

64

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. No.555(Hyd) of 1995

dt. 11-6-97.

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

.....
Aged 45 years, Section Officer, Central
Administrative Tribunal, Hyderabad Bench,
Hyderabad.

Applicant

-Versus-

1. The Government of India, represented
by Secretary to Government, Department
of Personnel & Training, Central Secre-
tariat, New Delhi - 110 001 ;

2. The Central Administrative Tribunal,
Principal Bench, represented by its
Registrar, Copernicus Marg,
New Delhi - 110 001 ;

Hyderabad Bench, represented by its
Registrar, HACA Bhawan, Hyderabad-500 004.

.....
Respondents

Counsel for the applicant : Mr. Y. Suryanarayana

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

Heard on : 4.3.1997 - Order on : 11-6-97.

O R D E R

A.K. Chatterjee, VC

Stripped of unnecessary details, the relevant facts
are that the petitioner, who was formerly a Deputy Section Offi-
cer in Andhra Pradesh High Court w.e.f. 5.8.1985 carrying a pay
scale of Rs.1380-2750/- (RS) came over to the Central Administra-
tive Tribunal (hereinafter referred to as the Tribunal) as a Sec-
tion Officer on deputation in the pay scale of Rs.2000-3500/- (Revised

on 12.6.1986. Rules for recruitment to various posts in the Tribunal were framed later and came into effect on 20.9.89, which provided, inter alia, for absorption of deputationists subject to fulfilment of certain conditions. The conditions among others were that a deputationist subject to his exercising option may be absorbed in a particular post if he was eligible for such post according to the norms laid down in the rule itself. The petitioner duly exercised option for absorption as a Section Officer but by an order dated 28.5.90, Annexure A/IV to the application, he was absorbed as an Assistant w.e.f. 1.11.89. It was, however, laid down in the order that he was allowed to continue to officiate as a Section Officer on an adhoc basis till he was regularised as such. The petitioner has been making representations to treat him as a Section Officer from the date of his deputation on 12.6.1986, but to no effect. He was ultimately promoted as a Section Officer by an order made on 3.5.1994. He has filed the instant application for a declaration that he should be deemed to have been appointed as a Section Officer with effect from the date of his joining in the Tribunal i.e. 12.6.1986 and other consequential reliefs on the following broad grounds:

2. i) A circular issued by the Tribunal dated 14.10.91, Annexure A/VI to the application, specifically provided that in respect of employees absorbed in the Tribunal w.e.f. 1.11.89, the services rendered by them in the Tribunal prior to promulgation of Recruitment Rules will be deemed to be regular services in that grade even if the appointment was made on an adhoc basis.
- ii) The petitioner by continuously officiating as a Section Officer since 12.6.86 against a substantive post with all benefits attached to such post is entitled to count his service from the said date.

....

has seen the "old letters" on the back of the "new ones".

iii) The petitioner having been assured that his services as Section Officer could be regularised as soon as formalities would be completed, the authorities cannot turn round to deny him the benefit of regularisation as Section Officer with effect from 12.6.1986.

3. A counter has been filed by the Tribunal impleaded as respondent No.2 on behalf of all the respondents. It has been stated that despite his option, the petitioner could not be absorbed as a Section Officer as he had not completed 8(eight) years of regular service as an Assistant on 1.11.1989, which was the eligibility laid down in the recruitment rules for appointment as a Section Officer and only to avoid his reversion or repatriation and thus only to be fair to him, he was allowed to continue to officiate as a Section Officer on an adhoc basis till his regularisation in such post.

4. The petitioner has filed a rejoinder disputing, inter alia, that he was not eligible for absorption as Section Officer.

5. We have heard the ld Counsel for both the parties and perused the records before us.

6. We are in no doubt that the circular issued by the Tribunal on 14.10.91, Annexure A/VI to the application does not in any way come to the aid of the petitioner. Obviously, the Tribunal was not competent to take a decision regarding counting of service rendered prior to the promulgation of the Recruitment Rules for the simple reason that the Administrative Department for the Tribunal being the Department of Personnel, only that Department could issue such an order. It has been so observed by the Hon'ble Supreme Court in Civil Appeal No.2277-78 of 1996 and ultimately the aforesaid order was even withdrawn by the Tribunal. In such situation, the circular dated 14.10.91 upon which reliance has

been placed by the petitioner does not in any way improve his case.

7. The plea of the petitioner of continuous officiation as a Section Officer against a substantive post since 12.6.86 is equally useless to support his case for regularisation of his service as Section Officer from the said date. The regularisation of service as Section Officer, which means his appointment as such on a regular basis as distinguished from an adhoc basis can only be made in terms of the relevant provision of the recruitment rules.

8. The fact that his adhoc appointment was against a sub-
for the post of Section Officer but it does not confer upon him any right to claim regularisation if he did not fulfil the eligibility conditions as laid down in the Recruitment Rules. If he was found eligible but regularisation was denied for want of vacancy, then only he could possibly argue that adhoc appointment having been made against a substantive post, non-availability of vacancy could not be a ground to deny appointment on a regular basis. Enjoyments by the petitioner of benefits are only normal incidents of holding the post even on ad-hoc basis and it cannot be a foundation of his claim for regularisation of his service as Section Officer since 12.6.1986.

9. The petitioner has urged that an assurance was held out to him that his service as Section Officer would be regularised as soon as ^{option} formalities were completed and upon such assurance he accepted absorption as an Assistant. As far as we could understand, the petitioner has tried to build up a case of a sort of estoppel and it was contended that if there was no such assurance, he would have preferred repatriation to the parent department, which

offer~~made~~ much better career prospect and eventually he could be appointed as District Munsif. The supposed assurance is to be found in the order absorbing him as an Assistant, Annexure-A/IV to the application, which provided that he would be allowed to continue to officiate as a Section Officer on an ad-hoc basis till he was regularised in that post. This does not even remotely imply that his adhoc appointment as Section Officer would be counted for regularisation of his service as Section Officer and cannot, therefore, constitute any assurance to that effect. Further the order containing the so-called assurance was made after the Recruitment Rules were framed and no person of ordinary prudence could assume that regular appointment as Section Officer could be made in disregard~~to~~ the provision of the said rules. It is hard to imagine how the petitioner after a specific order absorbing him as an Assistant with effect from 1st11.1989 could still believe that he would be absorbed in the higher post of Section Officer from a much earlier date. Even^{if} he had so believed, the Tribunal cannot be said to have induced such belief in him and thus it cannot be held responsible for the inconvenience or loss, if any, suffered by the petitioner by acting upon such belief.

10. The Ld.Counsel for the petitioner has urged that the order of the Tribunal absorbing the petitioner as an Assistant without accepting his option to be absorbed as a Section Officer was in substance a counter offer and the petitioner had no opportunity to accept or reject it. We are unable to find any merit in this contention. If really the petitioner was not willing to be absorbed as an Assistant, nothing prevented him to part company with the Tribunal and thus if he regarded his absorption as a counter offer, he had enough opportunity to reject it and revert to his parent department, which, according to him, offered much better prospect of promotion.

11. The petitioner has also raised a question of seniority, though this is not directly linked to his case seeking regularisation as a Section Officer w.e.f. 12.6.36. He has stated that in the final seniority list of Assistants of Hyderabad Bench, his name had appeared against Srl. No.1, but in the combined seniority list of Assistants prepared by the Principal Bench, he was relegated to the ^{1st} place. This is an argument of no consequence because the petitioner even though held the top most position among the Assistants of Hyderabad Bench, could be depressed to a lower place in the seniority list prepared in respect of all the Assistants located in different Benches. Indeed, the petitioner gave a representation against the seniority list prepared by the Principal Bench in which he ventilated his grievance only regarding date of his regular appointment in the parent department and the date from which his seniority was to be counted. He never raised any question that as he held the top most place in the seniority list of Assistants in Hyderabad Bench, his position should have been fixed at a higher place in the combined list prepared by the Principal Bench. Further it does not appear that there was any error to the dis-advantage of the petitioner regarding the date from which his seniority was to be counted as an Assistant. This date has been noted as 12.6.36, which was the date on which he had joined the Tribunal on deputation. The petitioner contended in his representation that he was regularly appointed as a Deputy Section Officer in A.P. High Court on 5.3.35 which should have been recorded as the date of regular appointment in parent department. According to the D.O.P.T. O.M. dated 3.7.36, seniority of an absorbed deputationist cannot be determined under any circumstances with reference to a date prior to his date of joining on deputation and, therefore, the seniority of the petitioner as an Assistant could not be fixed with

reference to any date earlier than 12.6.86. Thus, the seniority of the petitioner as shown in the seniority list of Assistants appears to be free from doubt.

12. In the rejoinder filed by the petitioner, he has disputed the stand of the respondents that the post of Deputy Section Officer held by him in Andhra Pradesh High Court was not equivalent to the post of Assistant in the Tribunal. ~~Assistant~~
~~Very important~~~~and~~~~of~~~~the~~~~petitioner~~
~~is~~~~equivalent~~, but even if both the posts are held to be equivalent, the seniority as an Assistant in the Tribunal cannot be counted with reference to any date anterior to his date of joining the Tribunal on deputation. Nor can it be said that he had put in 8 years of service as an Assistant on 12.6.86 even counting his service as Deputy Section Officer in A.P. High Court since 5.8.85.

13. The contention of the respondents as stated in their counter was that the post of Section Officer held by the petitioner on officiating ad-hoc basis w.e.f. 12.6.86 was deemed to have been served in the feeder cadre of Assistant as the post of Deputy Section Officer held by him in the parent Department w.e.f. 5.8.85 was not analogous to the post of Assistant in the Tribunal. Thus, according to the respondents, the petitioner did not complete 8 years of service as an Assistant even on 3.5.94 when he was promoted as a Section Officer which was effected only by giving relaxation by the competent authority. Regarding this contention, the petitioner has stated in the rejoinder that if it was found desirable to exercise the power of relaxation for giving promotion on 3.5.94, there was hardly any justification why relaxation could not be given earlier despite the promise made on 28.5.90. We are unable to make much of this argument and suffice it to say that it is entirely for the concerned authority to decide on the basis of

exigency of situation whether relaxation was called for. It is only a repetition to mention that there was nothing in the order dated 28.5.90 which might be regarded as an assurance to the petitioner that his adhoc appointment as Section Officer could be counted for regularisation of his service as such.

14. The petitioner has also contended in the rejoinder that the respondents were in error in stating that the post of Deputy Section Officer in Andhra Pradesh High Court was not equivalent to the post of Assistant in the Tribunal solely on the basis of consideration of pay scale attached to the post and disregarding the relevant orders on the subject issued by the Govt. of India. The question of equivalence of post is mainly relevant for the purpose of determination of seniority in the grade in which a deputationist is absorbed but for the purpose of absorption, the eligibility condition as laid down in the recruitment rules has to be fulfilled. It was not the case of the petitioner that the Deputy Section Officer in the High Court is a post higher than that of an Assistant in the Tribunal and it has already been pointed out that even by counting his service as Deputy Section Officer from 5.8.85, he did not become eligible for appointment as a Section Officer in the Tribunal on 12.6.86.

15. In this connection, the petitioner has also pointed out that in the Office Memorandum of D.O.P.T. dt.14.2.86 by which proposals were invited to ^{draw} drop up panels for filling up certain posts in the Tribunal, eligibility condition for the purpose of Section Officer was satisfied by him, which was why he was appointed as such on 12.6.86. Thus, according to the petitioner, the decisions to absorb him as an Assistant and to regularise his service as Section Officer only from 3.5.94 are clearly unsustainable. This contention has to be rejected. The Office Memorandum dt.14.2.86

referred to above laid down the eligibility condition only for selection on deputation. This O.M. ^{contains} contends no provision whatsoever that prospective deputationist would be absorbed to the post deputed on the basis of the same eligibility condition. For the purpose of absorption, the relevant provision in the Recruitment Rules are the guiding consideration, which cannot be overlooked and thus in the present case, the petitioner could not be absorbed as Section Officer w.e.f. 12.6.86 for want of requisite eligibility as laid down in those rules.

16. Mr. Devaraj, the Ld. Sr. Counsel appearing for the respondents has urged that the grievance, if any, of the petitioner had arisen as soon as he was absorbed as an Assistant by ^{the} ~~an~~ order dt. 28.5.90 and this matter cannot be agitated in the present application filed on 18.4.95. The petitioner's answer to this contention is that the cause of action arose for the first time only when he was promoted as a Section Officer prospectively w.e.f. 3.5.94 and thus this application has been filed well in time. After giving anxious consideration to the rival contentions, we find a good deal of force in the argument of Mr. Devaraj. As the entire case of the petitioner is that his absorption as an Assistant w.e.f. 1.11.89 by the order dt. 28.5.90 is illegal, it is impossible to hold that the petitioner had no grievance at that time. The petitioner no doubt contends that the issue was kept open and it was only finally decided against him when he was absorbed as a Section Officer w.e.f. 3.5.94. There is no merit in this contention because as already pointed out, there was no assurance or even any remote ^{intimation} ~~application~~ in the order dt. 28.5.90 that the petitioner was likely to be absorbed as a Section Officer w.e.f. 12.6.86, as prayed by him in this application or even from any particular date. The petitioner has also contended that ever since the order dt. 28.5.90 he has been

making representation but was not favoured with any reply. The respondents have stated that the representations were duly considered and rejected but it does not appear that the rejections were communicated to the petitioner. But even assuming that the petitioner was not intimated about disposal of his representation, it does not follow that he could wait indefinitely to ventilate his grievance before the Tribunal. Indeed, filing of a representation being not a statutory remedy, he could make an application as soon as the order dated 28.5.90 was passed or within one year thereafter. And in any case, when he received no response to his first representation even within six months of making the same, he should have made the application within one year thereafter. We, therefore, hold that the present application cannot be entertained at this distant point of time even if it was sustainable on merit, though we have already indicated that we find no substance in the case made out by the petitioner.

17. Before parting ^{with} this case, we should like to add a few more words. We have also heard an application filed by another Court Officer of the Hyderabad Bench of the Tribunal, Shri A. Surinder Reddy being O.A. No. 1218/95, wherein he had also ventilated his grievance that inspite of exercising option for absorption as a Court Officer, he was absorbed as an Assistant w.e.f. 1.11.89 like the present petitioner. The judgment in that case is being delivered separately. It was, however, stated that both the cases were identical in nature, which we find is only partially true. Both the petitioners have no doubt prayed for absorption as ^{Section Officer} Court Officer (though from different dates), but the grounds for such claim are altogether different. The case of Sri Surinder Reddy was that in the parent department, he held an analogous post and, therefore, he was eligible for absorption as a Court Officer with effect from 1.11.89 in accordance with the provisions as contained

in the Schedule to the relevant Recruitment Rules, while in the present case, the petitioner Shri T. Narender Reddy never claimed that he held an analogous post in the parent Department but prayed for absorption as Section Officer on the ground of continuous officiation as such, ^{for} ~~on~~ the supposed assurance held out to him and on the basis of circular issued by the Tribunal dated 14.10.91. Thus, the scope of the enquiry in the two cases ~~is~~ quite different.

18. Thus, considering the case of the petitioner in all its bearing, we are unable to grant ~~to grant~~ to the petitioner the relief prayed by him and the application is accordingly rejected.

19. Parties to bear their own costs.

P. J. D.

(PT THIRUVENGADAM)
Member(A)

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

Amrit
11/6/87
D.N.O.

3.12.88

Copy to:

1. The Secretary to Govt., Deptt. of Personnel & Training, Central Secretariat, New Delhi.
2. The Registrar, Central Administrative Tribunal, Principal Bench, Copernicus Marg, New Delhi.
3. The Registrar, Central Administrative Tribunal, HACA Bhawan, Hyderabad.
4. One copy to Mr.Y,Suryanarayana, Advocate,CAT,Hyderabad.
5. One copy to D.R(A), CAT, Hyderabad.
6. One duplicate copy.

YLKR

17/6/87

(A)

HYD.

COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

A.K.Chatterjee, V.C.

THE HON'BLE SHRI R.RANGARAJAN. M(A)

AND

P.T.Thiruvenkadam. M(A)

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

DATED: 11/6/87

ORDER/JUDGEMENT

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

in

O.A.NO. 555/85

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions,

Dismissed

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

YLKR

II Court.

