

(105)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. No. 1218 of 1995

dt- 11-6-97

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. P.T. Thiruvengadam, Member(A)

A. Surender Reddy, S/o A. Thimma Reddy,
aged about 41 years, Court Officer,
Office of the Central Administrative
Tribunal, Hyderabad Bench, Hyderabad

..... Applicant

-Versus-

1. The Secretary to Government, Department of Personnel & Training (Representing Union of India), Secretariat Buildings, New Delhi - 110 001 ;

2. The Registrar, Principal Bench, Central Administrative Tribunal, Faridkot House, Copernicus Marg, New Delhi - 110 001 ;

3. The Registrar, Central Administrative Tribunal, Hyderabad Bench, HACA Bhavan, 1st Floor, Hyderabad - 500 004.

..... Respondents

Counsel for the applicant : Mr. P. Krishna Reddy

Counsel for the respondents : Mr. N.R. Devaraj

Heard on : 5.3.1997

Order on : 11.6.1997

O R D E R

A.K. Chatterjee, VC

The petitioner, a Court Officer in the Hyderabad Bench in the Central Administrative Tribunal (Tribunal, ^{for} ~~in~~ ~~the~~ ~~sho~~) had previously practised as an Advocate from 27.11.80 till 9.7.84 when he joined the Andhra Pradesh Administrative Tribunal as a Court Officer. Thereafter, on 1.9.88, he was appointed as a Court Officer of the Tribunal for one year on deputation carrying a scale of pay of Rs.2000-3500/-, his pay being fixed

the minimum of the scale. Rules of Recruitment to various posts in the Tribunal were framed subsequently and took effect ^{on} from 20.9.89 and provided for absorption of willing deputationists subject to fulfilment of eligibility conditions as laid down in the rules, provided they were spared by their parent departments. The petitioner duly exercised option on 27.6.89 for absorption as a Court Officer in the Tribunal but by an order dt.29.5.90, he was absorbed as an Assistant w.e.f. 1.11.89 but allowed to continue to officiate as Court Officer till regularisation of his service as such. He made a representation on 8.6.90 requesting his absorption as a Court Officer on regular basis with effect from the date he joined the Tribunal i.e. 1.9.88 on the ground that he was eligible for absorption as Court Officer and that his absorption as an Assistant was wholly illegal and amounted to reversion. As he was not favoured with an order as desired, the instant application has been filed on 13.9.95, inter alia, for a direction upon the respondents to absorb him as a Court Officer on regular basis w.e.f. 1.11.89 and determine his seniority as such counting the service rendered by him as a Court Officer in Andhra Pradesh Administrative Tribunal from 9.7.84. He has been appointed as a Court Officer in the Tribunal on regular basis w.e.f. 9.7.92 by an order dt.3.5.94.

2. The application is resisted by a counter filed by Tribunal impleaded as respondent No.2 on behalf of all the respondents. Apart from the plea of limitation, it is contended, inter alia, that as the petitioner was working in Andhra Pradesh Administrative Tribunal in the scale Rs.1330-2630/-, he was treated as holding a post equivalent to that of Assistant and thus absorbed as such w.e.f. 1.11.89, but in order to avoid his reversion, he was allowed to continue as a Court Officer on an adhoc basis till his service as such was regularised. According to the Recruitment

a minimum of 8 years service in the feeder cadre of Assistant or equivalent grade was required for appointment as a Court Officer and so he was regularised as a Court Officer w.e.f. 9.7.92 as soon as he completed 8 years of service counting his service in Andhra Pradesh Administrative Tribunal.¹

3.¹ The petitioner in a rejoinder has pointed out that the delay in filing the application was condoned by the Tribunal by an order dt.12.10.95 and has contended that qualification for recruitment to the post held by him in Andhra Pradesh Administrative Tribunal, duties attached to it and other requirements are similar to the post of Court Officer in the Central Administrative Tribunal and therefore, he held an analogous post in the parent department despite lower scale of pay attached to it.²

4.³ We have heard the Ld. Counsel for both the parties and perused the records before us. There was no controversy that Rule of the Recruitment Rules laid down among others that a person holding the post of a Court Officer on the date of commencement of rules on deputation basis will be eligible for absorption in his grade subject to ^{possession} ~~fulfilment~~ of qualification and experience as laid down in the rules and if considered suitable by the Department Promotion Committee. In the schedule to the rules, it is stated that in case of Court Officer, transferred on deputation can be one of persons working in the Central/State Government holding any posts on regular basis. The bone of contention of the petitioner is that as he was holding the post of Court Officer in Andhra Pradesh Administrative Tribunal on a regular basis w.e.f. 9.7.84, he is in doubt holding an analogous post and, therefore, he satisfies the conditions of eligibility for absorption as a Court Officer in the Tribunal as laid down in the Recruitment Rules.⁴ The response

answer to this contention is that the scale of pay attached to the post of Court Officer in Andhra Pradesh Administrative Tribunal was lower than that attached to the post of Court Officer in the Central Administrative Tribunal and, therefore, the petitioner cannot be said to have held an analogous post in the parent department. The Ld. Counsel for the petitioner has pointed out D.P. & A.R. Office Memorandum No. 14017/27/75 dt. 7.3.84 on the subject of criteria for determining analogous post. The respondents in the reply have also pointed out the same Office Memorandum and thus, there is no controversy between the parties that the question whether the posts of Court Officers in the Andhra Pradesh Administrative Tribunal and the Central Administrative Tribunal are analogous for the purpose of absorption of a deputationist from the former post to the later post, has to be decided with reference to the above O.M. In this O.M., four criteria have been laid down, one of which is ^{that} a scale of pay attached to the two posts ^{should} ~~be~~ be identical or extension of or segment of each other. According to the respondents since this condition was not fulfilled, the petitioner was treated to be holding a post equivalent to that of Assistant. In other words, ~~According~~ to the respondents, unless the scale of pay of the two posts are identical or extension or segment of each other, they cannot be regarded as analogous. We are in no doubt that the respondents have totally ^{misread} ~~misread~~ and misinterpreted the Office Memorandum referred to above. There is nothing in this O.M. even to suggest remotely that unless the criteria regarding pay scale as laid down therein is satisfied, the posts cannot be treated as analogous. It will be more than obvious from para-2 of the O.M., which states that as far as the posts under the State Government/Public Undertaking etc. are concerned, it is quite likely that even post with same designation may not have comparable scales of pay and they

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differ with reference to the extent ^{and} of stage of merger of DA with pay. It has been further laid down that the selecting authorities may have to be guided more by the nature of duties performed by candidates in their parent organisation vis-a-vis those in the posts under selection and the qualification and experiences required for the post under the Central Government. Thus, it is manifestly ~~sk~~ clear that the question whether two posts are analogous or not cannot be decided solely on the basis of scale of pay, particularly if one of the posts is under the State Government/Public Undertaking. The counter filed by the respondents states in unmistakable terms that as the petitioner was not fulfilling the first condition of the Office Memo dt.7.3.94 i.e. to say condition regarding the scale of pay, he was treated as holding a post equivalent to that of Assistant. Thus, in considering whether the post is equivalent or not, the respondents did not take into account the nature of duties performed by the petitioner in his parent organisation and qualification and experience required for the post. Therefore, the respondents fell in error in deciding the equivalence of post in question merely on the basis of the scale of pay attached to the post. It is also pertinent to mention in this connection that there are also judicial pronouncement that the pay scales are the least consideration for determining equivalence. Reference may be made to the case of P.J. Vincent vs. U.O.I. (1993) 24 ATC 596. Here it has been observed that it was well settled that in the matter of determining equivalence, the scale of pay was least of the considerations. It is no doubt true that it was a case of absorption of a Flt. Lieutenant in Air Force, who was taken on deputation in the Sr. Time Scale of Indian Civil Accounts Service but it does not appear that the ^{absorption} ~~absorption~~ that the pay scales ^{were} ~~were~~ the least of consideration was made in interpreting any rule applicable to the

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particular case ; on the other hand, it was observed, as already pointed out, that it was well settled that in the matter of determining equivalence, the scale of pay was least of the considerations. There is no reason why this well-settled principle should not apply in the case before us, although even without this authority, it can be held without any fear of error on the basis of the Office Memorandum dt.7.3.34 referred to previously that equivalence of post must be decided taking into consideration not only the scale of pay but also the nature of duties, qualification, experience etc. and that in appropriate cases, two posts may be regarded as equivalent even though the pay scales may not be identical or an extension or segment of each other. In such circumstances, the order of the respondents absorbing the petitioner in the Tribunal as an Assistant w.e.f. 1.11.39 cannot be sustained.

5. The petitioner has made a prayer, inter alia, for a direction upon the respondents to absorb him as a Court Officer on regular basis from 1.11.39 considering the services rendered by him as Court Officer in Andhra Pradesh Administrative Tribunal from 9.7.34. Even though there may be some force in the argument that two Tribunals having been constituted to discharge precisely similar function but only in respect of different sections of employees and as such the post of Court Officer in a State Administrative Tribunal is analogous to the post of Court Officer in the Central Administrative Tribunal, still we are not inclined to hold on such basis alone ^{that} ~~and~~ a direction upon the respondents is called for to absorb the petitioner as a Court Officer in the Tribunal with effect from 1.11.39. We are rather disposed to the view that since the respondents did not complete the exercise required of them to decide whether the post of Court Officer in Andhra Pradesh Administrative Tribunal was analogous to the post of Court Officer in the Central

Administrative Tribunal, it is appropriate to give a direction to the respondents to complete such exercise and decide the issue raised in this application with due regard to the provision of the D.P. & A.R. O.M. NO.14017/27/75-Estt(D)(PT) dt.7.3.34 and in the light of the observation made in this judgment above.

6. Regarding the plea of limitation taken by the respondents, it has been stated in the rejoinder filed by the petitioner that the delay has been condoned by the Tribunal by the order dt. 12.10.95 and, therefore, this ground is no longer available to the respondents.

7. On the aforesaid premises, the application is disposed of with a direction upon the respondents, in particular upon the respondent No.2, to decide in accordance with the instruction contained in D.P. & A.R. O.M. No.14017/27/75-Estt(D)(PT) dt.7.3.34 and in the light of the observations made above whether the petitioner prior to his joining the Central Administrative Tribunal as a Court Officer was holding an analogous post in Andhra Pradesh Administrative Tribunal and if so, to publish appropriate order regarding absorption and to determine his seniority in the cadre of Court Officer/Section Officer/Private Secretary. Such exercise shall be completed within six months from date. The order absorbing the petitioner as an Assistant in Central Administrative Tribunal w.e.f. 1.11.89 stands quashed. In view of the direction given above, the seniority list, which has already been prepared need not be disturbed at the present moment.

8. Parties to bear their own costs.

P. J. Thiruvengadam
(P.J. Thiruvengadam)
Member (A)

A. K. Chatterjee
(A.K. Chatterjee)
Vice-Chairman

11-6-97
D.R.O.)

O.A.No. 1218/95.

To

1. The Secretary to Govt.,
Dept.of Personnel and Training,
Union of India, Secretariat Buildings,
New Delhi- 1
2. The Registrar, Principal Bench
Central Administrative Tribunal,
Faridkot House, Copernicus Marg,
New Delhi-1.
3. The Registrar, Central Administrative Tribunal,
Hyderabad Bench, HACA Bhavan,
1st Floor, Hyderabad-4.
4. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.
5. One copy to Mr. N.R.Devraj, Sr.CGSC. CAT.Hyd.
6. One copy to D.R.(A) CAT.Hyd.
7. One spare copy.

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I COURT

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TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE *A.K. Chatterji*,
VICE-CHAIRMAN

and

P. T. Tirumangalakur
THE HON'BLE MR. H. RAJENDRA PRASAD M(A)

Dated: 11-6-1997

~~ORDER~~/JUDGMENT

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

in

C.A.No.

1218/95

T.A.No.

(w.p.)

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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