
(2008) 02 AP CK 0040

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26727 of 2003

A.G. Venkatesulu

APPELLANT

Vs

S. Mallikarjuna Rao and Others

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Andhra Pradesh Leave Rules, 1933 — Rule 7, 86
Andhra Pradesh Ministerial Service Rules, 1998 — Rule 14, 14A, 27
Constitution of India, 1950 — Article 226

Citation : (2008) 3 ALD 21 : (2008) 2 ALT 334

Hon'ble Judges : K.C. Bhanu, J; D.S.R. Varma, J

Bench : Division Bench

Advocate : V. Jagapathi, for the Appellant; T. Bapuji Rao and G.P. for Services-II for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—Though the matter is listed under the caption "interlocutory", with consent of the learned Counsel appearing for the petitioner, the learned Counsel appearing for the respondent No. 1 and the learned Government Pleader for Services-II, appearing for the respondent Nos. 2 and 3, the main writ petition itself is taken up for hearing and disposed of by this order.

2. The writ petition is filed, under Article 226 of the Constitution of India, challenging the order, dated 7-11-2003, passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for brevity "the Tribunal"), allowing the O.A. No. 742 of 1997, which was filed by the respondent No. 1, applicant therein, filed u/s 19 of the Administrative Tribunals Act, 1985, seeking to quash the proceedings No. RC/ENC/G4/67000/92, dated 10-01-1997, and to direct the respondents therein to consider the case of the respondent No. 1, keeping in view the guidelines issued by the Government in G.O. Ms. No. 36, dated 25-1-1990 and Govt. Memo No. 8/Sr.A/81-1, dated 18-01-1984, and to declare the placement of the respondent No. 1 in the seniority list of Junior Assistants, as

per Rule-27 of the A.P. Ministerial Service Rules.

3. Petitioner is the respondent No. 3, respondent No. 1 is the applicant and respondent Nos. 2 and 3 are the respondent Nos. 1 and 2, in the O.A., before the Tribunal.

4. This case has slight cross-cross history, which is as under:

Petitioner was appointed as Junior Assistant, in the Office of Engineer-in-Chief (Administration Wing), Irrigation & Command Area Development Department, Hyderabad, on 23-1-1989, on regular basis; that his probation was declared on 7-2-1991; that, while so, a leave vacancy of Senior Assistant had arisen; that, consequently, he was asked to perform the duties of Senior Assistant in the said leave vacancy with effect from 5-2-1993; that, while he was continuing his services in that capacity i.e., Senior Assistant, in the leave vacancy, he made a request to the competent authority to transfer him to Anantapur; that his request was considered, and he was withdrawn from the post of Senior Assistant, reverted to the post of Junior Assistant, to which he originally belongs, and was transferred to Anantapur on deputation basis to the Irrigation Circle at Anantapur; by order, dated 30-9-1993; that after some time, again, on his request, he was repatriated to his parent department i.e., office of Engineer-in-Chief (Administration Wing), Irrigation and Command Area Development Department, Hyderabad, by which time, some of his juniors were promoted to the post of Senior Assistants; that, subsequently, he was promoted as Senior Assistant and was kept above his juniors, in the seniority list of Senior Assistants, at his parent office, who were promoted as Senior Assistants, while he was working as Junior Assistant at Anantapur, after calling for objections from the affected parties; that challenging the said fixation of seniority of the petitioner, the respondent No. 1 had approached the Tribunal by way of filing the said O.A., which was allowed. Hence, the present writ petition.

5. It is not in dispute that the petitioner was originally appointed on 23-1-1989 as Junior Assistant in a regular vacancy and got his probation declared on 7-2-1991, and that, while he was working in that capacity, he was asked to perform the duties of Senior Assistant, in a leave vacancy, vide proceedings No. Rc/ENC/G2/14784/89, dated 5-2-1993, which means, the substantive post of the petitioner was Junior Assistant only. The services that were being rendered by the petitioner as Senior Assistant, in a leave vacancy, does not confer any right on him. That vacancy has to be filled up after following the prescribed procedure. It was only a temporary measure. Therefore, the petitioner cannot be termed as a Senior Assistant working on regular basis. Any time, as and when the said vacancy is to be filled up, on regular basis, the petitioner has to be necessarily reverted to his substantive post of Junior Assistant.

6. While things stood thus, on the representation submitted by the petitioner, seeking transfer, on personal grounds, to Anantapur Circle, the competent authority, having considered the same, effected his transfer to Anantapur, duly

reverting to the post of Junior Assistant and appointed him as Junior Assistant at Anantapur Circle.

7. It is to be remembered that the so-called reversion, effected by the competent authority at Hyderabad, cannot be termed as the reversion of the petitioner on any other ground and it was only owing to his temporary appointment as Senior Assistant, in a leave vacancy.

8. However, when the request of the petitioner was conceded by the competent authority and was transferred to Anantapur Circle, he has to be necessarily sent only as Junior Assistant, which is his substantive post. Accordingly, the petitioner took charge as Junior Assistant, in Irrigation Circle at Anantapur, and was performing the duty as Junior Assistant. After some time, again when he sought transfer to his original place at Hyderabad, he was relieved at Anantapur and was brought to his original place at Hyderabad, in the post of Junior Assistant.

9. Owing to the fact that some of his juniors were promoted during his stay at Anantapur, it appears, the petitioner, after his promotion as Senior Assistant, had submitted a representation, seeking to consider his case for promotion on par with his juniors and sought appropriate placement in the seniority list of the Senior Assistants.

10. In our view, the said request of the petitioner was rightly considered by the competent authority, after calling the objections from all the affected parties and after taking into account such objections, in fixing the seniority. While fixing such seniority, the petitioner was made senior to some of his juniors, who got promoted even prior to him when he was on deputation at other place, which falls totally in a different Circle.

11. In this context, the question that falls for consideration, in this writ petition, is what would be the effect of sending the incumbent from one place to the other on deputation basis.?

12. The answer could be traced from Rule 14-A of the Fundamental Rules, which reads as under:

F.R. 14-A. (a) Except as provided in Clauses (c) and (d) of this Rule (x x x) a Government servant's lien on a post may in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.

(b) Omitted by G.O. Ms. No. 81, Finance, Dated 20-4-1970.

(c) Notwithstanding the provisions of Rule 14(a), the lien of a Government servant holding substantively a permanent post shall be terminated while on refused leave granted after the date of compulsory retirement under Rule 86 or Rule 7 of Andhra Pradesh Leave Rules, 1933, (x x x) or to the post of Chief Engineer of the Public Works Department or on his appointment as the Chairman or any other member of a Union Public Service Commission or as the Chairman

or any other member of a State Public Service Commission.

(d) A Government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post, (whether under the Central Government or any other State Government) outside the cadre on which he is borne.

13. From the above, it is obvious that an incumbent who had been transferred from one place to the other would have a lien on his original placement and the same cannot be denied even if the same is consented by the incumbent himself. Therefore, for all purposes, the incumbent who had been transferred from one place to the other will and shall have a lien at his original place of appointment, and as and when he was brought back, he would and should be accorded with all the benefits that would have accrued to him, had he been continued at his original place.

14. Precisely, it is the same that had happened in the present case. After repatriation to his original place of appointment, where he has a lien, as a matter of right, created under Rule 14-A of the Fundamental Rules, the petitioner is entitled to be promoted to the higher post in the event of any of his juniors being promoted.

15. It is not in dispute that when the petitioner was working at other place as Junior Assistant, some of his juniors, at his original place of appointment, have been promoted as Senior Assistants. Therefore, by virtue of his statutory operation of lien, whenever, comes back to his original place of appointment, the petitioner has every right not only to have the promotion but also to claim seniority in such higher post.

16. It is also pertinent to mention, since it is on record, that the respondent No. 1 was working for the same department at Pulichintala project, which subsequently had become defunct. Therefore, he was found as an excess staff and was adjusted to some other place and was posted at the Head Office i.e., Engineer-in-Chief, (Administration Wing), Irrigation & Command Area Development Department, Hyderabad, as Junior Assistant, in the year 1991. Therefore, even otherwise, the petitioner is senior to the respondent No. 1/ applicant in the said O.A.

17. Furthermore, it is conspicuous from the record that the respondent No. 1 was transferred, since he was found as surplus staff due to defunct of the Pulichintala Project, in which he was working, to the present department with his express willingness to take the last rank in the category of Junior Assistants in the present place of working. Therefore, viewed from any angle, the respondent No. 1 is junior to the petitioner.

18. In those circumstances, the petitioner had approached the competent authority by way of a representation, which had been rightly considered and disposed of, after following due procedure i.e., calling for objections from the affected parties, promoting the petitioner as Senior Assistant and placing him

above his juniors, who were promoted, while he was working as Junior Assistant at Anantapur, in the seniority list of Senior Assistants.

19. There is absolutely no irregularity in the action taken by the competent authority. On the other hand, the procedure prescribed under the Fundamental Rules, and Rule 14-A, in particular, had been scrupulously followed both in sending the petitioner on deputation to some other place and also after his repatriation to his original place of appointment.

20. Therefore, there is nothing illegal in the action of the competent authority and the procedure followed cannot be termed as having violated the Fundamental Rules. The Tribunal, in our view, had misread the position, rather it was not properly assisted, as could be seen from the impugned order. Therefore, the O.A. was considered and determined erroneously.

21. Having perused the material placed before this Court, we are of the view that the Tribunal went wrong in determining the case in favour of the respondent No. 1 and contrary to the interest of the petitioner. Therefore, the said position has to be corrected.

22. For the foregoing, the writ petition is liable to be allowed and the impugned order is liable to be set aside.

In the result, the writ petition is allowed, setting aside the impugned order, dated 7-11-2003, passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A. No. 742 of 1997. However, there shall be no order as to costs.