
(2000) 04 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 23263 of 1998, 644 and 13528 of 1999

Abdul Aleem and Others

APPELLANT

Vs

Govt. of A.P., Revenue (Excise) Dept. and Others

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Andhra Pradesh Excise Subordinate Service Rules — Rule 7

Citation : (2000) 3 ALT 338

Hon'ble Judges : V. Eswaraiyah, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : P. Gangaiah Naidu, in W.P. 23623/98, C.V. Mohan Reddy, in W.P. 644/99 and T. Suryanarayana Reddy, in W.P. 13528/99, for the Appellant; C.V. Mohan Reddy, for Respondent Nos. 14 and 18 in W.P. No. 23263/98, T. Suryanarayana Reddy, for Respondent Nos. 7 and 11 in W.P. 23623/98, Government Pleader for Excise and P.V. Krishaniah, for the Respondent

Judgement

V. Eswaraiyah, J.

These three writ petitions raise a common question, hence are being disposed of by means of this common judgment.

1. W.P. No. 23263/98 filed by 20 petitioners, who are the petitioners in O.A. No. 4161/1998 on the file of the A.P. Administrative Tribunal, to declare the order dated 7-8-1998 passed in O.A. No. 4161 of 1998 as illegal and contrary to law and also to declare the proceedings of the Government issued in Memo No.38435/ Ex. 12/90-30, dated 11-2-1998 and the consequential reversion orders dated 3-4-1998 of the Deputy Commissioner of Prohibition and Excise, Hyderabad Division, Hyderabad, as illegal and contrary to the Article 311(2) of the Constitution of India and to further declare that the petitioners are entitled to continue as Excise Sub-Inspectors even though they have not passed the departmental tests.

1-A. Respondents 5 to 40, who have passed the departmental tests, have been impleaded as per the order dated 28-8-1998.

2. O.A. No. 4161/98 was filed to implement the orders of the Government in Memo No.34942/Ex.I(2).98-1, dated 19-5-1998 and to declare the action of the Deputy Commissioner of Prohibition and Excise, Hyderabad Division, Hyderabad, in not implementing the said orders of the Government, as illegal and improper. By the said orders in Memo dated 19-5-1998, the Government stayed the proceedings dated 3-4-1998 of the Deputy Commissioner of Prohibition and Excise till the disposal of representation dated 11-5-1998 made by Md. Yousuf Sherif and other Excise Sub-Inspectors. The Tribunal dismissed the said O.A. No. 4161/98 on 7-8-1998 along with other O.A. Nos. 1470/98, 1459/98, 1858/98, 1918/98, 2253/98 and 2264/98.

3. W.P. No. 644/99 was filed by G. Prabhakar and 5 others challenging the order of the A.P. Administrative Tribunal passed in O.A. No. 9187/98 dated 31-12-1998 in refusing to grant interim relief of keeping the proceedings dated 26-12-1998 of the Deputy Commissioner of Prohibition and Excise, Hyderabad Division, Hyderabad, reverting the petitioners from the post of Excise Sub-Inspectors to the Junior Assistants (sic. in abeyance). The said Original Application . was admitted and Rule Nisi was issued.

4. W.P. No. 13528/99 is filed by B. Nirmala and 3 other qualified persons against the status quo order dated 19-5-1999 passed by the Tribunal in O.A. No. 2743/99, which was filed by the petitioners questioning the orders of the Deputy Commissioner of Prohibition and Excise, Hyderabad Division, dated 15-5-1999, in reverting the petitioners as Junior Assistants.

5. The issue in these three writ petitions relates to the recruitment to the post of the Excise Sub-Inspectors as per A.P. Excise Subordinate Service Rules (hereinafter referred to as "the Rules") issued in G.O.Ms. No. 202, General Administration Department, dated 16-2-1961 in exercise of the powers under Article 309 proviso of the Constitution. As per Rule 2 of the said Rules, one of the method of recruitment to the post of Excise Sub-Inspectors is by transfer from the category of Lower Division Clerks in the A.P. Ministerial Service serving in the Excise Department and by promotion from the category of Nakedars and Petty Officers (Andhra). The appointing authority is the Deputy Commissioner of Excise. 75% of the substantive vacancies are to be filled up by direct recruitment and the remaining vacancies to be filled by transfer of Lower Division Clerks from A.P. Ministerial Service serving in the Excise Department and by promotion from the category of Nakedars and Petty Officers (Andhra) by the appointing authority i.e., the Deputy Commissioner of Excise. As per Rule 7 of the said Rules, a person who has put in at least 5 years of service in the category of Lower Division Clerks/Nakedars and having general minimum educational qualifications as well as the physical measurements, is eligible for promotion to the category of Excise Sub-Inspectors. As per Rule 11, the Excise Sub-Inspectors appointed by transfer or by promotion shall within prescribed period of probation have to pass the prescribed departmental tests, if they have not already passed the tests. As per the amended Rule 2 in G.O.Ms. No. 565 dated 22-5-1985, the persons

already appointed as Excise Sub-Inspectors, who have already not passed the tests, shall pass the same within a period of three years, failing which, their grade increments shall be stopped till they pass the said tests. Rule 7 was amended in G.O.Ms. No. 255 Revenue (X) Department, dated 13-3-1987 stipulating the conditions of passing the departmental tests prescribed in (a), (b), (c), (d), (e) and (f) for the category of Excise Sub-Inspectors recruited by transfer from the category of Lower Division Clerks or by method of promotion from the category of Nakedars and Petty Officers (Andhra). In the table under Rule 7 of the said Rules, under category "Excise Sub-Inspectors" in column No.(I) and entry in columns (2) and (3) relating thereto, the following proviso was added by G.O.Ms. No. 584, Revenue (X) Department dated 12-8-1988, namely:-

"Provided that any person otherwise qualified for promotion or appointment by transfer to the post of Sub-Inspector, prior to the date of issue of the amendment in G.O.Ms. No. 255, Revenue Department, dated 13-3-1987 shall be considered for promotion or appointment by transfer as per the pre-amended rule. If such a person does not pass departmental tests within the period of probation which amounts two chances, he shall be reverted to the category/grade/or post from which he was promoted or appointed by transfer and shall not be eligible for promotion or appointment by transfer under this provision.

Provided further that the requirement relating to passing of departmental tests shall not adversely affect the persons already promoted or appointed by transfer to the post of Sub-Inspector of Excise."

In view of the aforesaid proviso, the Lower Division Clerks or Excise Head Constables, who are eligible for promotion as Excise Sub-Inspectors as per pre-amended Rule i.e., prior to issuance of G.O.Ms. No. 255 dated 13-3-1987, are entitled to get promotion as Excise Sub-Inspectors, but such persons who did not pass the departmental tests within the period of probation, which amounts two chances, shall be reverted to the category of Junior Assistants/Head Constables.

6. After amending Rule 7 of the said Rules incorporating the provisos to Rule 7 by G.O.Ms. No. 584, Revenue, dated 12-8-1988, the following Excise Head Constables/Junior Assistants were promoted/appointed by transfer from the category of Excise Head Constables/Junior Assistants in terms of G.O.Ms. No. 584 Revenue dated 12-8-1988 on condition that they should pass the departmental tests within a period of one year and if they do not pass the tests within the stipulated time, they should be reverted to the category from which they were promoted and shall not be eligible for promotion.

SI.	Name of the Promoted Dy. Commis- Inspector	No.	Excise Sub- category	from the CRNo.	sioner's &	date
					(1)	(2) (3) (4)
1.	Md. Waheeduddin Jr. Asst.					
2.	P.B. Diwakar Jr. Asst. "					
3.	Md. Anwarduddin Jr. Asst. "					
4.	D.I. Daniel Jr. Asst. "					
5.	B. Laxma Reddy Jr. Asst. "					
6.	S.V. Laxma Reddy Jr.					

Asst. " 7. E. Chalmaiah Jr. Asst. " 8. S. Rammohan Rao Jr. Asst. " 9. G. Narsimha Reddy Jr. Asst. " 10. K. Krishna Reddy Jr. Asst. " 11. Faizuddin Ahmed Jr. Asst. " (1) (2) (3) (4) 12. Yousuf Sharief Jr. Asst. Al/4343/89 5-8-1989 13. R. Ravinder Reddy Jr. Asst. " 14. K. Ravinder Reddy Jr. Asst. " 15. P. Chenna Reddy Jr. Asst. " 16. Gulshnani Jr. Asst. " 17. Yousuf Ali Jr. Asst. " 18. Md. Saleem Jr. Asst. " 19. D. Viswanadham Jr. Asst. " 20. Mahaboobuddin Jr. Asst. " 21. Syed Sajjad Jr. Asst. " 22. P. Sailoo Jr. Asst. " 23. Mubsher Mehdi Jr. Asst. " 24. P. Yadagiri Jr. Asst. " 25. K. Yesurathnam Jr. Asst. " 26. Ahmed Baig Jr. Asst. " 27. P.G. Prasad Jr. Asst. " 28. Md. Javid Ali Jr. Asst. " 29. Mazhar Hussain Jr. Asst. " 30. Madhusudan Jr. Asst. " 31. K. Venkateswarlu Jr. Asst. " 32. Md. Aleemuddin Jr. Asst. " 33. R. Kishan s/o Sayanna Jr. Asst. " 34. K. Balakishan Jr. Asst. " 35. G. Narasimha Reddy Jr. Asst. " 36. N. Neelaiah Jr. Asst. " 37. Shaik Abdullah Jr. Asst. " 38. G. Sopendev Jr. Asst. " 39. Sandula Raja Jr. Asst. " 40. Buggaiah Jr. Asst. " 41. Venkanna Jr. Asst. " 42. B. Anandam Jr. Asst. " 43. P. Sarvesham Jr. Asst. " 44. Ch. Sathi Reddy Jr. Asst. " 45. M.K. Nazeemuddin Jr. Asst. " 46. M.A. Razaak Jr. Asst. " 47. G. Narsi Reddy Jr. Asst. " 48. V. Narender Reddy Jr. Asst. " 49. Balapershad Misra Jr. Asst. " 50. C. Mallaiah Jr. Asst. " 51. T. Ramulu Jr. Asst. " 52. Md. Tajuddin Jr. Asst. " 53. P.C. Panday Jr. Asst. " 54. P. Yadagir Jr. Asst. " 55. Rafiq Hyder Jr. Asst. " 56. Khaja Nazeeruddin Jr. Asst. " 57. P. Balraj (expired) Jr. Asst. " 58. Md. Moulana EHC " 59. K. Narayana Reddy EHC " 60. V. Sudershan EHC " 61. Narayana EHC " 62. Md. Abdul Rasheed EHC " 63. Bheemaiah EHC " 64. Ch. Veera Reddy EHC " 65. M.A. Sami EHC " 66. Syed Zainuddin EHC " 67. Abdul Mujeeb EHC " 68. Md. Khasim EHC " 69. B. Sayanna EHC " 70. K. Narsimhulu EHC " 71. Khurseed Ahmed EHC " 72. Md. Nazeebulla Khan EHC " 73. Ahmed Chand Kereemji EHC " 74. D. Laxmaiah EHC " 75. M. Laxmanna EHC " 76. B. Bala Swamy EHC " 77. G. Yellaiah EHC " 78. G. Hellaiah EHC " 79. M. Posetty EHC " 80. A. Mohan EHC " 81. Bheemaiah EHC " 82. Shivappa EHC " 83. K. Satyanna EHC " 84. M.A. Quddus EHC " 85. P. Krishna Rao EHC " 86. Gulam Dastagir EHC " 87. B. Nagaraj EHC " 88. M.A. Rasheed EHC " 89. M.A. Sathar EHC " 90. Syed Athar EHC " 91. Yadaiah (expired) EHC " 92. Rasheed Ahmed (expired) EHC " 93. P. Anandam (expired) EHC " 94. Khaja Jamuluddin (expired) EHC "

7. From among the Lower Division Clerks and Excise Head Constables, who got promotion as Excise Sub-Inspectors as per provisos to Rule 7, some of the persons passed the departmental tests during the probation period, but some other promotees did not pass the departmental tests within the period of two chances. Though some of the promotees have not passed the departmental tests, they were not reverted, but the said unqualified Excise Sub-Inspectors were continued. The Deputy Commissioner of Prohibition and Excise, who is the competent authority to pass appropriate orders and who is the appointing authority and also the authority to pass orders for reversion, instead of exercising the statutory power, sought instructions through the Commissioner of Excise from the Government as the qualified and eligible Junior Assistants, who passed the departmental tests, could not be promoted. The Government vide

their Memo No. 38435/Ex.I(2)/90-3, Revenue Department, dated 9-11-1990 while requesting the Commissioner to send the remarks, informed that the persons who have not passed the tests in two chances may, however, continue in the present position till a decision is taken in the matter. The Commissioner of Excise vide his D.O. letter on CR No. 38927/91/Ex/H2, dated 20-5-1992 while informing that some of the qualified persons from the feeder categories approached the A.P. Administrative Tribunal with a request to consider their promotions as Excise Sub-Inspectors because the unqualified persons are working as Excise Sub-Inspectors and Tribunal while disposing of the R.Ps., have directed that the qualified persons should be considered for promotions over the unqualified persons as per their seniority and eligibility and sought clarification from the Government whether the unqualified persons should be still continued in view of the fact that the qualified candidates are insisting for promotion, who have a better claim than the unqualified to the post of Prohibition and Excise Sub-Inspectors. The Government vide their letter No. 38435/ Ex. 1/90-6, Revenue (Excise-I) Department dated 26-6-1992 requested the A.P. Public Service Commission to give permission to furnish the concurrence to amend Rule 7 to enable the unqualified /Excise Sub-Inspectors to avail two more chances for passing the tests. The Government issued orders in G.O.Ms. No. 1280, Revenue Department, dated 28-3-1994 amending the Rule 7 to the effect that allowing four chances to pass tests within a period of two years including two chances allowed during the period of probation.

8. The Commissioner of Prohibition and Excise in Cr. No. 28927/91/Ex/H2, dated 19-3-1994 requested for orders of the Government to revert the persons who have already availed four or more chances and still have not passed the departmental tests. After careful consideration of the request made by the Commissioner, the Government by their Memo No. 38435/ Ex. I(2)/90-12, Revenue Department dated 12-4-1994 have permitted the Commissioner of Excise to take necessary action to revert the persons who have already availed more than four chances but still not passed the tests. But, curiously it had issued another Memorandum No. 38435 /Ex.I(2) Revenue dated 7-6-1994 on the request of the A.P. Excise Executive Officers Association, staying the earlier orders of the Government dated 12-4-1994 until further orders and the Commissioner of Excise was requested to issue instructions to the Deputy Commissioners concerned to revoke the orders issued, if any, effecting the reversion of the officers who have not passed the departmental tests and to maintain status quo ante. This Memo of the Government dated 7-6-1994 led to the series of litigations among the qualified and unqualified persons which is the subject matter of the several Original Applications and writ petitions before the A.P. Administrative Tribunal and this Court. Had the Government not passed the said Memo dated 7-6-1994, there would not have been any series of litigations and the action taken by the concerned Deputy Commissioners according to the Rules would have become final and settled.

9. The Government having issued Memo dated 7-6-1994 staying its earlier

orders dated 12-4-1994 which led to the continuance of the unqualified persons has taken a wrong path not to follow the statutory Rules, As no action has been taken for more than 3 years, the Commissioner vide his letter dated 21-10-1997 requested the Government to communicate the decision, if any taken regarding the further continuance of the unqualified persons as Excise Sub-Inspectors.

10. The qualified persons made representations before the Commissioner of Excise and Deputy Commissioner of Excise, requesting the Deputy Commissioner of Prohibition and Excise, being the statutory authority to implement the Rules and to promote the qualified Junior Assistants as Excise Sub-Inspectors in place of unqualified Junior Assistants, who are continuing as Excise Sub-Inspectors, and further requested to prepare year wise panel basing upon the availability of the regular vacancies in each year and to consider eligible candidates in that particular year as per their seniority. But the Deputy Commissioner has not passed any orders, and therefore, some of the Junior Assistants, who were qualified, filed O.A. No. 6909/97 before the A.P. Administrative Tribunal seeking a direction to consider the cases of the qualified persons for promotion as Prohibition and Excise Sub-Inspectors against the regular vacancies which are available in preparing the panel every year. The Tribunal instead of deciding the issue on merits, shirked in exercising of its judicial function and merely disposed of the said O.A. No. 6909/1997 by order dated 12-7-1997 permitting the applicants to make a representation to the Government seeking relief citing all the reasons and the history of the case mentioned in the Original Application and also seeking orders relating to the promotion of the applicants, who are qualified to hold the post of Prohibition and Excise Sub-Inspectors in place of those persons, who are continuing and unqualified to hold the said posts within one week from 12-11-1997 and as and when such a representation is made, the Government was directed to consider the same and pass appropriate orders in the matter of promotion of the applicants to the posts of the Prohibition and Excise Sub-Inspectors, on merits and in accordance with statutory rules within six weeks thereafter.

11. The Government passed general orders in G.O.Ms. No. 165, General Administration (Service-C) Department dated 22-4-1997 issuing Ad hoc Rules notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules or in the Special Rules or in Ad hoc Rules, the Government employees who have crossed 45 years of age shall be exempted from passing the Departmental Tests prescribed in the Special Rules, or in Ad hoc Rules for the purpose of promotion to the next higher category i.e., promotion/ appointment by transfer to a post above the one held by him/her if they could not pass the same. Meanwhile, Rule 7 of the said Rules was amended in G.O.Ms. No. 70,

Revenue Department, dated 11-2-1998 under category "Excise Sub-Inspectors" in Column No.(I) and the entries in Column (2) and (3) relating thereto after the second proviso, the following proviso is added, namely:

"Provided also that the Excise Sub-Inspectors who are in service on 28-3-1994

irrespective of the chances already availed by them shall be allowed time till August, 1995 for passing the departmental examination."

The Government also issued clarificatory memos dated 28-7-1997 and 26-3-1998 with regard to G.O.Ms. No. 165, General Administration Department, dated 22-4-1997 exempting those employees who have crossed 45 years of age from passing the departmental tests/special tests prescribed in the Rules for the purpose of promotion to the next higher category that the said G.O. has a prospective effect and applicable to the panels to be prepared for the panel year from 1997 onwards etc.

12. Pursuant to the directions of the A.P. Administrative Tribunal in O.A. No. 6909/97 dated 12-11-1997 and on the representation of Sri P. Bheemeshwar, Junior Assistant and others dated 14-11-1997, and on considering the relevant rules, the Government vide their Memo No.38435/Ex.I(2)/90-30 Revenue Department dated 11-2-1998, vacated the stay orders issued in Government Memo No.38435/Ex.I(2)/90-13 dated 7-6-1994. The Government further directed the Commissioner of Excise to take necessary action to revert the persons who did not pass the departmental tests as per the extension of time granted and issue necessary instructions to the Deputy Commissioners concerned to take necessary action as per the Rules to promote the eligible persons to the posts of the Excise Sub-Inspectors in view of the directions of the Tribunal dated 12-11-1997 in O.A. No. 6909/97. Questioning the said Government Order issued in Memo dated 11-2-1998, O.A. Nos. 1420/98, 1459/98, 1858/98 and 1918/98 have been filed by the unqualified Excise Sub-Inspectors and the Tribunal declined to grant any interim orders suspending the operation of the Government Orders. Consequently, concerned statutory authority i.e., Deputy Commissioner of Prohibition and Excise, Hyderabad Division, Hyderabad, issued proceedings in CR No. A3/6599/1997 dated 3-4-1998, 7-4-1998, 9-4-1998 etc. reverting some of the unqualified Excise Sub-Inspectors by following the principle of "last come - first go", and the qualified persons joined at their newly promoted posts from 13-4-1998 onwards.

13. Questioning the reversion orders passed by the Deputy Commissioner, Prohibition and Excise, O.A. Nos. 2253, 2264 and 4161 of 1998 have been filed and the Tribunal by common orders dated 7-8-1998 dismissed all the Original Applications including O.A. Nos.1420/98 and 1459/98. Some of the unqualified persons also filed O.A. Nos. 1918, 2248, 2253, 1858 and 2264 of 1998 on the file of the A.P. Administrative Tribunal questioning the Government Memo dated 11-2-1998 and the consequential reversion orders of the Deputy Commissioner of Prohibition and Excise and the said Original Applications were admitted on 21-4-1998 but stay was declined.

14. Surprisingly, the Government issued orders in their Memo No. 34942/Ex.I(2)/98-1 dated 19-5-1998 staying the proceedings of the Deputy Commissioner of Prohibition and Excise, Hyderabad, in Cr.No.A3/6599/97 dated 3-4-1998 etc.

15. Some of the qualified Prohibition and Excise Sub-Inspectors filed O.A. No. 3525/98 and the Tribunal by an interim order dated 27-5-1998 directed that the implementation of the orders issued in Memo dated 19-5-1998 should not result in reversion of the applicants, if they are qualified and promoted in pursuance of the orders passed by the Tribunal in O.A. No.6909/97 and consequential order passed by the Government in Memo No. 38435/Ex.I(2)/90-30, Revenue, dated 11-2-1998. To implement the orders of the Government in Memo No. 34942/Ex.I(2)/ 98-1, dated 19-5-1998, the unqualified persons i.e., petitioners in W.P. 23263/98 filed O.A. No. 4161/98, which was dismissed along with other Original Applications on 7-8-1998. This W.P. No. 23263/98 is filed aggrieved by the order of the Tribunal in O.A. No. 4161/98 dated 7-8-1998. Though the Government Memo dated 11-2-1998 and the consequential order of the Deputy Commissioner of Prohibition and Excise dated 3-4-1998 were not challenged before the Tribunal in O.A. No. 4161/98, the petitioners have chosen to challenge the same in this writ petition. The main prayer before the Tribunal was only to implement the Government Orders in Memo dated 19-5-1998 and the Tribunal rightly dismissed the said Original Application.

16. The Tribunal rightly held that the stay orders of the Government in Memo dated 19-5-1998 cannot be implemented by the Deputy Commissioner of Prohibition and Excise as the Tribunal directed the respondents not to revert the qualified-Sub-Inspectors. All the qualified persons were promoted in the vacancies which were available because of reversion of the unqualified persons, and therefore, implementation of the Government Memo dated 19-5-1998 did not arise. The unqualified persons were reverted on 3-4-1998 and those vacancies were filled up by the qualified persons by 9-4-1998 whereas the Government issued orders in Memo dated 19-5-1998 staying the operation of the Deputy Commissioner's order dated 3-4-1998. The said Government Orders dated 19-5-1998 have become infructuous apart from being illegal. The writ petitioners have no legal right to continue as Excise Sub-Inspectors without passing the departmental tests. There is no illegality or irregularity in reverting them from the post of Excise Sub-Inspectors and there is no infirmity of the order passed by the Tribunal in O.A. No. 4161/98 dated 7-8-1998.

17. In W.P. No. 644 of 1999, the petitioners had passed the departmental tests 1991 and since then had been eligible for promotion to the post of Excise Sub-Inspectors and even though were promoted, were illegally reverted thereafter, and complaining the action of the Deputy Commissioner of Excise in reverting them, they had filed O.A. No. 9187/98, but the Tribunal without any justification declined to grant interim orders. In view of the legal principles stated in W.P. No. 23263/98 that the cut-off date for passing the departmental tests was 31-10-1995 and as the petitioners in W.P. No. 23263/98 did not pass the departmental tests as on the said cut-off date i.e., 31-10-1995, they were liable to be reverted and the action in reverting them was upheld by us as held above. In this writ petition (W.P. No. 644/99), since the writ petitioners are qualified candidates, they are entitled to hold the posts of Excise Sub-Inspectors and they

be restored to the said posts of Excise Sub-Inspectors, and consequently,/ the order of Deputy Commissioner of Prohibition and Excise dated 26-12-1998 gets set aside.

18. The petitioners in W.P. No. 13528 of 1999, who were initially appointed as Junior Assistants, passed all the departmental tests and qualified for recruitment by transfer to the posts of Excise Sub-Inspectors. They had passed all the departmental tests. In view of what is stated above regarding the unqualified promotees in W.P. No. 23263/98 and the qualified candidates in W.P. No. 644/99 and as the petitioners herein stand similarly situated to the petitioners in W.P. No. 644/99, the writ petitioners in W.P. No. 13528/99 are entitled for equal treatment and they should be restored to the posts of Excise Sub-Inspectors.

19. In view of what is stated supra, while W.P. No. 23263 of 1998 is dismissed, W.P. Nos. 644 of 1999 and 13528 of 1999 are allowed. No costs.