
(2002) 11 AP CK 0084

In the Andhra Pradesh High Court

Case No : Writ Petition No. 32760 of 1998

K. Sankariah and Another

APPELLANT

Vs

A.P. Administrative Tribunal and Others

RESPONDENT

Date of Decision : 22-11-2002

Acts Referred:

Andhra Pradesh Ministerial Service Rules, 1966 — Rule 4, 4(2), 4(3), 7

Citation : (2003) 2 ALT 163

Hon'ble Judges : D.S.R. Varma, J; Bilal Nazki, J

Bench : Division Bench

Advocate : P. Krishna Reddy, for the Appellant; A. Suryanarayana Murthy, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—The dispute is actually between the petitioners and the 5th respondent herein.

2. This writ petition is filed challenging the common order dated 20-10-1998 passed by the A.P. Administrative Tribunal, Hyderabad, in O.A. Nos. 5530/1998 and 1975/1996 with VMA.No. 541/1998.

3. Petitioners are the applicants in O.A.No. 5530/1998, wherein G.O.Ms. No. 427, Revenue (CT.III) Department dated 16-6-1998, by which notional seniority with effect from 3-3-1987 was sanctioned to 5th respondent and the consequential proceedings dated 8-7-1998 of the 3rd respondent - Deputy Commissioner of Commercial Taxes, Warangal, was challenged and further for a direction to the respondents to consider the case of the petitioners for appointment to the post of Assistant Commercial Tax Officers (for short "A.C.T.O.") by transfer in preference to the unofficial respondent therein, who is the 5th respondent in the writ petition.

4. The case of the writ petitioners in the said O.A. was that the 5th respondent herein was temporarily promoted to the post of Senior Stenographer while he

was working as Junior Assistant and the same is not in consonance with the Andhra Pradesh Ministerial Service Rules. Their specific case is that a Junior Assistant cannot be promoted as a Senior Stenographer, inasmuch as the post of Junior Assistant is not a proper channel for the promotion to Senior Stenographer. Their further case is that the request of the 5th respondent for granting notional seniority in the category of Senior Stenographer with effect from 3-3-1987 was rejected by the 3rd respondent - Commissioner. It is further stated that in the earlier O.A. filed by the 5th respondent in O.A.No. 11825/1991, the Tribunal did not give any positive directions in his favour, directing the respondents to accord him notional promotion with effect from 3-3-1987. Further by proceedings dated 3-1-1996, the Deputy Commissioner of Commercial Taxes (4th respondent) rejected the claim of the 5th respondent. Challenging the said decision, the other O.A. No. 1975/1996 was filed by the 5th respondent and the Tribunal granted the interim order, which is as under:--

Considering the submission of the rival counsel, the impugned order dated 3-1-1996 is stayed and the case of the applicant for notional seniority in the post of U.D. Steno may be considered as per the observations made in the judgment dated 3-2-1995 in O.A.No. 11825/1991, and also further promotion as ACTO in accordance with rules.

5. The case of the 5th respondent in the said O.A. was that he was appointed as Typist on 2-11-1982; that subsequently he was appointed as L.D. Stenographer on 1-7-1983 and was converted as Junior Assistant by order dated 17-4-1986; that he was kept in full additional charge of the post of L.D. Stenographer; that he had passed Shorthand Higher Grade and became eligible to be promoted as U.D. Stenographer; that at that point of time a vacancy of U.D. Stenographer had arisen and he made a representation on 3-3-1987 seeking consideration of his case for promotion as U.D. Stenographer; that however he was promoted as Senior Inspector, which post is equivalent to Senior Assistant on 29-1-1988 instead of promoting as U.D. Stenographer with effect from 3-3-1987; that he made a representation to give him notional seniority in the cadre of U.D. Stenographer with effect from 3-3-87 by which time he was fully qualified and eligible to be promoted as U.D. Stenographer that he was informed in response to the said representation that his case cannot be considered, as there were certain allegations pending against him; that he renewed his request after the disciplinary proceedings were dropped in the year 1990; and that in the meanwhile consequent upon the directions of the Tribunal in some other cases and the directions of the Supreme Court, he was reverted to the post of Junior Assistant by proceedings dated 25-6-1990, in order to accommodate the seniors. The details of the said directions of the Tribunal or the Supreme Court in this regard are not fully furnished. But the fact remains that he was reverted pursuant to the said directions of the Supreme Court and the Tribunal, for want of vacancy.

6. However, according to the Government as stated in the counter-affidavit,

taking a lenient view, he was promoted as Senior Stenographer through proceedings dated 27-6-1990. At this juncture it has to be noted that he was given promotion to the post of Senior Stenographer taking a lenient view, because of his reversion to the post of Junior Assistant. The earlier O.A.No. 11825/1991 filed by the 5th respondent was disposed of with the following directions:--

"The authorities will prepare a seniority list of district cadre organized and review seniority to the post of Senior Assistant/U.D. Steno in the zonal cadre and after merging various district cadre seniority list in the zone considering the case of the applicant and others eligible for the post of U.D. Steno with effect from the date when the vacancy was existing."

7. Subsequently the 4th respondent rejected his case through the proceedings dated 3-1-1996, and the same is challenged in O.A.No. 1975/1996 and the Tribunal passed the interim order staying the impugned proceedings and directed to consider the case of the 5th respondent for notional seniority in the post of U.D. Stenographer as per the observations made in the judgment dated 3-2-1995 in O.A.No. 11825/1991.

8. Taking clue from the orders passed in O.A.No. 11825/1991 and also the interim orders passed in O.A.No. 1975/1996, the 5th respondent made a representation and the matter was reopened and the case of the 5th respondent was considered by giving the benefit of notional seniority, which was under challenge in the other O.A. i.e., O.A.No. 5530/1998. Hence these two O.As. came to be filed and the Tribunal having considered the facts on record passed the impugned common judgment dismissing O.A.No. 5530/1998 and allowing O.A.No. 1975/1996. Therefore, the unsuccessful applicants before the Tribunal in O.A.No. 5530/1998 filed the present writ petition.

9. Undisputed facts are that the petitioners were appointed as Junior Assistants in the year 1976 and they were promoted as Senior Assistants on 9-7-1987. Therefore, as per the seniority list finalized by the competent authority, they were to get promotion to the next post i.e., A.C.T.O. It is not in dispute that the final seniority list has been prepared.

10. Whereas the respondent No. 5 was initially appointed as Typist in the year 1982. He was converted as L.D. Stenographer in the year 1983. Again he was converted as Junior Assistant on 30-4-1986 upon his request. He was further promoted as Senior Inspector, which is equivalent to Senior Assistant on 29-1-1988 and again reverted as Junior Assistant on 25-6-1990 consequent upon the directions of the Tribunal and the Supreme Court. Since he was reverted, a lenient view was taken and he was given promotion as Senior Stenographer by order dated 27-6-1990. Again in the year 1993 at his own request, he was converted as Senior Assistant.

11. From the above, apart from the liberal and convenient conversions from one post to the other and promotions from one to the other, accorded to 5th

respondent, it is important to note his date of appointment as Senior Inspector/ Assistant and the circumstances thereof.

12. Petitioners were promoted on 9-7-1987 as Senior Assistants and whereas the 5th respondent was promoted as U.D. Stenographer on 27-6-1990 and got conversion as Senior Assistant in the year 1993. Both the posts of Senior Assistant and Senior Stenographer are the feeder channel to the next higher post i.e., A.C.T.O. Therefore, it has to be noted that the 5th respondent is apparently junior to the petitioners. Even if his earlier date of promotion i.e., 29-1-1988 is taken into consideration, he is junior to the petitioners. Another important factor is that after his promotion on 29-1-1988, as Senior Inspector, he was reverted as Junior Assistant on 25-6-1990 by virtue of the directions of the Tribunal as well as the Supreme Court. The details are not clear from the pleadings, but are not in dispute.

13. Respondent No. 5 became eligible on 3-3-1987 for promotion to the post of U.D. Stenographer, and also on that date, the vacancy was available. But at that point of time, he was working undisputedly as Junior Assistant. The reasons for the authorities to promote him as U.D. Stenographer are three-fold viz., (1) availability of vacancy; (2) possessing of requisite qualification and; (3) taking a lenient view owing to his reversion to the post of Junior Assistant, pursuant to the directions of the Supreme Court and the Tribunal. We are unable to comprehend the logic behind the extension of lenient view and the question that stares at us for decision is, whether such a view is permissible under law?

14. At the threshold we are of the view that the benefit extended to the 5th respondent taking into account the above considerations, is impermissible, for the reasons that just because there was a vacancy available and he possessed requisite qualification, it is not open for him to claim seniority, as a matter of right. The established principle of law is that it is always the prerogative of the appointing authority or the State as the case may be, whether to fill up the vacancy or not. Even in such a case, admittedly merit is the criteria. Mere possessing the qualification is not always sufficient for a skilled job like the stenography. In such a case, the competent authority must always proceed, if it is fully expedient, with the filling up of the vacancy taking into consideration merit-cum-seniority. Policy on this score is also not very clear. However, in this context it has to be seen that Sub-rule (3) of Rule 4 of Ministerial Service Rules postulates that all promotions to the post shall be made on the ground of Seniority-cum- efficiency. Therefore, showing leniency is not permissible. Before extending such benefit, at least the seniority of the 5th respondent should have been taken. The appointing authority merely states in its counter that a lenient view was taken because of his reversion from the post of Senior Assistant to Junior Assistant. In case of appointments or promotions, the appointing authority shall always proceed in strict adherence to the rules. Apparently no such application of rules was resorted to in case of the 5th respondent.

15. Nextly, the 5th respondent was actually working as Junior Assistant as on the

date of his promotion as Senior Stenographer. Here it is necessary to refer to Rules 7 and 4 under the A.P. Ministerial Service Rules.

16. From a perusal of Rule 7 it is clear that the Junior Assistant and a Telephone Operator are eligible for the appointment as Typist or Stenographer and a Typist or Junior Stenographer are also eligible for appointment as Telephone Operator or as Junior Assistant and a Telephone Operator is also eligible to be appointed as Junior Assistant subject to qualification and suitability and further subject to satisfactory completion of service in the period of probation in the respective posts. Therefore, it is clear that transfers can be effected from one post to other mentioned in the said rule.

17. Further Rule 4 (2)(i) postulates that service rendered by an individual as Typist or Steno Typist before his transfer as Junior Assistant shall also be counted towards three years of service for the purpose of promotion to Senior Assistant. This provision only indicates that such counting of service rendered by the Junior Assistant as Typist or Steno Typist shall also be counted for the purpose of promotion to the post of Senior Assistant.

18. Whereas Clause (iv) of Sub-rule (2) of Rule 4 which specifically deals with the appointment to the post of Senior Stenographer postulates that so far as promotion to the post of Senior Stenographer is concerned, that can be made from the post of Typists and Junior Stenographer, subject to their qualifications and suitability and the option.

19. A combined reading of above two sub-rules of Rule 4 makes it abundantly clear that the earlier service rendered by the Junior Assistant as Typist or Steno Typist shall also be counted for the purpose of promotion to Senior Assistant. Whereas for the purpose of promotion to Senior Stenographer, the imperative requirement is that it should be made from the posts of Typist or Junior Stenographer. That means at the initial stage of appointment transfers are permissible from one to other among the posts of Typists, Stenographers, Telephone Operators and Junior Assistants. All these posts are to be treated as equal for the purpose of transfer. But, for the purpose of promotion, as Senior Assistant or Senior Stenographer, they are different. The Stenographer as already pointed out requires a totally different expertise than that of a Junior Assistant. An individual who has been continuously working in the capacity of Junior Assistant may not necessarily be acquainted with the stenography. To be more lucid, a person possessing qualification to hold a post of Stenographer cannot be equated with a person who is already working as Stenographer.

20. In the instant case it is apparent from the record that the 5th respondent though had the requisite qualification of Stenography, he was actually working as Junior Assistant and of course it was averred that when he was working as Junior Assistant, he was kept as full additional charge as Junior Stenographer. Except statement nothing is placed on record. Even assuming that he was discharging the duties of L.D. Stenographer, his substantive post was Junior Assistant.

Further, promotion from the post of Junior Assistant to Senior Stenographer is impliedly barred under Sub-rule (2)(iv) of Rule 4 of the A.P. Ministerial Service Rules.

21. It is further strange to note as to how the 5th respondent was hopping from one post to the other. He was initially appointed as Typist, converted as L.D. Stenographer and again converted as Junior Assistant and was promoted as Senior Assistant and got reversion pursuant to the directions of the Supreme Court and the Tribunal, to the post of Junior Assistant and upon extending a lenient view, he was promoted as Senior Stenographer and at his request he was working as Senior Assistant in the year 1993. 5th respondent in our view, was shifting his stand from one to the other, which suited him the best. No doubt his conversion from the post of L.D. Stenographer to Junior Assistant is permissible under law, but we are of the considered View that his promotion to the post of Senior Stenographer from the post of Junior Assistant de hors the rules and on sympathetic considerations is detrimental to the interest of other seniors or eligible persons for getting promotions in the category of Junior Stenographers or Typists.

22. Apparently as already recorded, the 5th respondent was junior to the petitioners in the cadre of Junior Assistants as well as Senior Assistants. Now the whole controversy has been generated because of the notional seniority given to the 5th respondent in the cadre of U.D. Stenographer with effect from 3-3-1987, on which date he acquired the qualification to hold the said post. But the fact that he was working only as a Junior Assistant, cannot be ignored. Mere acquisition of qualification to hold the post of Senior Stenographer is not sufficient to promote an individual from a wrong channel. Further it is also to be noted that he was reverted in the year 1990 as Junior Assistant on 25-6-1990 from the post of Senior Assistant pursuant to the directions of the Supreme Court and thereafter promoted to the post of Senior Stenographer on 27-6-1990. Therefore, the circle has been completed i.e., that he was recruited as L.D. Stenographer, opted to become Junior Assistant and he was successful and thereafter he got promoted to the post of Senior Assistant. His reversion to the post of Junior Assistant makes the situation further strong for the simple reason that a Senior Stenographer cannot be reverted to the post of Junior Assistant, nor a Junior Assistant be promoted as Senior Stenographer, as envisaged under Rule 4 of A.P. Ministerial Service Rules.

23. Added boon to the 5th respondent and which has turned as bane to the petitioners is giving notional seniority with effect from 3-3-1987, on which date he was allegedly acquired qualification, on which date he was virtually junior to the petitioners, perhaps to many.

24. Another important factor to be noted is 5th respondent never questioned the orders of reversion to the post of Junior Assistant from the post of Senior Assistant on 25-6-1990 pursuant to the orders of the Supreme Court. When that reversion has become final as seemingly directed by the Supreme Court, the

revision of seniority list has to be effected and that reversion was only to accommodate the seniors. When that was allowed to become final, we do not find any valid reason for the respondents to give leeway or extend lenient view to the 5th respondent for promotion from the post of Junior Assistant to the post of Senior Stenographer, within two days from the date of reversion, which is absolutely in contravention to Rule 4 of the A.P. Ministerial Service Rules.

25. It is also on record that the Head of the Department i.e., Commissioner through proceedings dated 23-1-1991 while rejecting the representation of the 5th respondent observed that the notional seniority to the 5th respondent in the cadre of Senior Stenographer with effect from 3-3-1987 cannot be extended on the ground that he was working as Junior Assistant and there is no channel for promotion for a person from the category of Junior Assistant to the cadre of Senior Stenographers as per rules and that only Typists and Junior Stenographers are entitled to such promotion. Unfortunately, his reasoning was not considered properly by the Government while issuing the G.O.

26. Now coming to G.O.Ms.No. 427 which is impugned herein, it has to be seen from the said G.O. that the Government has taken into account orders of the Tribunal. The said orders of the Tribunal are the final orders passed in O.A.No. 11825/1991 and the interim orders passed in O.A.No. 1975/1996. A combined reading of the said two orders, which are already extracted above, does not in any way indicate that the Tribunal explicitly intended that the Government should consider the case of the 5th respondent de hors the rules. Therefore, the reasons shown in the impugned G.O. for giving notional seniority with effect from 3-3-1987 to 5th respondent is wholly irrational.

27. For the foregoing reasons, we are of the view that the impugned G.O. 427, Revenue (CT.III) Department, dt. 16-6-1998, is liable to be set aside and is accordingly set aside. The respondents are directed that any promotions to the post of Senior Stenographers are to be made strictly in accordance with rules and any further promotion to the higher post of ACTO shall be made in accordance with the seniority list final or existing as on to-day.

28. Accordingly the impugned common judgment of the Tribunal is set aside and the writ petition is allowed while setting aside the order of Tribunal in O.A.1975/96. No costs.