

(2015) 10 KAR CK 0155

In the Karnataka High Court

Case No : Writ Petition No. 22183/2012 (S-CAT)

The Chief Post Master General, Karnataka Region and Others

APPELLANT

Vs

S.V. Balasubramanya and Others

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Citation : (2015) 10 KAR CK 0155

Hon'ble Judges : Mohan M. Shantana Goudar and B. Veerappa, JJ.

Bench : Division Bench

Advocate : C. Shashikantha, Advocate, for the Appellant; A.R. Holla, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J.—The petitioners have questioned the order of the Central Administrative Tribunal dated 15th December, 2011 passed in Original Application No. 634/2003.

2. The respondent in the Writ Petition viz., Sri S.V. Balasubramanya has expired and his legal representatives are brought on record.

3. The applicant before the Tribunal (the respondent in the present writ petition) was aspiring to take examination to the post of P.S. Group "B" Grade post on the ground that he was working a LSG under TBOP Scheme (which is a time bound promotion scheme). Though hall-ticket was issued to him initially, the examination was cancelled by the Department on the ground that the respondent was not eligible to take up the examination in P.S. Group "B" Officers in as much as he was not promoted to the post of LSG but was given only time bound promotion. In other words, the Department was of the opinion that the time bound promotion cannot be considered as promotion to the post of LSG and monitory benefits given to the respondent under TBOP scheme cannot ensure to the benefit of the respondent for appearing for P.S. Group "B" Grade. Such an order of cancellation of hall-ticket vide Annexure-4 dated 17.9.2003 was

questioned by the respondent - S.V. Balasubramanya before the Central Administrative Tribunal in Original Application No. 634/2003 which came to be allowed on 28.10.2004. The Central Administrative Tribunal while passing the said order had taken into consideration the clarification issued by the Government of India vide Annexure-A3 dated 28.7.2003 which reads thus:

"References from Heads of some Postal Circles have been received in this Directorate seeking clarifications whether the officials (Pas) promoted under TBOP/BCR having 5 years notional/regular service of more are also eligible for appearing in the P.S. Gr. "B" Examination.

The matter has been examined in the Directorate. I am directed to clarify that officials promoted under TBOP/BCR scheme are eligible to take the examination on completion five years. Five years service in LSG are reckoned from the date the official is notionally promoted to LSG or higher grade so as to be eligible for appearing in the Departmental Competitive Examination for Promotion to P.S. Group "B" grade."

A copy of the said document, Annexure-A3 was marked to all the Heads of Postal Circles; All Directors of Postal Training Centers; Director, Postal Staff College of India, Ghaziabad; Director General (APS). A clarification vide Annexure-A3 dated 28.7.2003 was issued for clarifying the concerned Rule in Department of Posts [(Posts and Telegraphs) (Selection Grade Posts)] Recruitment (Amendment) Rules, 2002. The order of the Central Administrative Tribunal was questioned by the Department before this Court in Writ Petition No. 13771/2005 which came to be allowed and the matter was remitted to the Central Administrative Tribunal on 14.7.2011 by observing thus:

"3. In the circumstances, this petition is allowed. Matter is remanded to the tribunal with a request to re-consider the matter and to find out whether the applicants before the tribunal were promoted and working as LSG in order to take up the examination to the post of Group-B officer cadre".

Thereafter the matter was reconsidered by the Central Administrative Tribunal in the original application No. 634/2003 and is decided in favour of the respondent and against the Department as per the impugned order.

4. In the meanwhile, the respondent/S.V. Balasubramanya was promoted to the Group "B" Officer Cadre on 3.9.2010 as is clear from Annexure-R1 along with 11 others. Further he was given financial upgradation on 14.3.2011 as per Annexure-R4 since he had completed 4 years of service in PSS Group "B" post. During the pendency of this writ petition, the respondent/S.V. Balasubramanya expired and his legal representatives were brought on record.

5. Learned advocate for the Central Government taking us through the material on record submits that Sri S.V. Balasubramanya was not entitled for promotion to the P.S. Group "B" post and consequently, he was not entitled for monetary benefits attached to Group "B" posts. He further submits that since the

respondent has expired, his legal representatives are not entitled for the financial benefits attached to P.S. Group "B" posts of Balasubramanya after his demise. He heavily relies on the document at Annexure-A4 to contend that the hall ticket issued to the respondent/Balasubramanya was cancelled since he had not completed 5 years of regular service in LSG, HSG - II posts and what was given to him was merely a time bound financial upgradation.

Sri A.R. Holla, learned Counsel appearing on behalf of the respondent, drawing attention of the Court to the clarification issued by the Circular vide Annexure-A3 dated 28.7.2003 that the said clarification was not brought to the notice of this Court while deciding the Writ Petition No. 13771/2005 and therefore, the Division Bench while deciding the said writ petition had passed the order therein in ignorance of the clarification vide Annexure-A3 dated 28.7.2003.

6. It is not in dispute that the respondent/Sri S.V. Subramanya was not promoted; he had completed 5 years of regular service in LSG/HSG-II. It is also not in dispute that he was given TBOP. However, he was given all the benefit of TBOP scheme which is a time bound promotion scheme relating to monitory benefits attached to LSG posts. As per the relevant rules then prevailing, the work of a candidate as LSG is prerequisite to appear for examination to the next promotional posts i.e., P.S. Group "B" posts. But the said rule was clarified by the Government of India vide Annexure-A3 on 28.7.2003 as mentioned in paragraph No. 3 supra. The clarification dated 28.7.2003 makes it amply clear that the officials promoted under TBOP/BCR scheme are eligible to take up examination on completion of five years. Five years service in LSG are reckoned from the date the official is notionally promoted to LSG or higher grade so as to be eligible for appearing in the Departmental Competition Examination for Promotion to P.S. Group "B" grade. It is not in dispute that the respondent/Subramanya was promoted under TBOP scheme. It is also not in dispute that he had completed 5 years in LSG posts as reckoned from the date he was notionally promoted to LSG or higher grade. Thus the clarification - Annexure-A3 to the concerned rule fully supports the case of the respondent that he was entitled to appear for the Departmental Competitive Examination for Promotion to P.S. Group "B" grade post. Accordingly, based on the said clarification, the hall-ticket was rightly issued to him along with others, but subsequently, the same came to be cancelled erroneously. Such an order of cancellation of hall-ticket was set aside by the Tribunal. When the matter came up before the Division Bench of this Court in W.P. No. 13771/2005, this Court without referring to the clarification dated 28.7.2003 issued by the Government of India passed the order. Unfortunately the Circular Annexure-A3 dated 28.7.2003 was not brought to the notice of this Court. Thus this Court proceeded to decide the said writ petition based on the rule without advertent to the clarification dated 28.7.2003. Had the parties brought the clarification dated 28.7.2003 issued by the Government of India to the notice of this Court while deciding W.P. 13771/2005, the things would have been different. Since the clarification dated 28.7.2003 was not brought to the notice of this Court in W.P. 13771/2005, this Court remitted the

matter to the Central Administrative Tribunal to reconsider the matter and to find out whether the respondent herein so promoted was working as LSG in order to take up the examination under P.S. Group "B" grade. The Central Administrative Tribunal has clarified the said aspect of the matter based on the Circular dated 28.7.2003 vide Annexure-A3.

7. However the Central Administrative Tribunal may not be justified in advising the petitioners herein to amend the above mentioned Recruitment Rules keeping in mind the clarification dated 28.7.2003. But the impugned order of CAT, in all other aspects is just and proper in the facts and circumstances of the case.

8. The respondent has now expired. He had drawn the salary also attached to the P.S. Group "B" post. He has died during the pendency of the writ petition. Hence, at the most this writ petition can survive only with regard to the financial benefits, if any, to be paid to the respondents, who are the legal representatives of the late employee - Sri S.V. Balasubramanya. Be that as it may. Since we find that the order of the Tribunal is just and proper, no interference is called for. Writ Petition stands dismissed.

9. However, we make it clear that the advisory observations made by the Tribunal to the Department for amending the Recruitment Rules are to be ignored.