed for the post of LDC in Employees State Insurance Corporation, ~~Hyderabad~~ (ESIC), Hyderabad. The applicant was recruited as LDC in ESIC in the ST quota. He also got promotion as UDC in the ST quota.

4. In 1986, the applicant applied for the post of Assistant Regional Director in ESIC. He was selected for the said post. It is stated that the UPSC, ~~got~~ while getting the antecedents of the applicant verified, ~~and it~~ was informed that the applicant is not a ST and accordingly the applicant was not given the order of appointment ^{for the post of} ~~appointing him as~~ Assistant Regional Director of ESIC. On the other hand, the UPSC communicated to ESIC that the applicant is not a

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ST candidate. Thereupon the said fact was communicated to the 1st respondent and then he ~~was~~ issued a show cause notice on 17.11.1988 for taking disciplinary action by alleging that the applicant got job in ST quota by falsely describing that he is a ST candidate. Thereupon the applicant had given the reply on 23.12.1988 to the above show cause notice and stated inter-alia as under in para-5 of the said reply:-

"In short, I submit that the proceedings now initiated suffer from arbitrariness and capricious exercise of power and are per se illegal. However, I may be permitted to submit that if for some reasons the Govt. of Andhra Pradesh had deleted the said community from the list of S.T. Communities, the same could be given effect to from the date the G.O. was issued. They cannot at any rate re-open an issue which has been acted upon in goodfaith, that too, a decade back. Yet I will have no grievance if my case is considered as an OC candidate and I am re-adjusted against the quota intended for the OC Community. I am certain that this will be considered sympathetically. I may make it clear that it is not my intention to take advantage or deprive a member of the ST community of his right for the post under reserved quota."

(This original reply was produced for perusal at the time of hearing of the arguments.)

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The learned counsel for the applicant conceded that it is the reply that was given by the applicant to the show-cause notice dated 17.11.1988. (The learned standing counsel for the respondents submitted that a copy of the said reply will be furnished for the purpose of the record. Hence, this original reply is returned to him.)

5. The District Collector of Hyderabad District cancelled the caste certificate given to the applicant ~~which was~~ to the effect that the applicant is a ST candidate. It is also stated for the applicant that the caste certificates of his sisters and brothers were also cancelled by the revenue authorities. The applicant and his brothers and sisters filed Writ Petition No. 15786/90 on the file of Andhra Pradesh High Court challenging the proceedings dated 17.10.1989 of the District Collector whereby the caste certificates of the petitioners therein were cancelled. In WPMP 20252/90 in the said Writ Petition, the High Court passed the following interim order dated 22.4.1991:-

"IT IS ORDERED that the respondent herein be and hereby is directed not to remove the petitioner No.1 from service, in pursuance of the proceedings dt.17.10.89 bearing No.D5/5690/89 issued by the Collector, Ranga Reddy District, pending further orders on this petition."

6. The A.P. State Government issued G.O.Ms.No.245/77 notifying 'Wanjari' which is synonym to 'Sugali' as ST.

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On 23.2.1979, the A.P. State Government issued G.O.Ms. No.44 of Social Welfare (E) Department, deleting "Wanjari" occurred in Column-5 against Sl.No.24 in Column (1) thereof in the GOMs No.245, SW dated 30.6.1977. The GOMs 44 dated 23.2.1979 was challenged in the Writ Petition No.3490/79. The said writ petition was disposed of on 13.8.1979 by holding that even after the said deletion the "Wanjari", a tribe, would continue to be notified ^{Schedule tribe} as ~~ST~~ as it comes under "Sugali" and the "Wanjari" caste is not ^a notified ~~as~~ ^L ~~ST~~ ^{Schedule tribe}.

7. The question as to whether the applicant belongs to Wanjari caste or Wanjari tribe is ^a the matter for consideration in the WP 15786/90 and it is ^{not} the matter for consideration in this OA for, it is merely contended that without revising the seniority list, the case of the applicant for promotion cannot be ignored and that he cannot be ~~allowed to~~ be superseded by his juniors in regard to the promotion.

8. It is urged for the respondents that even the applicant stated in his reply dated 23.12.1988 that his case may be considered by treating him as OC candidate, and on that basis it was noticed that as an OC candidate in the UDC cadre, the applicant has to be placed lower down in the seniority list and hence his turn had not yet come for promotion to the post of Assistant/Head Clerk. But Shri Rama ~~XXXX~~ Rao, learned counsel for the applicant stated that without revising the seniority list and when the applicant is ^{as per present seniority list} senior most, and when his juniors were promoted, he ^{should} ~~would~~ have been promoted to the post of Assistant/Head Clerk.

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9. The jurisdiction that is being exercised by this Tribunal is under Article 226 of the Constitution. It is well settled that even if there is any force in the contention for ~~the~~ ^{an} applicant that there is an irregularity or illegality as contended, still the relief need not be granted if it has to be denied on the ground of equity. In this case, the revenue authority ^{ie.,} the District Collector already cancelled the caste certificate of the applicant. The same is challenged in the Writ Petition and it is not yet established for the applicant that he belongs to ST. When the matter is at that stage, we feel that it will not be equitable to give a direction to the respondent-I to promote the applicant, when his turn had not come, if he is only treated as OC candidate for, it would be giving a relief ^{which} to the applicant will not be entitled to, if in case he could not ultimately establish that he is an ST candidate. But if the applicant could establish that he belongs to ST community, then unless his interest is safeguarded, prejudice will be caused to him in case this OA is dismissed. So, we feel that in the circumstances it is proper to pass the following order:-

If ultimately the applicant establishes that he belongs to ST community, ~~then~~ he should be given promotion to the post of Assistant/Head Clerk with effect ~~from the date on which he was promoted to the post of Assistant/Head Clerk~~ from the date on which

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16/2/20

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. RANARAJAN : MEMBER
(ADMN)

Dated: 10-2-1994.

~~ORDER~~/JUDGMENT:

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

in

O.A.No.

1442/93.

T.A.No.

(W.F.N)

Admitted and Interim Dire
issued.

Allowed.

Disposed of with Dire

Dismissed.

Dismissed as withd

Dismissed for Def

Rejected/Ordere

No order as to cc