

(2001) 04 SC CK 0003

In the Supreme Court Of India

Case No : C.A. No.-003368-003368 / 2001

T. Aruna and Others

APPELLANT

Vs

The Secretary, Andhra Pradesh Public Service Commission
and Others

RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:

Andhra Pradesh State and Subordinate Service Rules, 1962 — Rule 33(c)
Andhra Pradesh Ministerial Service Rules, 1998 — Rule 5
Andhra Pradesh Public Service Commission Regulations, 1963 — Regulation 12(3)

Citation : AIR 2001 SC 2114 : (2001) AIRSCW 2001 : (2001) 1 JT 356 Supp :
(2001) LabIC 1790 : (2001) 3 SCALE 673 : (2001) 9 SCC 54 : (2001) SCC(L&S)
1249 : (2001) 2 SCT 1039 : (2001) 3 Supreme 635

Hon'ble Judges : S. Rajendra Babu, J;K. G. Balakrishnan, J

Bench : Division Bench

Advocate : H.S. Gururaja Rao and T.V. Ratnam, for the Appellant; Raju Ramachandran D. Ramakrishna Reddy, Mrs. D. Bharathi Reddy, Guntur Prabhakarand K. Ram Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishnan, J.—Leave granted.

2. The Judgment of the Division Bench of High Court Andhra Pradesh is challenged before us. The appellants and respondents 3 to 10 are now working in different cadres such as Assistant Secretaries, Superintendents and Senior Assistants in Andhra Pradesh Public Service Commission (hereinafter being called "APPSC"). The appellants were initially recruited as Typists and Respondents 3 to 10 were initially recruited and appointed as Junior Assistants. For Junior Assistants, the next promotion post was Senior Assistants. Those who were appointed as Typists had also been urging for promotion to the post of Senior Assistants and from 1978 onwards they were given promotion to the post of Senior Assistants. Promotions to the post of Senior Assistant from the cadres of Junior Assistant and Typist were in the ratio of 4:1. However, promotions so

made were not supported by any rules but were based on a policy adopted by APPSC. In 1992, APPSC decided that inter se seniority between Typists and Junior Assistants shall henceforth be fixed from the date of their first appointment and the ratio for the purpose of their promotion to the category of Senior Assistants was sought to be revised. Both groups of employees were given opportunity to submit their objections and thereafter the seniority was revised vide Office Memorandum No. 2051/ADB.2/93 dated 30.6.1996. The group representing employees who were initially recruited as Junior Assistants filed OA No. 4013/96 before Andhra Pradesh Admn. Tribunal for a direction to the APPSC for implementation of the revised proceedings issued on 30.6.1996 and the rival group, namely, the appellants filed OA No. 4172/96 challenging the proceedings dated 30.6.1996 relating to seniority.

3. The APPSC filed reply statement contending that the Commission had earlier adopted a ratio of 1:4 in the matter of promotions to the posts of Senior Assistants from the categories of Typists and Junior Assistants respectively and that procedure was found to be incorrect as there were no rules supporting such promotions, and that the Commission accordingly revised the seniority list. After hearing the parties, the Tribunal found that promotions to the post of Senior Assistants were not being done in accordance with the relevant rules and the Tribunal disposed of the two OAs with the following directions.-

a. For making promotions to the category of Senior assistants, the length of service in feeder categories i.e., Junior Assistants and Typist should be the criterion for the purpose of promotion to the post of Senior Assistant and not the ratio of 4:1.

b. Junior Assistants with 3 years of service are eligible for promotions to the category of Senior Assistants with effect from 12.2.1979.

c. Typists should have 5 years of service for promotion to the category of Senior Assistants in respect of the promotions to be made prior to 21.3.1984. In respect of promotions to the category of Senior Assistants made subsequent to 22.3.1984, three years of service would be sufficient.

d. In these Oas, the Tribunal has only laid down guidelines for the purpose of promotions to the category of Senior Assistants from the feeder categories of Junior Assistants and Typists during the period from 1980 to 1992. The inter se seniority between the individual employees recruited to different categories through different methods of recruitment should be fixed following the rules and orders of the courts, if any.

e. Following the above guidelines, the promotions made during the period from 1980 to 1992 to the category of Senior Assistant should be reviewed and after such review the revised seniority lists should be drawn and communicated to the employees for making representations, if any. After considering the representation, the final seniority lists should be issued.

f. This exercise should be completed within a period of three months from the date of the receipt of this order.

4. The aforesaid direction issued by the Tribunal was challenged by the appellants in W.P. No. 18552/97. The Division bench of Andhra Pradesh High Court affirmed the decision of the Tribunal. That decision is challenged before us.

5. We heard the Appellants' Counsel Sri T.V. Ratnam and Respondent's senior Counsel Sri Raju Ramachandran and also the Counsel for the APPSC. The main contention urged by the appellants' Counsel is that Jr. Assistants and Typists are in the feeder category for promotion to the posts of Sr. Assistant and the date of first appointment in their respective feeder category should be taken into consideration for the purpose of inter se seniority between employees of the two categories. The appellants relied upon Rule 33(c) of the A.P. State Subordinate Services Rules. But this contention of the appellants is refuted by the respondents and it is submitted that Junior Assistants and Typists are not equivalent posts and the qualification and method of their recruitment is also different. It is also submitted that for the purpose of promotion to the category of Senior Assistant, separate rules are applicable, for the two feeder categories.

6. It is true that both Typists and Junior Assistants have been in the feeder category for the purpose of promotion to the posts of Senior Assistant. But it is not fully correct to say that posts of Junior Assistants and Typists are equivalent. Minimum education qualifications prescribed for Typists is SSC/Matriculation, whereas for the post of Junior Assistant, the minimum education qualification is graduation. For recruitment of Junior Assistants, a test consisting of four papers is prescribed, whereas to Typists one has to pass a test consisting of only one paper. Moreover, in Andhra Pradesh Ministerial Rules, separate guidelines have been provided for promotion from these two categories. Therefore, it is idle to contend that there should not have been any distinction in the matter of promotion from these two categories to the next higher cadre.

7. In fact, the relevant rules also treated these two groups differently for the purpose of promotion. By virtue of Regulation 12(3) of the APPSC Regulation, 1963, which is reproduced hereinbelow, it is made clear that Andhra Pradesh Ministerial Service Rules would be applicable to employees of APPSC.

REGULATION 12(3)

The conditions of service of the members of the staff of the Commission shall, save as expressly provided in these regulations, be the same as those prescribed by State Government in respect of Government servants holding corresponding appointments elsewhere than in the Office of the Commission. The provisions in Annexure-II to these regulations shall apply to the members of the staff of the Commission mentioned therein.

ANNEXURE-II

[See Regulation 12(3)]

1 (a) The Secretary shall be:

(i) XXX XXX XXX

(ii) XXX XXX XXX

(iii) The authority competent:-

(a) XXX XXX XXX

(b) To make appointments, promotions and transfers in respect of the posts of Superintendents, Assistants, Clerks, Accountants, S.C. Steno, Senior Steno, Senior Steno, Junior Stenos and Typists within the meaning of the Special Rules for Andhra Pradesh Ministerial Service:

XXX XXX XXX

3(a) A member of the staff of the Commission shall ordinarily put in a minimum service of three years, but in no case shall it be less than two years in the category, class or grade from which he or she shall be promoted or appointed by recruitment by transfer as the case may be, to the corresponding next higher category, class or grade - Stenographers and Typists of the Commission shall however, be governed by Rule 5 of the Andhra Pradesh Ministerial Service Rules for promotion or appointment.

8. From the above Rules, it is clear that Junior Assistants are entitled to get promotion to the next higher grade after completion of 3 years' service, of which at least 2 years shall be in that category, and the Typists shall be governed by rule 5 for the purpose of their promotion.

9. The relevant portion of the Andhra Pradesh Ministerial Service Rules, viz. Rule 5 reads as follows:-

5. Promotion and absorption of certain stenographers and typists:- No member of the service shall be eligible for promotion or appointment as the case may be, from the post mentioned in column (1) of the table below to the post mentioned in column (2), unless he has put in satisfactory service for the minimum period and in the category specified in column (3) thereof.

THE			TABLE	
(1)		(2)		(3)
XXX		XXX		XXX
Upper Division			(4)	
Upper Division Clerk			3 yr service as Upper	
Division			Stenographer	
Stenographer			(5)	
Third Grade			5 years service as	
Upper Division			Stenographer or	
(Third) Grade Steno-			Typist, or	
grapher of Typist or			Or	

Steno-Typist who			Steno-Typist		Has opted for				Absorption in the post	
			Of Upper Division						Stenographer	

"28(a) Typists and steno-typists in the offices of Heads of Departments and Directorates shall not be eligible for conversion as Lower Division Clerks or for promotion as Upper Division Clerks and Directorates shall be eligible for conversion as Lower Division Clerks unless they hold a degree of a University in India established or incorporated by or under Central act, Provincial Act, or State Act or any other equivalent qualifications.

Provided that those appointed to these categories in the offices specified in this sub-rule prior to 31st October, 1980 shall be eligible for promotion as Upper Division Clerk or for conversion as Lower Division Clerk even if they do not possess a degree of a University but they must have passed the full test(two paper test) held by the Andhra Pradesh Public Service Commission for recruitment to the post of Lower Division Clerks.

(b) Typists or Steno-typists shall not be eligible for conversion as Lower Division Clerk or for promotion as Upper Division Clerk and telephone Operators for conversion as Lower Division Clerk the Subordinate office, i.e., offices other than the heads of Departments and Directorates unless they hold Minimum General Education Qualification.

(c) No typists or Steno-typist shall be eligible for such promotion or transfer before he has satisfactorily completed the period of his probation."

10. From these Rules, it is abundantly clear that Typists and Stenographers have to pass the eligibility test for getting promotion to the post of Senior Assistant and they have to put in 5 years' service for the purpose of promotion. The appellants have submitted that they have passed the test and qualified themselves for promotion. Admittedly, from 22.3.1984, the Typists also are entitled to get promotion to the cadre of Senior Assistant after completing 3 years service. The direction given by the Tribunal which is affirmed by the High Court is in accordance with the relevant rules.

11. The Counsel for the appellants urged that some of the appellants who were given promotion to the cadre of Senior Superintendents long back and subsequently to still higher cadres are to be reverted to lower category in view of the directions contained in the impugned judgment. It was submitted that promotions effected long back should not be disturbed as they were not challenged. Admittedly, the Commission was not following any rules and the promotions were effected based on a policy. No seniority list was either published. The affected parties got the opportunity to challenge these promotions only when a seniority list was published in 1996. Under the above circumstances, the reasons for delay, if any, cannot be put at the door of the respondents who were seriously affected by the way in which promotions were being done. We are, however, told that seniority list has now been finalised after giving due

consideration to the individual representation.

12. We do not find any merit in the appeal and the same is accordingly dismissed, however, without costs.