

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A. 1233/94

Date of decision: 11-9-97

Between:

1. M. Eshwariah
2. Ch. K.L.Rao
3. S. Narsing Rao
4. D.Srinivas
5. N.Jagdish
6. K.Beerappa
7. D.Venkateshwarlu
8. V.V.Ramana Reddy
9. Ch. N.Reddy
10. B.Narsimlu
11. A.Kannayya Reddy
12. D.Samba Siva Rao
13. Syed Khadeer
14. B.Rajeswar
15. S.Raja Reddy
16. Tulsi Das

... Applicants

(Counsel for applicants: Mr.BSA Satyanarayana)
And

1. Union of India rep. by
Director General, Posts,
New Delhi.
2. Chief Postmaster General,
A.P. Circle,
Hyderabad.
3. Superintendent,
RMS 'Z' Division,
Hyderabad.
4. Senior Supdt., RMS.,
Hyderabad Sorting Division,
Hyderabad.
5. V.Ramesham, HSG II, SA,
Sub Record Office,
RMS, 2 Division,
Karimnagar.

... Respondents

(Counsel for Respondents Mr.K. Bhaskara Rao)

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HON'BLE SHRI H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

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JUDGEMENT

The applicants are aggrieved about the higher pay fixed and allowed to be drawn by Respondent-5, R.Ramesham, who, according to the applicants, was junior to all of them, and ----- for direction to Respondent-2 to issue orders stepping up the pay of the applicants.

2. The applicants were recruited as Sorting Assistants between 16.2.63 and 1.4.66. Respondent-5 was recruited on 16.10.67. All were recruited as Sorting Assistants in the erstwhile RMS 'Z' Division which was subsequently split into two separate Divisions in July, 1974. While Respondent-5 opted to remain in RMS 'Z' Division, the applicants chose to go over to Hyderabad Sorting Division which was created on bifurcation of the erstwhile RMS 'Z' Division.

3. A vacancy of Sub Record Officer, Karimnagar RMS, arose on account of its upgradation on 1.1.79. For the immediate filling up of the post, Superintendent, RMS 'Z' Division ordered R-5, who was working at Karimnagar, to officiate against the said post. In order to terminate this purely temporary local arrangement orders were issued by the Director of Postal Services on 10.8.79 allotting 7 selected officials in the Circle to RMS 'Z' Division, whereupon Superintendent, RMS 'Z' Division posted 2 of those selected-and-allotted officials to Karimnagar to fill up two existing vacancies, including the post of SRO. However, the officials allotted to it did not join RMS 'Z' Division and instead requested for re-allotment to their parent (Hyderabad Sorting) Division. Subsequently, too a number of Sorting Assistants who were promoted to LSG cadre, were allotted to RMS 'Z' Division and some were posted to Karimnagar. However,

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all officials who were so promoted to LSG, and posted to Karimnagar, declined promotion or were re-allotted to their parent units at request. Under these circumstances the post of SRO, Karimnagar RMS., against which R-5 had been officiating ever since its upgradation, was allowed to continue. This resulted in the post being manned by an unapproved official owing entirely to successive refusals by selected candidates to join the post.

4. Two developments occurred thereafter--

- (i) the LSG which was a Circle Cadre at the relevant time was divisionalised from 1.1.86;
- (ii) a new scheme called "Time Bound One Promotion Scheme" was introduced from 30.11.83 under which all officials with 16 years of service were held eligible for promotion to the next higher scale of pay, viz., LSG, without reference to any physical availability of posts in the higher scale.

The applicants as well as R-5 were promoted to the next higher scale of pay from the date of introduction of the TBOP Scheme. There was, however, no change in their duties or, in most cases, in the place of posting on promotion.

5. The respondents say that the pay of Ramesham (R.5) was fixed in the higher grade on his promotion to LSG taking into consideration the length of service rendered by him in the capacity of officiating SRO, Karimnagar, between 1979 and 1983. It is further stated by the respondents that the present applicants were not in the zone of consideration for promotion to LSG earlier to the introduction of the TBOP Scheme, nor had they represented at any time for being considered for posting as SRO, Karimnagar.

6. Subsequently, another scheme known as Biennial Cadre Review was introduced from October, 1991, whereunder all officials with 26 years of service were promoted from LSG to Higher Selection Grade-II. Even after this promotion there was no change in the

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place of posting of either the applicants or Respondent-5.

7. It is the grievance of the applicants that, the LSG having been a circle cadre prior to 1-1-86, it was incumbent on the part of the authorities to have called for volunteers from among all eligible officials in the Circle to officiate in the post of SRO, Karimnagar, instead of permitting an adhoc local arrangement to continue for indefinitely long periods.

In this context they draw attention to the instructions issued by PMG Hyderabad in June, 1982, (Annexure A-5 to OA) laying down the limits upto which officiating arrangements were to continue. According to this circular the officiating arrangements in short term leave vacancies were to be limited upto 15 and 30 days on the basis of office and station seniority, respectively; between periods of 31 days to 4 months, divisional seniority was to be the critereon and, by implication, any arrangement in excess of 120 days had necessarily to be ordered at the circlelevel. The applicants say that in the present instance, the adhoc arrangement was allowed to continue far in excess of the maximum permissible time-limit.

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8. One other complaint of the applicants is that they were unaware of the relative seniority of themselves and Respondent No.5, until they came across the Circle gradation list of RMS officials as on 1-7-1989 which was circulated only in 1993. And, finally, the applicants refer to instructions contained in DG Posts No.1-7/93-PAP dt.15-12-93, which interalia state that the stepping-up of the pay of a senior official in a pay scale to that of a junior cannot be considered if the senior is granted EOL resulting in postponement of his subsequent increments, or refuses or foregoes promotion, joins the higher post later or is appointed later in the lower post, or where the junior draws more pay due to additional increments on acquiring higher qualifications. It is pointed out that none of these contingencies would be applicable in their case, so the prohibitions of on stepping up/their pay in this case cannot be denied to them.

9. The respondents admit that the adhoc officiating arrangement against the post of SRO, Karimnagar, did indeed continue well beyond three years but also explain the circumstances which perforce necessitated the prolongation of the arrangement. These are :

(a) between 1979 and 1983, many

officials were selected for LSG

and allotted to RMS 'Z' division
all of them
on several occasions but refused
to join at Karimnagar, when posted
as SRO there. It was not as if no
attempts were made by them to fill
the post on Circle basis for, indeed,
they were aware of the continuing
officiating arrangement. During this
period the cases of nearly 230 officials
were considered and promotions
ordered to LSG of which as many
as 222 were allotted to RMS 'Z'
division. It is another matter that
none was willing to be allotted to
'Z' division much less to be posted
to Karimnagar.

(b) As for calling volunteers is concerned,
the exercise, if undertaken at all,
shall have to be confined to certain
permissible limits of seniority; it is
not that everyone borne on the seniority
down to the juniormost shall have to be
necessarily sounded out. An official
will be asked to express his willingness
to officiate against an adhoc post
if he is within certain limits of

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seniority and if every senior declines the offer. The applicants in this case were so far junior, at every opportunity and on each round of selections, that the question of even asking for their willingness simply did not arise - for even if they had so volunteered, there was just no possibility of their being considered even for an adhoc promotion. For example, in the last selection to LSG against 2/3rd promotion quota for 1983, the position was as under:

No.of vacancies: 17 (SC : 2
 (OC : 13

Last official : (position gradation list)
 considered (SC : 294

(OC : 298

Last official : (SC : 267
 promoted (OC : 272

Seniormost applicant in OA : (SC : 447
 (OC : 419

(The seniority of the applicants ranges between 419 & 743)

10. The position that emerges here is not without its peculiar interesting overtones. The applicants base their claim solely on the ground that they happen to be senior to Respondent 5 and that they were not given an opportunity to officiate in preference to him. In a strictly legalistic way

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and by rigid implementation of the letter of rules, this argument may not be wholly illogical. As against this position, however, one has to take note of and view the circumstances as they existed or developed and over the time which prevented an early termination of the ongoing arrangement. The respondents at the Circle level do indeed appear to have made several attempts at selecting and allotting an adequate number of LSG officials to the division while the Divisional Superintendent continued to post the selected officials to man this LSG post. None of the attempts succeeded since none was willing. Such being the position on ground, it cannot be categorically held that the officiating arrangement was carelessly allowed to continue for long without any meaningful attempt to fill up the post on regular basis.

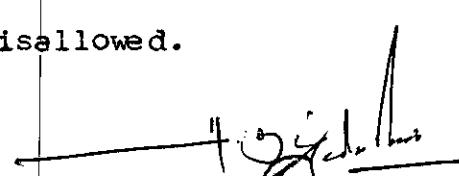
11. Similar is the position with regard to calling for volunteers to officiate against the post when the vacancy was seen to be continuing beyond the first few months. It is true the LSG was a circle cadre at the time and long term arrangements had to be ordered at the Circle level in long term vacancies. On its upgradation, it was perhaps inevitable to fill up the post on the basis of office seniority. Since no other official was available for consideration in the same station or vicinity, the arrangement had to

continue on office/station seniority until the time was ripe for terminating the arrangement and replace it by proper circle arrangement. And this the respondents did not fail to attempt to do. It is another matter that the efforts continued to come to naught owing to the unwillingness of selected officials to move over to Karimnagar.

12. To recognise merely the nominal right of the applicants for being considered for a chance to officiate - a right invoked several years later, in hindsight, as it were - and to ignore the ground reality at the point of time, is to shift focus from real to notional. The present application is based almost solely on the not-wholly-admissible strength of the letter and literal understanding and interpretation of a rule which existed at the time to the exclusion of logic, and spirit of the same rule and the circumstances which were attendant to the impugned arrangement.

13. I do not find any overwhelming merit in the O.A. The same is disallowed.

MD


H. RAJENDRA PRASAD
Member (A)

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Copy to:-

1. The Director General, UOI Posts, New Delhi.
2. The Chief Postmaster General, A.P. Circle, Hyderabad.
3. The Superintendent, RMS 'Z' Division Hyderabad.
4. The Senior Superintendent, RMS., Hyderabad, sortint division, HYD.
5. One Copy to Mr. B.S.A. Satyanarayana, Advocate CAT, HYD.
6. One Copy to Mr. K. Bhaskara Rao . Addl .CGSC. CAT. Hyd.
7. One Copy to The Hon'ble Sri H. Rajendra Prasad, M(A). CAT.HYD.
8. One Copy to The D.R.(A).
9. One Duplicate copy.

officer
S. D. Patel

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TYPED BY
CHECKED BY
S. D. Patel

APPROVED BY
S. D. Patel

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HONOURABLE SHRI H. Venkateswara Rao

AND
THE HONOURABLE SHRI B. S. J. P. R. MEGHAWAR
(M) (J)

Dated: 11-9-97

~~ORDER/JUDGEMENT~~

~~M.R./R.A./C.R./R.O.~~

in

C.A. No. 1233/97

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with Directions

Dismissed Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

