

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A.No.345 of 1997..
1999

Date of Order: 21-6-1999.

Between:

1. D.M.Subrahmanyam.
2. G.Bhaskar Lal.

...Applicants

a n d

1. Union of India, Ministry of Defence,
Rep. by its Secretary, New Delhi-11.
2. H.Q.S. Southern Command,
Engineers Branch, Rep. by its Chief
Engineer, Pune-411 001.
3. Chief Engineer, (NAVY),
Station Road, Visakhapatnam-530 008.
4. Commander of Works (Projects),
Visakhapatnam-530 008.

...Respondents

COUNSEL FOR THE APPLICANT : Mr.K.Vinaya Kumar

COUNSEL FOR THE RESPONDENTS : Mr.B.Narasimha Sharma

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

A N D

THE HON'BLE SRI H.RAJENDRA PRASAD, MEMBER(ADMN)

: O R D E R :

(PER HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN)

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1. There are two applicants of this OA. In an earlier OA.No.795 of 1993, by an order passed on 5-11-1996 this Tribunal directed the respondents to consider the application of these two applicants for seniority from the date of regularisation of their services in the light of Government of India, Ministry of Defence's Circulars dated:14-7-1992 and 15-3-1994. However, the 4th respondent (Commander of Works (Projects), Visakhapatnam), held that the applicants were not eligible for seniority from 23-8-1975 and 1-10-1972 respectively as claimed by them on the ground that the panel of candidates for the purpose of promotion was not applicable in the case of the applicants. By a letter dated:14-7-1992, the Government of India, Ministry of Defence issued instructions that the service conditions of the Task Force personnel engaged by C.W.E.(P), Portblair, Andamans were not applicable to the personnel employed in C.W.E.(P), D.D., Visakhapatnam which, according to the applicants, was not correct and not in accordance with the rules applicable as on 1-10-1972 and 29-3-1975 in relation to the applicants. According to the applicants, the instructions issued by C.W.E.(P), Portblair, Andaman on behalf of Government of India, Ministry of Defence were applicable to the applicants also in view of the fact that originally the applicants were deployed in the Task Force personnel of the C.W.E.(P), Portblair, Andaman and C.W.E.(P) D.D., Visakhapatnam, under the control of the Southern Command previously with Headquarters at Pune. The instructions dated:15-3-1994, issued by the Headquarters, Southern Command, Pune considered the panel prepared and one Sri P. Atchuta Rao,

MES No.183072, who was also working along with the applicants had been included in the seniority for the purpose of promotion but the Commander Works Engineer(P), Visakhapatnam, could not say that the instructions issued by the Headquarters, Southern Command, Pune on behalf of the Government of India, Ministry of Defence were not applicable in the case of the applicants and in fact, according to the applicants, separate rules could not be envisaged for each Command and previously all the personnel were under the Southern Command, Pune. The post of Chief Engineer (Navy), Visakhapatnam, had been carved out separately but the applicants could not be considered on the ground that they were working in Visakhapatnam when the person working along with them was shown in the seniority list for the purpose of promotion as per letter dated 15-3-1994, addressed by the Southern Command, Pune to all the Chief Engineers including Chief Engineer (Navy), Visakhapatnam and D.G.N.P., Visakhapatnam, as also G.E.I N.D., Vizag. The 4th respondent refused to implement the orders issued by the Ministry of Defence, Government of India, which were applicable to all the staff in the entire Southern Command, particularly to the ex-Task Force personnel anywhere in India.

2. Further according to the applicants in Writ Petitions 3850 and 4317 of 1978, the Hon'ble High Court of Andhra Pradesh directed that a writ in the nature of mandamus be issued directing the respondents therein to treat the petitioners as surplus and absorb them in regular vacancies in Defence establishment with all service benefits including seniority and pay etc. This decision was not

taken into consideration and therefore, the applicants had to approach this Tribunal by filing the present OA.

3. It is pertinent to note that this Tribunal by its Order dated:5-11-1996 in OA.No.795 of 1993, which was filed by the present applicants themselves directed that since the earlier representation dated:22-12-1992 was not disposed of, it was necessary to direct Respondent No.2 to dispose of the representation dated:22-12-1992 in accordance with law taking due note of the letters of the Ministry of Defence dated:14-7-1992 and 15-3-1994. While issuing the said direction, the Bench of this Tribunal also took note of the fact that the OA was filed praying for a direction to Respondent No.1 to regularise the services of the applicants to count for seniority and regularisation from the date of their initial engagement thereby counting that period also for seniority, promotion, confirmation and pensionary benefits from 28-3-1975 to the first applicant and from 1-10-1972 to the 2nd applicant respectively as per the order of Government of India dated:14-7-1992.

4. The respondents in their counter affidavit point out that the Writ Petition No.2851 of 1985 (T.A.No.1147 of 1986) and O.A.No.795 of 1993 were filed by the present applicants on the same subject prior to the filing of the present OA and therefore, according to the respondents, the present O.A. deserved to be dismissed in limine^e having regard to the fact that the subject matter was the same as in the previous proceedings referred to above. It is further pointed out on behalf of the respondents that the applicants themselves produced a letter dated:15-3-1994

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stating that the same was applicable to the Southern Naval Command at Visakhapatnam.

5. Further according to the respondents the letter dated:21-2-1997, was issued by C.W.E.(P),Vizag in compliance with the Judgment in OA.No.795 of 1993. The report of compliance with the directions given in Judgment in OA.No.795 of 1993 was filed before this Tribunal, vide M.A.No.238 of 1997 and thereafter the Judgment was delivered as under:

"Subsequent to filing of MA.No.238 of 1997, it is now revealed that necessary orders have been passed in the case as directed in the O.A."

No order was,therefore, passed on the MA as it had become infructuous.

6. It is submitted by the learned Standing Counsel Mr.B.Narasimha Sharma on behalf of the respondents that the communication of the Ministry of Defence dated:14-7-1992 dealt exclusively with the Task Force personnel employed at C.W.E.(P), Port Blair. These conditions were not made applicable to the personnel employed at C.W.E.(P),Visakhapatnam. Since the personnel employed in C.W.E.(P), Port Blair were based at isolated and remote places of Andaman Islands far away from the main land of India, any special service benefits or concessions for serving in such far flung areas could not be made applicable as a matter of right or as a matter of course to the personnel employed at the main land.

7. As regards Sri P.Achutha Rao, the respondents' case is that his services were regularised under the provisions of Government of India, Ministry of Defence communication

dated:8-7-1977 as he was fulfilling all the recruitment conditions at the time of his initial appointment in the Task Force Establishment. Therefore, according to the respondents, the applicants could not compare themselves with him, as both of them had been offered regular employment under the provisions of the Ministry of Defence letter dated:29-8-1983, after relaxing their age as they were over aged at the time of their initial recruitment to the Task Force Establishment; and it was clearly mentioned as pointed out by the learned Standing Counsel for the respondents in the above Government letter that the period of service rendered prior to the issue of letter dated:29-8-1983, shall not be counted for the purpose of seniority, confirmation and promotion. The seniority of Sri P.Achuta Rao commenced from 1-10-1972 and therefore, the applicants had no reason to grumble about the promotion of their senior for which a D.P.C. panel was issued, vide CESC, Pune letter dated:15-3-1994.

8. It is further pointed out by the learned Standing Counsel for the respondents that the issue of the letter dated:12-2-1997 by the C.W.E.(P), Visakhapatnam was absolutely in order and it had been ruled by the CAT, Hyderabad Bench by its Judgment dated:20-3-1997 in M.A.No.238 of 1997 in O.A.No.795 of 1993, that necessary orders had been passed in the case as directed in the O.A. and therefore, the relief sought by the applicants should be rejected. It is further submitted by the learned Standing Counsel that the 4th respondent had issued letter dated:21-2-1997, which had already been accepted by CAT, Hyderabad Bench, and held that the orders had been passed as directed in M.A.No.238 of 1997 in O.A.No.795 of 1993,

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and therefore, the request of the individual had no locus standi and deserved to be rejected.

9. True, we agree with the submissions made by the learned Standing Counsel for the respondents that the present OA deserved to be dismissed summarily mainly on account of the fact that the same issues fell for consideration of the Tribunal/Court in two earlier proceedings and therefore, it would not be in order for this Bench of the Tribunal to entertain any plea by taking a different view of the instructions issued by the Government of India. By a letter dated:21-2-1997, the respondents pointed out that the Judgment dated:7-3-1991 in T.A.No.1147 of 1986 filed by the applicant (D.M.Subrahmanyam), the Tribunal upheld the decision of the Government of India and ruled that the seniority would be reckoned only from the date of regular appointment to the cadre and therefore, he was eligible for seniority, confirmation and promotion only from the date of his appointment on regular basis. In the said Judgment it is observed that in OA.Nos.703 of 1987 and 107 of 1988, the Tribunal had held that the applicants therein on being conferred with regular status in terms of the orders issued by the Defence Ministry were entitled to all the financial benefits on par with regular employees i.e., fixation of pay, grant of annual increments, calculation of leave, pension, gratuity, other terminal benefits and medical reimbursement. The Bench made a distinction between regular status and regularisation and held that the seniority could be reckoned only from the date of regular appointment to the cadre. The Tribunal further held that

extending the same principle, the benefit of past continuous service before 8-7-1977 was to be confined only to financial benefits and not for the purpose of seniority, confirmation and promotion and therefore, para.2 of the letter dated:29-9-1993 was fully in order and thus the application was dismissed.

10. In the Judgment in OA.No.795 of 1993, before this Tribunal, the applicants had produced the copies of two letters in support of their argument, the position of which was explained in the aforesaid Judgment in T.A.No.1147 of 1986 as under:

"(i) GOVT. OF INDIA, MIN.OF DEFENCE NO.15(4)/
86/D(Civ.I) Vol.III, dated:14-7-1992.

This letter deals with the service conditions of the Task Force personnel engaged by CWE.(P), Port Blair, Andamans. These conditions are not made applicable to their personnel employed in CWE(P) DD, Visakhapatnam.

(ii) LETTER No.150102/4/TUE/EIB(R-DIC), DATED:
15-3-1994.

This letter has not been received in this Office. However, in the judgment in OA.No.795 of 1993, itself it is mentioned that this letter is applicable to the employees of the Southern Naval Command, Visakhapatnam. This department is working under the Engineer-in-Chief, Army HQ, New Delhi, and the orders/instructions issued by them and other formation Head Quarters in the chain of Command such as Chief Engineer, Southern Command, Pune, Chief Engineer(Navy), Visakhapatnam only are applicable to its employees."

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11. The respondent, therefore, informed the applicant by letter dated 21st February, 1997, that the applicant was eligible for seniority, confirmation and promotion only from the date he was absorbed as regular employee. Nothing has been brought to the notice of this Tribunal whether the aforesaid judgment was challenged in any higher forum, and therefore, the same has acquired the status of finality which cannot be reopened and reconsidered in the present OA.

12. In view of the bar of resjudicata staring at the face of the applicants, we do not consider it necessary to examine the legality of the impugned order the subject matter of which is the same as in previous two proceedings before this Tribunal. This Bench cannot and is not sitting in appeal over the observations made and conclusions reached by the Bench in the earlier case and therefore, it would not be in order for us to re-examine the whole case all over again when the same has already been conclusively disposed of on merits.

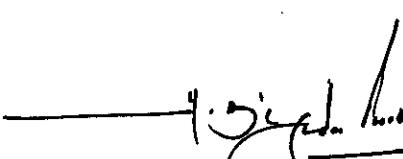
13. Before parting with this order, we believe that it is necessary to produce the following extracts of the letter dated 2.2.1997 (Annexure-A 7 to the OA) addressed to the applicant by the Commander Works Engineer (P).

"3. You have earlier filed a TA No.1147/86 in the CAT Hyderabad challenging the decision of the Govt of India. The Judgement dated 7.3.91 on TA No.1147/86, filed by you in the CAT Hyderabad has upheld the decision of the Govt of India, and ruled that the seniority can be reckoned only from the date of regular appointment to the cadre. Thus you are eligible for Seniority, Confirmation and Promotion only from the date you have been appointed to the regular status. The CAT Hyderabad in their Judgement on 7.8.91 on TA No.1147/86, ruled that this ruling is fully in order. In this connection the extract from the Judgement dated 7.8.91, on the above OA is reproduced below :-

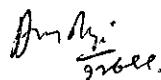
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" We have examined the case and heard the learned counsel for the applicants and the respondents. On the day of hearing the learned counsel for the respondents Shri N. Bhaskara Rao pointed out that similar cases had already been adjudicated by this Bench. On a scrutiny, we find that cases of this nature have already been decided upon by this Bench in the Judgement dated 10.8.90 in O.As no.703/87 and 107/88. In the letter dated 8.7.77 in para 3 it is stated that on adjustment in Naval Dockyard or other Defence Establishment these personnel will be entitled to the benefit of past continuous service rendered by them in the Task Force for the purpose of Pay etc.. This would only mean that financial benefits alone are to be given to them taking into account the past continuous service. In O.As No.703/87 and 107/88 we had held that the applicants therein on being conferred regular status in terms of certain orders issued by the Defence Ministry were entitled to all the financial benefits on par with regular employees i.e. fixation of pay, grant of annual increments, calculation of leave, pension, gratuity, other terminal benefits and medical reimbursement. We made a distinction between according regular status and regularisation and held that the seniority can be reckoned only from the date of regular appointment to the cadre. Extending the same principle, the benefit of past continuous service referred to in the letter of 8.7.77 is to be confined only to financial benefits and not for purpose of seniority, confirmation and promotion. Therefore, para 2 of the letter dated 29.8.83 is fully in order. The application is, therefore, dismissed with no order as to costs. " "

14. In the result, therefore, the OA is dismissed, however, with no order as to costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)


(D.H. NASIR)
VICE-CHAIRMAN


Dated the 21st June, 1999.

1ST AND 2ND COURT

COPY TO:-

1. HDHNJ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A)
5. SPARE

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.PANGARAJAN :
MEMBER (A)

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

ORDER: 21/6/99

ORDER / JUDGEMENT

MA./PA./GP-Nos.

in

DA. No. 345/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

O.A. CLOSED.

DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED / REJECTED.

NO ORDER AS TO COSTS.

SRR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

20 JUL 1999

हैदराबाद न्यायालय
HYDERABAD BENCH