

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.904/95

DATE OF ORDER : 06-01-1998.

Between :-

Abdul Kareem

... Applicant

And

1. The Union of India rep. by
Its Secretary, M/o, Finance
North Block, New Delhi.

2. The Commissioner, Central
Excise, Basheerbagh,
Hyderabad.

... Respondents

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Counsel for the Applicant : Shri G.Parameshwar Rao

Counsel for the Respondents : Shri N.R.Devaraj, Sr.CGSC

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CORAM:

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri B.S.Jai Parameshwar, Member (J)).

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(Order per Hon'ble Shri B.S.Jai Parameshwar, Member (J)).

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None for the applicant. Heard Sri N.R.Devaraj, standing counsel for the respondents. The applicant ^{was} ~~is~~ also not present when this O.A. was taken up for hearing. Hence we are deciding this O.A. under section 15(1) of CAT (Proceedure) Rules, 1987.

2. The applicant was appointed as contingent labour in April, 1987 on daily wages @ Rs.8/- per day. Later his name was sponsored by the Employment Exchange for appointment as Full Time Contingent Labourer with effect from 11-4-89. The applicant was appointed as such with effect from the said date and was working in the office of Asst.Commissioner, Hyderabad Division-II. Then the respondents called for applications for the post of Sepoy vide C.Nos.II/31/26/91-E.5 dt.25-4-91 and II/31/26/91-E.5 Volume.II dt.11-10-91. The candidates were required to fulfill certain conditions. The applicant's application was duly forwarded by the Divisional Asst.Commissioner. Due to some administrative reasons the notification dt.25-4-91 was cancelled and no recruitment was made against that notification. However, the candidature of the applicant was not considered favourably in view ^{of} Board's instructions vide F.No.49014/4/90-Estt(C) dt.8-4-91, wherein it was stated that the casual workers recruited before 7-6-88 and who were in service on the date of issue of instructions should be allowed to be considered for regular appointment in Group-D posts. ^{2(a)} Then the applicant filed original application before this Tribunal in OA 875/92 On 12-10-92 this Tribunal directed the department to treat his

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application as representation, to consider the same and dispose it of with an order giving reasons within one month. The matter was referred to Ministry and the Ministry in its letter dt.21-6-93 considered the representation of the applicant for regularisation. Accordingly the applicant was appointed as Sepoy vide E.O.(N.G.O.) No.120/93 dt.5-8-93 and the applicant reported for duty on 6-8-93.

3. This O.A. is filed to call for the records relating to recruitment to the post of Sepoy made against circular Nos.II/31/26/91-E.5 and II/31/26/91-E.5 Vol.II dt.25-4-91 and 11-10-91 respectively and to declare that the applicant is entitled for notional seniority from the date his immediate junior was appointed as Sepoy and according^{ly} to direct the respondents to grant him notional seniority in the cadre of Sepoys from the date his immediate junior was appointed to the cadre with all consequential benefits.

4. A reply has been filed stating that the post of Sepoy is a selection post and the applicant^{was} appointed as Sepoy on 5-8-93 and^{is now} claiming seniority above Sri Mohd.Pasha who was appointed as contingent labour subsequent to the appointment of the applicant. The applicant cannot be treated as a Government servant when he was a contingent worker. Seniority is relevant only in respect of government servants. There is no seniority list for contingent workers. Deemed date of promotion and consequent seniority can apply to a period when the candidate was a government servant and not otherwise. Hence the representation of the applicant dt.20-7-94 was rejected by the department. However, the same was not intimated

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to the applicant in writing. Further it is stated in the counter that the applicant is claiming seniority over and above 104 employees as per the seniority list published vide letter dt.23-2-94. The applicant has not made them as parties to this O.A.

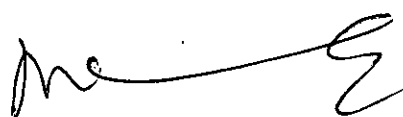
5. When the directions was given in OA 875/92 by this Tribunal the respondents were expected to consider the representation of the applicant strictly in accordance with the rules. If on that date the applicant was not eligible for consideration ^{for appointment} as Sepoy taking in to consideration his earlier service as contingent labourer then they could have straightaway rejected the representation i.e. OA 875/92. However, the respondents considered and appointed the applicant as Sepoy from 5-8-93 and reported to duty on 6-8-93. Now the applicant is claiming seniority considering his services as contingent labourer. The learned counsel for the respondents submits that the Department understood the judgement of the Tribunal in OA 875/92 to the effect that his earlier services as contingent labourers should also be considered. But there ^{was} ~~is~~ no such direction in that O.A. If the respondents have taken a view which is not borne by ^{the} rules then the respondents only are ~~alone~~ responsible for that view. Having given that relief, now they cannot go back and say that the contingent service cannot be taken into account for considering him as Sepoy earlier to 1993 on par with his junior. ^{5(a) -} Hence the only direction that can be given in this O.A. ^{that} is respondents ^{be} ~~are~~ directed to consider the contingent labour service while promoting the applicant if the contingent service of his junior ^d ~~have~~ been taken into consideration while promotion ^{ng} as Sepoy. In view of the ^{above,} ~~the~~ respondents shall consider the case of the applicant on par with his junior

in contingent worker category and consider regularisation of the applicant in the post of Sepoy from that date provided he is otherwise eligible.

6. O.A. disposed of with the above directions. No order as to costs.


(B.S. JAI PARAMESHWAR)
Member (J)

6-1-98


(R. RANGARAJAN)
Member (A)

Dated: 6th January, 1998.
Dictated in Open Court.


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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

THE HON'BLE MR. B. S. JAI PARAMESHWAR :
M(J)

DATED: 6/1/98

ORDER/JUDGMENT

M.A./R.A/C.A.NO.

in

D.A.NO. 904/85

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

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