

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

## AT HYDERABAD

O.A.No. 1314/95

Date of Order 29.4.99

## BETWEEN :

1. S.Md.Zafarulla
2. Smt.V.Girija Bai
3. A.Arun

Applicants.

## AND

1. Government of India, rep. by its Secretary, Dept. of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Central Secretariat, New Delhi.

2. Central Administrative Tribunal, Principal Bench, New Delhi. Rep. by its Registrar, Faridkote House, Copernicus Marg, New Delhi.

3. Central Administrative Tribunal, Hyderabad Bench, Hyderabad. Rep. by its Registrar, 1st Floor, Haca Buildings, Hyderabad.

4. Sri R.Mahanti. .. Respondents.

- - -

Counsel for the Applicants .. Mr.Y.Suryanarayana

Counsel for the Respondents .. Mr.B.N.Sharma  
for R-1 to 3  
.. Mr.J.Sudheer  
for R-4

- - -

CORAM:

HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (ADM.)

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



- - -

.. 2 ..

O R D E R

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

---

None for the applicants and for R-4. Even the parties were absent when the OA was taken up for hearing. Heard Mr.B.N.Sharma, learned standing counsel for the respondents 1 to 3. Since the OA was filed in the year 1995 we were not inclined to adjourn the proceedings to any further date. Hence we are deciding this OA in accordance with Rule 15(1) of the C.A.T. (Procedure) Rules, 1987.

2. Originally there were six applicants in this OA. The applicants 4 to 6 were deleted as per order dated 27.10.95 in M.A.932/95. Thus there are 3 applicants in this OA. They are working as UDC in the office of the R-3. They were initially appointed in the IDC cadre in the office of the Hon'ble High Court of A.P. on 9.1.78, 18.2.78 and 1.4.80 respectively. They came on deputation to work in the office of R-3, on and from 26.6.86 in the cadre of UDC and are presently continuing as such. They submit that they have been absorbed as UDCs in the services of C.A.T. w.e.f. 1.11.89 vide office order No.34/90, dated 29.5.90 (A-1). They are presently working as UDCs.



102

3. The Respondent No.4 was initially appointed in the Directorate of Insurance, in the State of A.P. He was working as Senior Accountant in the said Directorate and his substantive post is Senior Accountant. The R-4 came to work on deputation basis as Assistant in the office of R-3 w.e.f. 8.7.91. He worked as Assistant in the scale of pay of Rs.1400-2600. Initially his period of deputation was for a period of one year, however, the period of deputation was extended from time to time upto 8.7.95.

4. On and from 1.1.93 the State of A.P. revised the scales of pay ~~of~~ its employees. The parent department of R-4 fixed the pay of the applicant at Rs.3310/- on account of such revision.

5. As the revised pay of the R-4 had exceeded the maximum of the scale of the post of Assistant in the C.A.T. the pay fixation case was referred to the FA & CAO of the R-2. The R-3 after considering the fixation of pay of the R-4 by his parent department they referred the matter to the R-2. The Principal Bench of C.A.T. informed the R.2 that as the R-4 had crossed the maximum pay of the Assistant in the pay scale of Rs.1400-2600 after fixation of pay at Rs.3310/- by his parent department he may have to be repatriated to his parent department. This position was brought to the notice of R-4. However the repatriation was not done, for the R-4 made representations for absorption in the C.A.T.

2

.. 4 ..

6. The applicant submits that consequent upon the revision of the scales of pay by the State of A.P. the R-3 referred to Finance Wing (FA & CAO) seeking clarification with respect to fixation of pay of R-4. The R-2 by his letter dated 26.11.93 informed R-3 of its decision to repatriate the services of R-4 to his parent department. This decision to repatriate the R-4 to his parent department was taken as the revised pay of the R-4 exceeded the maximum in the pay scale of the post of the Assistant i.e. Rs.1400-2600. Then the R-4 appears to have submitted a representation dated 16.12.93 expressing his willingness to continue to work in the C.A.T. The applicant submit that this representation was a sequel to the decision taken by the FA & CAO to repatriate his services.

7. The first applicant had submitted his representation to the R-3 to furnish him a copy of the letter of the R-2 addressed to R-3 to furnish to it the CR dossiers and the service particulars of R-4 to consider his representation dated 16.12.93. However, by memo dated 22.8.95 the request of the first applicant was rejected putting forth the reason of confidentiality of the said correspondence between the R-2 and R-3.

8. While the matters stood thus and the R-2 was taking a decision on the representation dated 16.12.93 of the R-4, the applicants apprehending that the R-2 may take a decision favourable to the R-2 have filed this OA for the following reliefs:-

D

..5 ..

(a) to call for the records relating to and connected with the letter No.PB/17/33/93-Estt-II(A) dated 14/17.5.95 of the 2nd respondent and the memo No.A-32014/11/94 /Estt dated 6.9.95 on the file of the 3rd respondent and quash them.

(b) to set aside the decision of the official respondent to continue the 4th respondent on deputation and to absorb him as Assistant in the office of the 3rd respondent and consequently direct the respondents 1 to 3 to repatriate the 4th respondent to his parent department forthwith and consequently,

(c) to set aside the decision of the 2nd respondent in rejecting the 1st applicants request for filling up the post of Assistant by promotion of inservice candidates and consequently direct the official respondents to fill up the post of Assistant by promoting the inservice candidates working as UDCs in the office of the 3rd respondent as per the special rules governing the post with all consequential benefits.

9. Their main contentions are summarised herein below:-

(a) The period of deputation of R-4 came to an end on 8.7.95. The R-4 cannot be continued in the office of the R-3 on deputation.

(b) The post of Assistant is governed by the C.A.T.

(Group-B&C - - Miscellaneous posts) Recruitment Rules 1989

*R*

.. 6 ..

and as amended in 1994. The amended rules came into force  
w.e.f. 29.10.94.<sup>5</sup>

(c) In accordance with the pre-amended rules the post of Assistant can be filled up by promotion, failing which on transfer or transfer on deputation. Whereas after the amended rules the post of Assistant can be filled up only by 50% direct recruitment and 50% by promotion. The post of UDC is the feeder category for promotion to the post of Assistant. A UDC with at least 5 years of service is eligible for consideration for promotion to the post of Assistant.

(d) Rule 5 of the said rules 1989 contained a provision for absorption of only those who were working in the respective grade either on transfer or on deputation. The recruitment rules 1989 came into force w.e.f. 20.9.89.

(e) After the amended rules 1994, there is no provision to absorb an official who came on deputation after 20.9.89. The amended rules 1994 came into force w.e.f. 25.10.94.

(f) The amended Rules 1994 do not contain any provision for absorption.

(g) They rely on the order dated 22.3.95 passed by this Tribunal in OA.810/94 ( N.Suvarna v. CPMG and others).

(h) In OA.810/94 the C.A.T. Stenographers Group-B&C Recruitment Rules are considered.



.. 7 ..

10. One of the applicants herein submitted representation and dated 20.3.95/another representation dated 20.6.95 for considering his case for promotion to the post of Assistant. The R-3 by his memo No.320-14/11/94/Estt dated 27.6.95 <sup>applicant</sup> informing the first ~~respondent~~ that there was no vacancy of Assistant as the R-4 was continuing in the said post on deputation. He submitted a representation to the Hon'ble Chairman. The Hon'ble Chairman considered the said representation and rejected his claim. It is stated that Hon'ble Chairman has not stated any reasons for rejecting his representation.

11. They further contend that continuation of R-4 on deputation beyond 8.7.95 has deprived the chances of promotion of the applicants herein. As per/amended rules 1994, the post of Assistant has to be filled up by promotion of an inservice candidate. Hence continuation of R-4 on deputation beyond 4 years is against the norms.

12. The Ministry of Personnel had directed R-2 to obtain letters of prior sanction/approval for continuation on deputation of R-4 beyond 4 years. The applicants plead that they are unaware of R-2 having obtained such prior sanction/approval from the Ministry of Personnel.

13. The proposal of absorbing R-4 in the C.A.T. is against the Rules 1994 and against the decision in O.A. 810/94. They further submit that O.A. 810/94 has been approved by the Hon'ble Supreme Court in SLP(C) 10096/95.

.. 8 ..

14. They further submit that the proposals submitted by the R-2 for considering the case of R-4 for absorption the 1st respondent appears to have ~~not~~ negatived the proposal and in view of the same, the Principal Bench rejected the claim for absorption and directed R-3 to repatriate R-4 to the parent department. They submit that in this behalf. orders were issued on 15.5.95 to the R-3. Hence constituting a DPC to consider the case of absorption of R-4 is against the earlier decisions of R-4.

15. The first applicant further submits that his representation has been rejected without proper reasons.

16. The respondents 1 to 3 have filed the counter stating that the R-4 belongs to SC community. That in the C.A.T. there ~~were~~ backlog of SC vacancies in different categories and in the category of Assistant also. Those vacancies ~~were~~ being carried forward on year to year basis. The R-4 was fully eligible for absorption. He had first charge on one of ~~the~~ <sup>the</sup> ~~vacancy~~ <sup>jobs</sup> and therefore he was absorbed against SC vacancy for which the general candidates like the applicants herein have no claim at all. They further submit that taking into these consideration, the proposal of absorption of R-4 was ~~referred~~ <sup>mooted</sup> to R-2.

17. No doubt in the first instance when the parent department of R-4 fixed the pay of the applicant at Rs.3310/- which crossed the maximum of the pay of the scale of the

R

.. 9 ..

The Assistant in the C.A.T / F.A. & C.A.O. had advised for the repatriation of the R-4 to his parent department. However, the R-4 submitted a representation that he was prepared to work in the scale of the Assistant in the C.A.T <sup>the benefits of</sup> forego<sup>ing</sup>/his revision of pay by the State of A.P. Further the R-4 was selected to work in the C.A.T. on deputation basis because of the fact that he belonged to reserved <sup>Approval for</sup> community. ~~the~~ Extension of ~~the~~ deputation of the R-4 beyond 8.7.95 was obtained from the department of Personnel and Training. The services of the R-4 were absorbed in accordance with the pre-amended rules w.e.f. 11.12.96.

18. <sup>a</sup> They submit that R-4 submitted/representation dated 30.12.93 stating that he was prepared to continue on deputation as he would like to draw the pay in the scale of the post of Assistant in the C.A.T. He also expressed his willingness for absorption as Assistant in the C.A.T. The said representation was forwarded to the Principal Bench on 12.1.94. The Department of Personnel and Training on a clarification sought from the C.A.T. held that in case the R-4 opted for the Central Government pay scales, despite the revision of the pay by the State of A.P. <sup>pay plus</sup> he may be continued on deputation until his DA/ADA admissible under the State Government does not exceed the maximum of the pay scales of the deputation post plus DA/ADA/IR thereon under the Central Government. As per the information



.. 10 ..

furnished in Annexure-R -5 the total emoluments of R-4 never exceeded the Central scales in comparison to the pay of the State Government employee. That even otherwise, the R-4 had given <sup>an</sup> undertaking to forego the emoluments of the State Government and opted for Central Government pay scales as per Annexure-R-4. Initially on a reference made by the Principal Bench, the matter regarding absorption of R-4 was considered by the Department of Personnel and Training and on such consideration it was decided that his absorption as Assistant in Central Administrative Tribunal may not be possible as the scale of the pay of the post held by him in his parent office was higher than the scale attached to the post of Assistant in the C.A.T. Subsequently, the R-4 again submitted a representation requesting for absorption in the C.A.T., that representation was forwarded to the Principal Bench for consideration. He had submitted another representation dated 30.6.95. In which he prayed for continuing him on deputation ~~for~~ <sup>pending</sup> consideration of his absorption. The Principal Bench in its letter dated 14/17.7.95 informed that the representation of the R-4 had been considered by the Hon'ble Chairman and he has ordered that in case R-4 <sup>was</sup> ready to opt the pay scale of the Assistant grade in the C.A.T. and forego the higher pay scale in his parent department he ~~can~~ <sup>could</sup> be considered for absorption in the C.A.T. <sup>basis</sup> he having joined the C.A.T. on deputation in July 1991 he would be governed by the pre-amended rules. It was

*R*

.. 11 ..

only on 25.10.94 that the rules for the post of Assistant came to be amended and the amended rules would be applicable for the officials joining the C.A.T. after 20.5.94. Since the case of R-4 fell within the purview of the pre-amended recruitment rules, the official respondent went ahead with the process of absorption of R-4.

19. Accordingly, the Hon'ble Chairman constituted a DPC. The DPC recommended absorption of the R-4. The applicant No.1 had sought a copy of the said letter dated 14/17.7.95. Since the said letter contained particulars regarding the members of the DPC and also the details of records required to be placed before the DPC, it was felt confidential in nature and therefore the copy of the letter dated 14/17.7.95 was not supplied to the applicant No.1. They further submit that the amended rules can only operate prospectively from the date of amendment. The amended rules came into force w.e.f. 25.10.94. Hence for the purpose of considering the case of absorption of R-4, the ACRs were called for. His parent department, namely, the Directorate of Insurance also conveyed its no objection in this behalf. They further submit that it was not possible for them to get a reserved community candidate to fill the S.G. slots. They further submit that the decision of this Tribunal in OA.810/94 (Smt. N. Suvarna v. C.P.M.G. and others) has been overruled by the Principal Bench in OA.1111/95 (Sri S. Kailasam v. Union of India and others) which lays down that the



absorption of an official joining the C.A.T. after the notification of the recruitment rules on 20.4.89 is permissible and therefore the ratio of the judgement in OA.810/94 is no longer a good law. Since the Hon'ble Supreme Court had not considered the facts and or reasons while dismissing the SLP against order in OA.810/94 the decision of the Full Bench in the case of OA.1111/95 is squarely applicable. Thus they submit that there are no grounds in the OA and the OA is liable to be dismissed.

20. The respondent No.4 also has filed a reply. However, no rejoinder has been filed by the applicants.

21. The main contention of the applicants is that the R-4 should not be absorbed in the services of the C.A.T. that his absorption deprives a legitimate expectation of promotion of one of the applicants, i.e. the applicant No.1. <sup>however</sup> The respondents produced the seniority list of UDCs. The applicants 1 to 3 are in the Sl.Nos. 1 to 3 in the said seniority list. The applicant No.1 is the senior-most UDC as per the seniority list. It is stated that in case the R-4 is absorbed in the services of the C.A.T. then the chances of promotion of the applicant No.1 will be jeopardised.

22. The seniority position has not been disputed by the respondents. But they contend that the R-4 was taken on deputation to work in the office of the R-3 against a reserved community slot. They further submit that there were backlog of vacancies meant for reserved community candidates.

.. 13 ..

They further submit that there were no sufficient number of reserved community candidates and that posts meant for reserved community candidates were being carried forward on year to year. It is on these grounds they submit that the R-4 being a candidate belonging to reserved community was found most suitable for absorption in the services of the C.A.T.

23. No doubt when his pay was revised in his parent department he had crossed the maximum of the scale of pay of the post of Assistant in the C.A.T. The FA & CAO had then advised to repatriate the services of R-4 to his parent department. At that time, the R-4 submitted representation that he was willing to work in the scale of the pay of the Assistant in the CAT foregoing the revision of pay in his parent department.

24. The contention of R-4 that he was relieved from his parent department subject to the condition that he would not be taken back cannot be accepted. A deputationist can work in the foreign department so long as <sup>the</sup> department continues to have his services or so long as the parent department continues to allow the deputationist to work in the foreign department. Further it is stated that the recruitment rules were amended w.e.f. 25.10.94 prospectively. The R-4 was working in the C.A.T. since 8.7.91. He was working in the post which was governed by the pre-amended rules.

R

.. 14 ..

It is not the case of the applicants that R-4 was working in the post created after the amended rules came into force i.e. after 25.10.94. Further the Principal Bench had taken decision to absorb the services of the R-4 in accordance with the pre-amended rules. Having regard to the fact that the R4 came on deputation to work in the C.A.T. against the reserved community post, that there were backlog vacancies and those vacancies were being carried forward on year to year basis, and that no eligible reserved community candidate was available for appointment in the C.A.T., These circumstances prevailed upon the Principal Bench to consider the case of the R-4 for absorption in the C.A.T. We feel that the applicants cannot have any grievance. His absorption in the C.A.T. does not in any way affect the promotional chances of the applicants. Further, chances of promotion is not a condition of service. The applicants cannot have any grouse when the respondents categorically stated that the services of the R-4 was absorbed against the reserved community candidate in accordance with the rules. Their contention that the amended rules did not provide for absorption has no force, <sup>for</sup> the simple reason that the post to which the R-4 had been absorbed was a post which was in operation when the recruitment rules 1989 was in operation. The recruitment rules amended in 1994 can only be prospective in nature. When that is so, it cannot be said that the services of the R-4 was absorbed in a post that

7

.. 15 ..

was created after the amended rules 1994 came into operation.

25. As regards the absorption, the Full Bench of the Principal Bench has said that the same is permissible under the pre-amended recruitment rules. When that is so the applicants cannot have any grievance on the absorption of the R-4 in the services of the C.A.T.

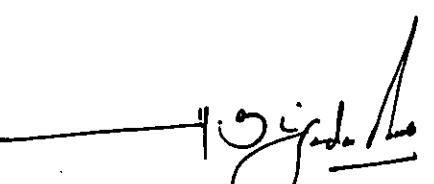
26. The applicants have not filed any rejoinder to the reply filed by the respondents. In that view of the matter we find no merits in the OA and the OA is liable to be dismissed.

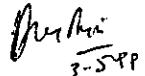
27. Accordingly, the OA is dismissed. No costs.

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

29.4.99

Dated : 29<sup>th</sup> April, 1999

  
( H. RAJENDRA PRASAD )  
Member (Admn.)

  
M.L.  
3-5 P.P.

sd

COPY TO:-

1. HON. J.
2. HHRP M(A)
3. HSSJP M(J)
4. B.R. (A)
5. SPARE

1ST AND 2ND COURT

TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR :  
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :  
MEMBER (A)

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

THE HON'BLE MR. B. S. JAI PARAMESWAR :  
MEMBER (J)

DATED: 29.4.98

ORDER / JUDGEMENT

~~MR./R.A./C.P. NO.~~

IN

C.A. No. 1314/95

ADMITTED AND INTERIM DIRECTIONS  
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS WITH PREJUDICE  
Central Administrative Tribunal  
ORDERED/REJECTED. DESPATCH

NO ORDER AS TO COSTS

SRR

