

(14)

Application filed under section 19 of the Administrative
Tribunals Act, 1985

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: HYDERABAD BENCH
AT HYDERABAD

O.A.No: 627 of 1994

Between:-

C.VENKATRAMAN,
S/o Sri C. Yethirajulu,
aged about 49 years,
Occupation: Assistant Director,
Service Centre for Carpet Weaving
Training Centre, Eluru Road,
Madhavavaram Down Centre,
Vijayawada, r/o Vijayawada.

--- Applicant

AND

- (1) The Union of India represented by
the Secretary, Ministry of Textiles,
New Delhi.
- (2) The Development Commissioner(Handi-
crafts), Office of the Development
Commissioner for Handicrafts,
West Block, No. VII, R.K. Puram
- (3) The Joint Development Commissioner(H)
Office of the Development Commissioner,
for Handicrafts, West Block, No. VII,
R.K. Puram, New Delhi.

--- Respondents

DETAILS OF THE APPLICATION

1. Particulars of the Applicant :-

The particulars of the applicant are as men-
tioned in the cause title above.

The address of the applicant for the purpose
of service of summons, notices, etc. is that of his
counsel, M/s. Vemuri Venkateswara Rao and Kasturi Phani
Raju, Advocates, H.No. 1-8-472/1, Temple Street, Chikka-
dapally, Hyderabad - 500 020.

2. Particulars of the respondents :-

The address and particulars of the respondents

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are the same as mentioned in the cause title above.

3. Orders against which this O.A. is filed :-

The applicant files this O.A. seeking directions to include his name in the seniority list of Assistant Directors (Handicrafts) issued as on 30.09.1990 showing his date of promotion as 20.6.1980 at appropriate place ~~and~~ with all consequential benefits and to quash the letter no. 8/1/86-Admn.I, dated 3.6.1991 issued by the third respondent keeping the merger of the post of Assistant Director (Admn & Coord.) with the post of Assistant Director (Handicrafts) in abeyance.

4. Jurisdiction :-

The applicant submits that the original application filed is well within the jurisdiction of this Honourable Tribunal as provided under section 14(1) of the Administrative Tribunals Act, 1985, in as much as the applicant is employed in Service Centre for Carpet Weaving Training Centre, Ministry of Textiles at Vijayawada, A.P.

5. Limitation :-

The applicant submits that the original application filed is well within the limitation period as prescribed under section 21(1) of the Administrative Tribunals Act, 1985, in as much as the applicant submitted his representation on 4.3.1992 which ~~is~~ is still pending with the authorities.

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6. FACTS OF THE CASE :

The applicant respectfully submits that he was initially appointed as Junior Field Officer in the scale of pay of Rs. 550 - 900/- and was given posting in the Carpet Scheme. The post of Junior Field Officer of the Carpet Scheme was redesignated as Carpet Training Officer with effect from 1.3.1978 in the pay scale of Rs. 550 - 800/-. The persons who were appointed as Junior Field Officers along with the applicant in December, 1975 were given posting in various other schemes of the Respondent - 2 organisation. The respondent no.2 organisation is directly under the control of the Respondent No.1. The posts of Junior Field Officers in the other schemes of the respondent no.2 organisation were redesignated as Handicrafts Promotion Officers with effect from 12-05-1979 in the scale of pay of Rs. 550 -900/-. As per the recruitment Rules issued by the 1st respondent vide Notification dated 5-7-1979, the Carpet Training Officer with 3 years regular service is eligible and entitled to be promoted as Assistant Director(Administration and Coordination) in the scale of pay of Rs. 650-1200/-. Accordingly, the applicant was promoted as Assistant Director (Admn. & Coord.) vide Memorandum dated 15-5-1980 issued by the 2nd respondent after subjecting him to the process of selection and on the basis of the recommendations of the Departmental Promotion Committee as per the Recruitment Rules. Such promotion as Assistant Director (Admn. & Coord.) was ordered against a regular and permanent posts. On promotion as Assistant Director(Admn.& Coord.), he was given posting at Service Centre Jaunapur in Utter Pradesh. Though such promotion was termed as Adhoc in

the Memorandum dated 15.5.1980, the same was regular in as much as he was subjected to the process of selection and was recommended by the Departmental Promotion Committee for a regular and clear vacancy. The said appointment of the applicant as Assistant Director (Admn. & Coord) was approved by the Union Public Service Commission also as per the Recruitment Rules. Thereafter his services were regularised as Assistant Director (Admn. & Coord.) w.e.f. 14.8.1985 vide orders of the 2nd respondent issued on 8.10.1985. The Asst. Director (Admn. & Coord.) Recruitment Rules, 1979 were superseded by the Deputy Director and Assistant Director (Admn. & Coordination) Recruitment Rules, 1986 issued by the 1st respondent vide Notification dated 15.7.1986. As per the said Recruitment Rules, 1986, 2/3rds of the posts of Deputy Directors are to be filled in by promotion of Asstt Director (Admn. & Coord.) with 8 years regular service or 10 years total service in the cadres of Assistant Director (Admn. & Coordination) and Carpet Training officers combined together. The post of Assistant Director (Admn. & Coord.) Group-B gazetted under the Carpet Weaving Training Scheme in the pay scale of Rs. 2000 -3500/- was merged with the cadre of Assistant Director (Handicrafts) carrying the identical scale of pay. The order to this effect was issued by the 2nd respondent on 22.6.'87 with the approval of the 1st respondent. Thus, from 22.6.1987, there is no separate cadre of Assistant Director (Admn. & Coord.) and it was merged into the cadre of Assistant Directors (Handicrafts). Therefore, the Assistant Directors (Admn. & Coord.) are also entitled to be considered for promotion as Deputy Directors (Handicrafts).

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The applicant respectfully submits that a tentative revised seniority list of Assistant Directors (Handicrafts) was issued as on 30.09.1990 by the second respondent vide his Circular dated 30th October, 1990. Objections to the seniority list were invited on or before 26.11.1990. The name of the applicant was not included in the said seniority list at all, though he was entitled to be shown above the serial no.1 in the said tentative seniority list of Assistant Directors (Handicrafts). Therefore, having come to know that his name was not included in the said tentative seniority list of Assistant Directors (Handicrafts), the applicant submitted a representation on 31.1.1991 to the 2nd respondent requesting him to include his name in the seniority list of Assistant Directors (Handicrafts). No reply was given to the representation submitted by the applicant. Ignoring his representation dated 31.1.91, for inclusion of his name in the seniority list of Asstt Directors (Handicrafts), the respondent no.2 issued the final revised and up-to-date seniority list of Assistant Directors (Handicrafts) as on 30.11.1991 vide his circular dated 11.12.1991. In the said final seniority list also, the applicant's name was not included.

The applicant further respectfully submits that he came to know that an order was issued by the second respondent on 3.6.1991 i.e. subsequent to his representation dated 31.1.1991, keeping in abeyance until further orders of the merger orders dated 22.6.1987 of the post of Assistant Director (Admn. & Coord) in the cadre of Asstt Directors (Handicrafts). In this connection, it is pertinent to note that such abeyance orders issued by the respondents was only with a malafide intention to deny

the benefit of inclusion of the name of the applicant in the seniority list of Asstt Directors (Handicrafts) and further promotion to the post of Deputy Directors (Handicrafts) on the basis of said seniority list. The said orders were not communicated to the applicant.

It is not open to the respondents to keep the merger of the post of Assistant Director (Administration and Coordination) in the cadre of Assistant Directors (Handicrafts) vide impugned letter dated 3.6.1991, in as much as the merger orders dated 22.6.1987 have already come into operation with effect from the same date, i.e.

22-6-1987. Once the orders have already come into force, the question of keeping them in abeyance does not arise.

The issue becomes a fait accompli and the authority who issued the merger orders dated 22.6.1987 is not empowered to keep the same in abeyance. Such an authority becomes functus officio . Therefore, the impugned letter dated

3.6.91 issued by the third respondent is wholly without competence and is illegal. That apart the merger orders could not have been kept in abeyance after a period of over 4 years without observing the principles of natural justice by the issue of notice and opportunity to the

applicant. Especially when the applicant submitted a representation requesting ~~that~~ his name to be included in the list of Assistant Directors (Handicrafts) on the basis of the merger orders which were in existence from 22.6.87, the respondents oughtnot to have issued the impugned

letter dated 3.6.91 in violation of the principles of natural justice. In view of the facts and circumstances, the applicant is entitled for notice and opportunity before the impugned letter dated 3.6.91 is issued. Any order issued without competence and in violation of principles

of natural justice are void and are deemed to be

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non-existence in the eye of Law. Hence, the impugned letter dated 3.6.1991 cannot have any operative force to the detriment of the interest of the applicant. At this juncture, it is pertinent to note that the post of Assistant Director (Administration & Coordination) which is an isolated post in the department, cannot be kept ~~granted~~ in abeyance without merging it with the cadre of Assistant Director (Handicrafts). The respondents have maintained absolute silence to the representation submitted by the applicant requesting for inclusion of his name in the seniority list of Assistant Directors (Handicrafts), on 31.1.1991. However, it may be noted that the the orders of merger of the post of Assistant Director (Admn.& Coord.) with cadre of Asstt Directors (Handicrafts) was in operation during the period from 22.6.1987 to 3.6.91. Therefore, the applicant has got vested right to be shown in the seniority list of the Assistant Directors (Handicrafts) issued as on 30.09.90 in as much as the merger orders were in operation. He is also entitled to be shown in all the seniority lists of the Assistant Directors (Handicrafts) issued from 22.7.1987 onwards till 3.6.91. During the said period many of the persons who are juniors to the applicant were promoted to the posts of Dy.Directors (Handicrafts) on the basis of the provisional seniority list of Asstt Directors (Handicrafts) issued as on 30th September, 1990 and also *later* . On the basis of such seniority lists, the applicant was also entitled to all the consequential benefits such as promotion etc. to the grade of Dy. Directors (Handicrafts). However, having come to know that the merger orders were kept in abeyance by the respondents vide their orders dated 3.6.1991, the applicant submitted a representation on 4.3.1992 to the

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second respondent requesting for restoration of the merger orders dated 22.6.1987 to enable him to get a chance of promotion as Deputy Director (Handicrafts) as per ~~the~~ his seniority. The respondents have not given any reply to the said representation. There is no seniority list of Assistant Directors (Admn. & Coord.) issued at all so far. Right from the constitution of the cadres of Assistant Directors (Admn. & Coord.) there is no seniority list issued so far pertaining to the said cadre. There are no chance of promotion available to the applicant unless the merger orders issued on 22.6.1987 were revived. He has already completed 13½ years of service as Assistant Director (Admn. & Coord.). Orders issued by the Joint Development Commissioner (H), the 3rd respondent herein, vide his orders dated 3.6.91 keeping the merger orders dated 22.6.1987 in abeyance until further orders, is mala-fide, illegal and arbitrary. Such abeyance orders were intended to deny the benefit of seniority and promotion to the applicant herein. In as much as the applicant was not shown in the seniority list of Assistant Directors (Handicrafts) many of his juniors have been promoted to the posts of Deputy Directors (Handicrafts) from 22.6.87 without his case being considered for such promotion. Persons shown in the eligibility list of officers in the grade of Deputy Directors (Handicrafts) issued vide circular dated 4.2.1991 are all juniors, having regard to the date of promotion of the applicant to the post of Asstt. Director (Admn. & Coord.) on 15.5.1980. Aggrieved by his non-inclusion in the seniority list and the abeyance orders issued against him, the applicant submitted a representation on 22.7.1993 requesting for inclusion of his name in the seniority list of Assistant Directors (Handicrafts)

reckoning his seniority in the said cadre with effect from 20.6.1980, the date on which he joined in the post of Assistant Director (Admn. & Coord.) by withdrawing the abeyance orders of merger issued by the Joint Development Commissioner on 3.6.1991. There is no reply to the said representation. It is respectfully submitted non-inclusion of the name of the applicant in the seniority list of Assistant Directors (H) is violative of Article 14 and 16 of the Constitution of India. The abeyance of the merger orders issued by the 3rd respondent on 3.6.1991 are wholly illegal, malafide and arbitrary and as such are liable to be struck down as violative of Articles 14 and 16 of the Constitution of India. There ~~xxx~~ is no chance of promotion to the applicant unless his name is included in the seniority list of Assistant Directors (Handicrafts). With the sole intention of causing favour to many of his juniors and to the Assistant Directors working in the Handicrafts Scheme, the respondent no.3 issued the order dated 3.6.91 keeping the merger orders in abeyance until further orders. There are no tenable reasons for the issue of impugned orders dated 3.6.1991 by the 3rd respondent. Already 2½ years have elapsed from the date of the impugned orders of abeyance. Merger orders cannot be kept in abeyance indefinitely. There is no question of keeping the orders in abeyance once they have already come into operation. In the present case the merger orders have come into force w.e.f. 22.6.1987. As the things stand now, the applicant has no avenue of promotion at all. The impugned orders were issued only to protect a certain section of officers working under the respondent no.2 to the detriment of the applicant.

7 MAIN RELIEF SOUGHT FOR:

Therefore, in the interest of justice, it is prayed that this Hon'ble Tribunal may be pleased to declare that the applicant is entitled to be included in the tentative seniority list of the Assistant Directors (Handicrafts) issued as on 30.09.90 by showing his date of promotion as 20.6.80 at appropriate place by holding that the applicant is entitled for promotion to the post of Dy. Director (Handicrafts) with effect from the date on which his immediate junior in the cadre of the Asst. Director (Handicrafts) was promoted with all consequential benefits such as seniority, promotion, arrears of salary and allowances etc. and quash the letter no.8/1/86-Admn.I, dt.3.6.91 issued by the 3rd respondent and the order No.8/1/86-Admn.I/3173 dt.27.7.94 issued by the 2nd respondent declaring them as illegal, arbitrary, mala fide and void and unconstitutional and pass any other order or orders as is deemed fit, proper, necessary and expeditent in the circumstances of the case".

Prayer amended as per the orders of the Hon'ble Tribunal dt. 4.1.95 and made in M.A.No.700/94.

[Signature]
SECTION OFFICER.

necessary and expedient in the circumstances of the case.

8. INTERIM RELIEF PRAYED FOR:

The applicant further prays that this Honourable Tribunal may be pleased to direct the respondents herein to include his name in the seniority list of Assistant Directors (Handicrafts) issued as on 30.09.1990 and to grant promotion to the post of Dy. Director (Handicrafts) on the basis of the said seniority forthwith, pending disposal of the O.A., and pass any other order or orders as is deemed fit, proper, necessary and expedient in the circumstances of the case.

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9. Remedies exhausted :-

The applicant submitted representation on 31st January, 1991 requesting for inclusion of his name in the seniority list of Assistant Directors (Handicrafts) whereafter the impugned letter dated 3rd June, 1991 was issued and thereafter the final seniority list was issued on 11.12.1991 in which list also his name was not included. Thus, he has availed the alternative remedy available to him under Rules. Against the impugned letter dated 3rd June, 1991, the applicant submitted a representation on 4th March, 1992.

10. Matters pending with any other court etc. :-

The applicant further declares that he has not previously filed any application, writ petition, suit, appeal etc. in any court, or before ~~the~~ any authority in respect of the subject matter of this Original application, nor the application, writ petition, Appeal, Suit etc. are pending with any of them.

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11. Particulars of the fees of application :-Postal order no. 871541 dated 10/1/94

for Rs. 50/- drawn in favour of the Registrar, P.O./B.C./D.D./Removed

Central Administrative Tribunal, Hyderabad Bench, Hyderabad is enclosed.

12. Details of Index :-

An Index showing the details of the material papers to be relied upon is enclosed herewith.

13. Enclosures :-

1. Vakalatnama
2. Index and Chronology
3. Postal order for Rs. 50/-
4. Material papers.

VERIFICATION

I, C.VENKATRAMAN, S/o Sri C. Yethirajulu, aged about 49 years, Occupation: Assistant Director, Service Centre for Carpet Weaving Training Centre, Eluru Road, Madhavavaram Down centre, Vijayawada, R/o Vijayawada, the applicant herein do hereby verify that what is stated in the above paragraphs of the O.A. is true and correct and hence verified on this 20th day of December, 1993 at Hyd.

HYDERABAD,
Dated: 20/12/1993.

Wdu
Counsel for the Applicant.

C. VENKATARAMAN
APPLICANT