

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH

O.A.No. 499/94.

Date of decision: 14-8-1997.

Between:

N.V.S. Sastry. .. .. Applicant

And

1. The Superintending Engineer, Telecom Civil Circle, Hyderabad - 500 020.
2. The Chief General Manager, Telecom, A.P.Circle, Hyderabad.
3. The Superintending Engineer, Telecom Electrical Circle, Hyderabad.
4. The Director General, Telecommunications representing Union of India, i.e: Delhi.

Respondents.

Counsel for the applicant: Sri K.Venkateswara Rao.

Counsel for the respondents: Sri K.V.Raghava Reddy.

CORAM:

Hon'ble Sri R. Rangarajan, Member (A)

Hon'ble Sri B.S. Jao Parameshwar, Member (J)

JUDGMENT.

(per Hon'ble Sri R. Rangarajan, Member (A)).

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Heard Sri K.Venkateswara Rao, learned counsel

for the applicant.

The applicant was initially recruited as L.D.C., in February, 1962 and posted to T&P (Civil) Division, Hyderabad.

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*in that*

promoted i.e., 23-4-1992. Even ~~then~~ the applicant had asked for promotion from 15-11-1988, ~~also in that~~

~~on~~ The Tribunal had directed in O.A.414/92 to

give effect to his promotion from 23-4-1992. Hence

the same prayer cannot be asked for in this O.A., also

*attached by*  
as such the prayer is ~~against~~ the principles of  
res judicata.

The direction in O.A.414/92 is very clear in that the applicant should be given notional promotion only from the date the reserved Scheduled Caste Candidate was promoted. If that is not to the liking of the applicant then he should have filed a review petition to amend that direction to give him notional promotion from 1988 onwards. But no such review petition was filed. Hence that judgment has become final. In that view, the submission of the respondents appears to be in order.

The first and foremost contention of the applicant in this O.A., is that the post was sanctioned in the year, 1988 and that post was filled in only on 23-4-1992 by a reserved Scheduled Caste candidate.

Posts are created to fulfil the objectives concerning the Department/~~of~~. If there is no need of ~~the~~ post,

the creation of the post is superfluous. Keeping the

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to the post of Office Superintendent with effect from 28--10--1988 with all consequential benefits. The O.A. was allowed and Sri Dharam Singh was reverted and the applicant was promoted with effect from 23-4-1992 the date on which Sri Salayya was promoted with all consequential to the applicant. benefits/ The judgment in the above referred O.A., states that the applicant in that O.A., who is also the applicant in the present O.A., should be given notional promotion from the date on which the reserved candidate who is not going to be reverted assumed charge as Office Superintendent. That would mean that the notional Promotion will be with effect from the date Sri Salaiah was promoted. // This O.A., is filed praying for declaration that the applicant is entitled to be treated as Office Superintendent with effect from 15-11--1988 the date on which he has been promoted as Office Superintendent by Office Memorandum No.9(2)SEETC/(N)/68/1936 dated 11-11--1986 with all consequential benefits such as seniority, pay and allowances and other benefits.

The respondents in their reply submitted that this O.A., is barred by the principle of res judicata as the applicant herein who filed the earlier O.A.414/92 had prayed for the same relief in that O.A. That O.A. was disposed of directing the respondents to promote the applicant from the date the reserved S.C. candidate was

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is within the rules in not de-reserving the reserved posts

We have read the Govt. O.M. dated 6-1-1981 referred to above. That O.M., in our opinion was necessitated to fill up direct recruitment posts as ~~as~~ <sup>could</sup> ~~our~~ reserved roster point ~~can~~ not be kept unfilled. That would cause lot of problem if direct recruitment is resorted to. In that view the Circular has to be viewed. We do not see such a necessity had arisen in the present case. Hence the O.M., dated 6-1-1981 referred to above may not be of much help to the applicant.

The next contention of the applicant is that in case a reserved post is not filled up by de-reservation, if reserved candidates are not available within a reasonable period, some ~~as~~ sort of motives by inference can be attributed to the competent authority who is empowered to make de-reservation. If any motive is attributed in not filling up the post, it has to be clearly brought out in the O.A.. Merely vague reasoning cannot be substituted for full explanation of the motives in not de-reserving the post. In this O.A., we do not find any clear-cut

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post vacant for three years from 1982--92 till Salayya was posted on 23--4--1992 shows that the post was kept vacant for no reason. In that connection, the applicant relies on O.M.No.36011/1579-Est. (SCT) dated 6-1-1981 to state ~~that~~ if reserved Posts are not filled in time it should necessarily be de-reserved and filledup by O.C. candidates. Mere creation of posts does not mean that the posts ~~are~~ filled up by O.C.candidate by ~~de-reservation~~ dereserving the posts if reserved candidates are not available. It is the discretion of the competent authority to decide whether the reserved posts should be de-reserved or not. No Tribunal or Court can compell the Competent Authority to ~~de-reserve~~ the posts reserved for S.C/S.T. candidates. Any pressure is brought on the competent authority to dereserve the post, it may negate the obligations cast on the Administration as per the Constitution. Hence, we are of the opinion that de-reservation is to be done with caution by the Competent Authority <sup>only</sup> if such Authority has come to the conclusion that dereservation is essential in the interests of administration and also in public interest. If such a view is ~~not~~ to be taken the competent authority

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necessity to fill up the post etc. In that view, we feel that the request of the applicant to give him ~~.....~~ cannot be granted.

In view of what is stated above, we find that there is no merit in this O.A. Hence, this O.A., is dismissed. No costs.

CERTIFIED TO BE TRUE COPY  
A.M.H.  
सरकारी अधिकारी  
CIVIL & CRIMINAL  
कानूनी अधिकारी  
Central Government of India  
केन्द्र सरकार  
HYDERABAD  
B.M.

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motive attributed to the Competent Authority is not de-reserving the post. Further the mere creation of the post for reserved candidates and that post kept unfilled for a long period and that post not being de-reserved for vague reasons cannot compel us to come to the conclusion that non-filling up the post is arbitrary and motivated. Hence this contention is rejected.

We find from the ~~order~~ promoted retrospectively with effect from 23-4-1992 i.e., ~~date when~~ the S.C. reserved post was filled up by Sri Salayya.

Thus the applicant got his seniority in the post of ~~office~~ Superintendent ~~in~~ from that date. No O.C. candidate was posted in between 1988 and 23-4-1992. Thus the applicant had not lost seniority because of this ~~late~~ promotion.

The only point for consideration is whether he lost any monetary loss by pay fixation because of his promotion in ~~in~~ 1992 instead of 1988. The reply is in affirmative. But that will not give any right to the applicant to give him notional promotion from 1988 instead of 1992. If the Department feels that it is unnecessary to fill up the post even when a vacancy is existing, none can force the Department to fill up that post. The non-filling of the post may be due to several other reasons such as availability of work, the <sup>not</sup>

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