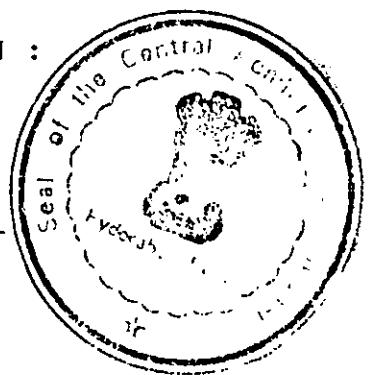


CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A. No.414/1999.

Date of Order : 5 -3-2001.



BETWEEN :

M.V.S. Prasad Rau, I.A.S.(Retd.)
S/o M.V.N.Rau, aged about
Former Commissioner of Rehabilitation
and Principal Secretary to Government
of A.P., Revenue Department,
Secretariat, Hyderabad-500 022.
R/o HIG Flat 86, Block VI,
Phase V, KPHB Area, Kukatpally,
Hyderabad.- 500 072.

.. APPLICANT

A n d

1. The State of Andhra Pradesh, rep. by
the Chief Secretary to Govt. of A.P.
General Administrate(Special-A) Department,
Secretariat, Hyderabad - 500 022.
2. The Union of India, rep. by the
Cabinet Secretary to the Govt. of India,
Rashtrapathi Bhavan, New Delhi- 110 011.
3. The Union of India, rep. by the Secretary
(Personnel) to the Government of India,
Ministry of Personnel, Public Grievances and
Pensions, Department of Personnel, AIS-III
Section, North Block, New Delhi-110 011.
4. The Principal Secretary to the
Prime Minister of India,
South Block, New Delhi- 110 001.
5. Sri N.K. Suroya, I.A.S.,
Special Chief Secretary and Chairman,
Godavari Valley Development Authority,
Secretariat, Hyderabad- 500 022.
6. Sri S.R.Govindarajan, I.A.S. (Retd.)
Former Special Chief Secretary to Government,
Industries Department, Secretariat, A.P.
Hyderabad, R/o Road No.12, Banjara Hills,
Hyderabad-36.
7. Dr. M.S. Rajajee, I.A.S. (Retd.)
Chairman, Andhra Pradesh Public Service
Commission, Gruhakalpa Buildings,
Hyderabad -500 001.

.. RESPONDENTS

Counsel for Applicant : Mr. S. Ramakrishna Rao

Counsel for Respondents: Mr.B.N.Sharma, SrCGSC
Mr.V.V.Anil Kumar, SC for State.

CORAM : HON.MR.JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON. MR.M.V. NATARAJAN, MEMBER (ADMINISTRATIVE)

O R D E R.

M.V.NATARAJAN, MEMBER(A) :

1. In OA No.1000/96 disposed of on 29-9-1999 the applicant herein Sri M.V.S. Prasada Rau was permitted to withdraw the O.A. giving him an opportunity to file a fresh O.A. for expunging the adverse remarks, if any, in the Confidential Reports which were retained in spite of his representation and for consequential promotion and other benefits. It was also directed that the period from 14-8-1986 till 29-1-1999 shall not be considered for the purpose of limitation if he files a fresh O.A. The applicant has filed the present OA No.414/99 on 23-2-1999 seeking the following reliefs :

- (a) To set aside the impugned memo No.1499/SC-E/92-2 dated 8-7-1994 of the Ist Respondent rejecting the claim of the applicant for expunging the adverse remarks recorded in ACRs for the year 1992-93 and for the period from 1-4-1993 to 30-6-1993 passed without any reasons therefor and the consequential Memo No.566/Spl.A/94 dated 20-10-1995 rejecting the representation of the applicant for promotion to the rank of Special Chief Secretary to Andhra Pradesh, declaring the same arbitrary, illegal, unwarranted and in violation of Articles 14 & 16 of the Constitution.
- (b) To direct the respondents to expunge the adverse remarks recorded in the ACRs of the applicant for the year 1992-93 and for the period from 1-4-1993 to 30-6-1993 and with a further direction to the respondents to promote the applicant to the rank of Special Chief Secretary with retrospective effect from the date his juniors were promoted with all the consequential benefits duly expunging the adverse remarks made in the ACRs of the applicant.

2. The grievance of the applicant (an IAS Officer of 1962 Batch) that while his turn for his next promotion as Special

Chief Secretary came, on the basis of adverse remarks made by a former Chief Secretary for the year 1992-93, his case was ignored for promotion. The adverse remarks as extracted from the OA are reproduced below :

" In your ACR for the year 1992-93 it was recorded that you have never impressed anyone with your desire or capacity to work and there were complaints that you did not attend office and staff was unhappy."

3. The applicant submits that he represented to the first respondent on 3-3-1994 requesting for expunging the aforesaid remarks as they were vague, uncharitable and untenable. However, his claim was rejected by the first respondent through his Memo No.866/Spl.A/94 dated 20-10-1995.

4. The applicant has submitted that while during the preceding years, namely, 1990-91 and 1991-92 he received excellent/outstanding CRs and the report given to him for the brief spell of three months from 1-4-1993 to 30-6-1993 stood in the way of his promotion which resulted in he being superseded. Hence the O.A.

5. We have heard the learned counsel on either side and also perused the reply statement filed by the respondents and the rejoinder filed by the applicant.

6. The respondents have submitted that the case of the applicant came up for consideration for promotion in the fixed grade of Rs.8000/- (pre-revised scale) to the rank of Chief Secretary to Government in May, 1994 when one vacancy in that rank arose on 15-3-1994. Considering the over all record of the applicant, the Government were not inclined to promote the applicant to the rank of Chief Secretary and accordingly considered the next officer in the seniority who was found to be having consistently good track record of service and promoted him.

7. The appeal preferred by the applicant to the Government of India to rescind the order issued by the State Government on 2-6-1994 effecting the promotion to his junior was forwarded by the State Government to Government of India who are the appellate authority. The Government of India in their letter dated 21-9-1995 have informed that the representation of the applicant was duly considered and on an examination of the facts of the case, it was found that the action of the State Government in that regard was in order. It was also made clear that promotion of IAS Officers to the Selection Grade and above are made on the basis of merit-cum-seniority under rule 3(2A) of the IAS (Pay) Rules, 1954, and as such, an officer cannot claim such promotion as a matter of right. This decision of Government of India was communicated to the applicant through Memo No.866/Spl.A/94, GA(Spl.A) Deptt. dated 20-10-1995. The contention of the respondents is that All India Service (CR) Rules, 1970, do not stipulate that while rejecting the representation for expunction of adverse remarks, a speaking order should be issued.

8. On the basis of the submissions made by the applicant that preceding the adverse remarks he had received the outstanding reports from the predecessor Chief Secretaries the ACRs of the applicant were called for. During the period 1990-91 and 1991-92 the applicant's grading was very good. It is true that from 1-4-1992 to 31-12-1992 and from 1-4-1993 to 30-6-1993 the applicant had received adverse remarks which had been communicated to him as seen from records. He was graded as below average in 1-4-1992 to 31-12-1992 report and average in 1-4-1993 to 30-6-1993 report; the reporting authority being the same Chief Secretary.

9. In the counter filed it has been stated that the recorded adverse remark in this ACR by the Reporting Officer

was with a vindictive attitude is not correct. The said remark was accepted by the highest authority the Chief Minister.

10. We notice that the impugned adverse remarks are contrary to the remarks recorded in the preceding reports and therefore, hold that the said adverse remarks do not deserve to be on record.

11. The further relief sought in this O.A. is to promote the applicant to the rank of Special Chief Secretary with retrospective effect from the date when his juniors were promoted with all consequential benefits.

12. It is seen from the documents produced by the applicant that he had filed a representation on 7-7-1994 for grant of promotion to the fixed grade of Rs.8000/- per month which was forwarded by the State Government to the Department of Personnel and Training. The applicant was informed through letter No.866/Spl.A/94 dated 26-10-1995 that Government of India had also stated that promotions of IAS officers to the Selection Grade and above are made on the basis of merit-cum-seniority under Rule 3(A) of IAS (Pay) Rules, 1964 and that as such an officer cannot claim such promotion as matter of right.

13. We have given careful consideration to this aspect. According to the existing rules, assessment of merit of an individual is the function of his ACRs. For the reasons specified in para-10, adverse remarks made by the same reporting authority for the period from 1-4-1992 to 31-12-1992 and 1-4-1993 to 30-6-1993 do not deserve to be retained in the ACRs. Whether the applicant stood a chance for being considered against the vacancies which arose then, is a matter to be reconsidered and decided by the authorities concerned, depending upon the availability of vacancies and

comparative assessment of the applicant along with others who were considered at the relevant point of time.

14. We direct the State Government to expunge the adverse remarks for the period from 1-4-1992 to 31-12-1992 and 1-4-1993 to 30-6-1993 in the ACRs of the applicant and to reconsider his promotion without going into the ACRs for the period referred to above, within a period of 3 (three) months from the date of receipt of this order.

15. The O.A. is accordingly disposed of. No costs.

प्रमाणित ग्रन्ति

CERTIFIED TRUE COPY

मामला : CASE NUMBER OA 444/99

नियमान्वय : DATE OF JUDGEMENT 5/3/2001

प्राप्तिकाल : DATE OF RECEIPT 9/3/2001

COPY MADE READY ON 9/3/2001

Ox

अधिकारी/दायरकारी /Section Officer/Clerk Officer

केंद्रीय राजनीय नीतिकरण

Central Administrative Tribune

हैदराबाद आयोगी

HYDERABAD BENCH.