

38

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

1094
OA. Gr.1200/96

dt.21-8-96

Between

K.K. Sarma

: Applicant

and

1. Union of India, rep. by
The Secretary
Min.of Home Affairs
Central Sectt., New Delhi

2. Registrar General, India, and
Ex.Officio Census Commissioner
2/A, Man Singh Road,
New Delhi 110 011

3. Director of Census (Operations)
Govt. of India, Pioneer House
Somajiguda, Hyderabad 500082

: Respondents

Counsel for the applicant

: K.L.N. Rao
Advocate

Counsel for the respondents

: N.R. Devaraj
SC for Central Govt.

CORAM

HON. JUSTICE M.R. M.G. CHAUDHARI (VICE CHAIRMAN)

HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

Judgement

Oral order (per Hon. Mr. Justice M.G. Chaudhari, VC)

Mr. K.L.N. Rao for the applicant. Mr. N.R. Devaraj for the respondents.

1. The applicant seeks a direction to the respondents to regularise his service as Assistant Director, Census Department with effect from 1-9-1984 and to give him all consequential benefits. It may be stated that the applicant has been promoted regularly to the said post of Assistant Director with effect from 18-8-1989. The question, therefore, is confined to his claim for the benefit of promotion being extended retrospectively with effect from 1-9-1984. That according to the applicant will ensure to his monetary benefits. The applicant has retired on 31-7-1996 on superannuation .

2. Strong reliance is placed by the learned counsel for the applicant Mr. K.L.N. Rao on the decision of the Cuttack Bench of CAT in OA.41/93 dated 3-10-1994 in which case one P.K. Rout, whose grievance was similar to that of the applicant was directed to be given benefit of regularisation with effect from 1-9-1984 together with consequential benefits. We have critically examined the position of the applicant with a view to see whether similar benefit may be extended to him particularly when another Bench of the Tribunal in similar circumstances was inclined to extend that benefit to another official. The exercise was necessary to erase any impression in the mind of the applicant that he is being discriminated and justice is being denied to him unfairly. But the position of the applicant, is

..2.



(73)

beset with several legal difficulties which is not possible to overcome purely on sympathetic grounds.

3. Firstly, the applicant seeks a relief with regard to a grievance relating to 1-9-1984. We are inclined to take the view that since the cause of action had arisen within a period of three years preceding 30-6-1986 when the Central Administrative Tribunal started exercising jurisdiction over the State of Andhra Pradesh, the applicant had to agitate his grievance before the Tribunal within a period of six months from 30-6-1986 under Section 21(2) of the Administrative Tribunals Act, 1985. We are not, therefore, sure whether we can exercise jurisdiction over a matter which had attained finality prior to the exercise of jurisdiction by the Tribunal in this State.

4. However, leaving aside the question of jurisdiction, the next difficulty that arises is as regards accrual of cause of action. That would involve the question whether the present action suffers from laches. It does not appear to us to be correct to proceed on the footing that OM dated 14-3-1996 can afford cause of action to the applicant for seeking the relief which he has sought in this OA which was filed on 9-4-1996. That office memorandum inter alia states that for the year 1984 there was only one vacancy in the grade of ADCO(T) which was filled on regular basis on the recommendation of DPC and since the applicant was not in the zone of consideration, his name was not considered by the DPC. Clearly therefore, the grievance could be made at that stage. It is further stated that the applicant's name was considered by the DPC for promotion for the vacancies relating to the year 1985 but the applicant's name

..3.

lum

was not recommended for the promotion against those vacancies because his name in the eligibility-cum-seniority list of Feeder cadre of Investigators was at a lower position than others. Historical narration of facts although ^{presently} is made that cannot give rise to a fresh cause of action which had already accrued when his name was not recommended in 1985.

5. Thirdly, when the case of the applicant was considered by DPC in 1985, it would not be open to the applicant to claim relief relating to an earlier period i.e. 1984.

6. Fourthly, the applicant accepted the promotion in 1989. He has acquiesced in the action of the respondents and it is not open to him to go behind that selection.

7. Giving relief to the applicant at this stage would require DPC proceedings of the year 1989 to be altered. Likewise, DPC proceedings of 1985 will have to be reopened. Until these two barriers are crossed- the case of the applicant for giving him benefit from the year 1984 will not be open to be considered. Such a course cannot be adopted at this belated stage, particularly when DPC proceedings of 1985 ^{and} or 1989 are not subject matter of challenge nor it would be proper to dabble with those decisions when they could not be confined only to the applicant. It is also not possible as all the candidates who were considered by DPC in 1985 or 1989 are not before the Tribunal and their position cannot be disturbed by introducing the applicant in those lists. We are aware that since the applicant was retired and only notional promotion is contemplated that may not have any practical impact on the other candidates who were selected in 1985 and 1989 yet it would not be a correct step to be taken in at this stage.

..4.

Full

975

8. Turning to the decision of the Cuttack Bench on which much reliance is placed and in fact which order seems to have given rise to a ray of hope in the mind of the applicant, what we are inclined to think is that the decision has to be read as confined to the case of the applicant in that case and cannot be read as laying down a ratio which implies upsetting the decisions of the two DPCs which were held in 1985 and 1989. For that matter we do not know whether any DPC was held between 1985 and 1989. Secondly, it appears from the judgement that it was not the case of the respondents in that case that the applicant Mr. P.K. Rout had been considered by the DPC earlier. As against that in the counter which has been filed by the respondents in the instant case it has been stated ^{that} the case of the applicant was considered by the DPC in the year 1985 but he was not found fit and was not selected. That position distinguishes the case of the applicant from the case of the applicant in the OA before the Cuttack Bench. We therefore, hold with respect that the decision must be deemed to be confined to the facts of that case and that cannot be followed in this case.

9. Learned counsel for the applicant submitted that in fact the applicant was senior to P.K. Rout and it therefore results in giving rise to an anomalous position that a junior has got benefit by virtue of decision of Cuttack Bench but the applicant though senior is being denied the same and therefore, it is a fit case where laches should be overlooked. In support of this submission reliance is placed upon the list of investigators who were promoted as Assistant Directors on adhoc basis for a period of one year issued by the Government of India, dated 23-9-1980, Annexure A.1. In that list of

hmr

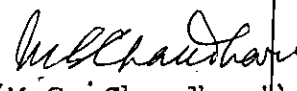
98

ad hoc promotees the name of the applicant figures at Sl. No.6 and that of P.K. Rout at Sl.No.11. The argument, however, cannot be accepted because this was not a list of seniority pertaining to the feeder cadre which alone is material for promotion to the post of Assistant Director. In so far as the seniority list of officers of Feeder cadre Investigators is concerned the respondents have produced a copy of the seniority list in which the name of P.K. Rout figures at Sl.No.63 and the name of the applicant figures at Sl.No.68. There is, therefore, no harm in saying that P.K. Rout though junior to the applicant has been given relief by the Cuttack Bench and injustice is being done to the applicant.

10. In the background of above facts and circumstances, the conclusion is inevitable that the applicant had not moved at appropriate time. His action initiated as late as 9-4-1996 seeking relief with reference to the year 1984, therefore, suffers from laches and that cannot be condoned. In our opinion, merely because P.K. Rout was given relief by the Cuttack Bench, it does not automatically follow that the applicant is entitled to get the same relief as a matter of course. We are, therefore, constrained to hold that the grievance of the applicant cannot be entertained


11. Consequently the OA is rejected. No order as to costs.


(H. Rajendra Prasad)
Member (Admn.)


(M.G. Chaudhari)
Vice Chairman

Dated : August 21, 96
Dictated in Open Court

sk


Deputy Registrar (D) cc.

1094
O.A. ~~SR.1200~~/96.

To

1. The Secretary, Min.of Home Affairs,
Union of India, Central Secretariat,
New Delhi.
2. The Registrar General, India,
and Ex-Officio Census Commissioner
2/A, Man Singh Road, New Delhi-11.
3. The Director of Census (Operations)
Govt.of India, Pioneer House, Somajiguda,
Hyderabad-82.
4. One copy to Mr.K.L.N.Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

pvm.

① 23/10/96
2 draft I COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

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

Dated: 21-8-1996

ORDER / JUDGMENT

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

in
O.A. No. 1094/96

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

pvm

