

(26)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD.

* * *

O.A. 444/94

Dt. of Decision : 26.4.1994.

Smt. D. Varahalu

.. Applicant

Additional Collector,
Customs,
Customs House,
Visakhapatnam.

.. Respondent

Counsel for the Applicant : Mr. P.B. Vijayakumar

Counsel for the Respondent : Mr. S. S. Sr. CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

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

..2

JUDGEMENT

I AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN]

Heard Shri P.B. Vijayakumar, learned
counsel for the applicant and also Shri N.R.
[redacted] for the
Respondents.

2. The applicant joined service as L.D.C.
in the Customs house, Visakhapatnam on 10-11-61.
The applicant pleaded that she was ~~not~~ appointed
in a vacancy which was not reserved for any
Reserved category and she never declared that she
belongs to ~~SI COMMUNITY~~ ~~ST~~
her social status was stated as S.T. The appli-
cant was not given promotion on the basis that
she was a S.T candidate. The applicant further
pleaded that she has not realised any benefit
during the course of her service by claiming that
she is a S.T candidate.

3. By letter dated 31-1-92, ~~x~~ District Collector
Visakhapatnam informed the office of the Respondents
that the applicant is not a S.T. It was on the basis
of the declaration of the applicant herself. Then
the charge memo. dated 16-11-92 was issued to the
applicant and the charge is as follows:-

"That the said Smt. D. Varahalu secured an
appointment as Lower Divisional Clerk in Customs
House, Visakhapatnam on 10-11-61 against a vacancy
reserved for Scheduled Tribes claiming herself
to belong to Scheduled Tribe though she belongs
to forward Community"

4. After the enquiry, the Enquiry officer held that the appointment of the applicant was not against the reserved ^{vacancy} candidates, and the applicant was never promoted on the basis that she was a S.T and she has not realised the benefits on the basis that she belongs to ST category.

The said report of the enquiry officer was not furnished to the ~~disciplinary authority~~

was not given by the disciplinary authority to the effect ~~that~~ as to why ~~she~~ should not differ from the findings of the enquiry officer.

But the disciplinary authority passed the impugned order dated 30-3-94 by holding that if the applicant

~~would have~~ ~~status as S.T, she should not got appointment~~
as by then she was aged 28 years, and as such she was age barred for the said appointment.

5. It is rightly contended for the applicant that the impugned order dated 30-3-94 is vitiated as no show cause notice was given by the disciplinary authority ~~when he had chosen to differ~~ from the findings given by the enquiry officer.

On that ground, the impugned order dated 30-3-94 ~~is liable to be~~ is ~~likely to~~ set aside.

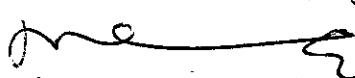
6. It is argued for the applicant that she has ~~rendered~~ unblemished career and when she has not got the benefits of promotion on the basis of social status, it is not proper to allow the disciplinary authority to continue the enquiry especially when ~~the age~~

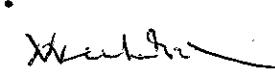
~~to an end~~ on 30th April, 1994. It is a matter for consideration by the disciplinary authority. When the applicant herself declared that she did not belong to S.T community and if in fact she was not given promotion, as against the vacancy allotted for reserved candidates, and if in fact and when it is a case where the applicant ~~would~~ ~~could have retired~~ by 30th April, 1994 if she was in service, the question as to whether it is just and proper to continue the enquiry is a matter that ~~is~~ ^{has} to be considered by the disciplinary authority. So we are of the view that the disciplinary authority if so advised, is at liberty to continue the enquiry after giving notice for differing from the findings of the enquiry officer. It is needless to say that the disciplinary authority before taking a decision as to whether it is just and proper to continue the enquiry, will look into the judgement of the Supreme Court in 1992 SC 662 wherein the scope of Rule 3 of the Pension rules was considered.

7. In the result, the impugned order dated 30-3-94 whereby the applicant was removed from service is set aside. This ~~order~~ ^{supreme court} does not require the disciplinary authority ~~to~~ ^{now} ~~any~~ ^{any} continue the enquiry in accordance with rules and of course, he has to keep in view the observations made in this order before taking a decision as to whether it is a case where enquiry has to be continued.

8. The OA is ordered accordingly. No costs.

C.C. by 28-4-94.


(R. RANGARAJAN)
Member (Admn.)


(V. NEELADRI RAO)
Vice-Chairman

Dated the 26th April, 1994

Open court dictation

C.C. To day
28/4/94

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.GORTHI : MEMBER(AD)

AND

THE HON'BLE MR.TCCHANDRASEKHAR REDDY
MEMBER(JUDL)

AND

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

Dated: 26-4-1994

ORDER/JUDGMENT

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

O.A.No.

444/4

T.A.No.

(w.p.)

Admitted and Interim Directions
Issued.

Allowed

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

