

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION Nos. 19799 of 2015 & 8803 of 2016

COMMON ORDER: (*Per VRS,J*)

Both these writ petitions arise out of an order passed by the Central Administrative Tribunal, Hyderabad, on an application filed by an individual, 1st respondent in W.P.No.8803 of 2016 and petitioner in W.P.No.19799 of 2015, who was employed as Deputy Conservator of Forests in the State of Andhra Pradesh. While the Union of India is aggrieved by the direction issued by the Tribunal to consider the matter afresh, the individual before the Tribunal is aggrieved by the refusal of the Tribunal to grant him the total relief.

2. Heard Mr. B. Narayana Reddy, Assistant Solicitor General, appearing for the Union of India, and Mr. Siva, learned counsel appearing for the individual.

3. In a meeting of the Cadre Review Committee held on 11.09.2009 under the Chairmanship of the Cabinet Secretary, duly attended by the Secretary (Personnel), Ministry of Personnel, Public Grievances & Pension, as well as by the Director General and Special Secretary, Ministry of Environment & Forests, the vacancies in the

Indian Forest Service for the combined State of Andhra Pradesh were determined at 45. The minutes of the Meeting were forwarded to the Department of Personnel & Training. The Department of Personnel & Training, while drafting the notification for recruitment, came to the conclusion that the number of vacancies to be notified was only 44 and not 45. Accordingly, only 44 vacancies were notified. As a consequence, the individual was not included in the panel for promotion.

4. Therefore, the individual filed an application in O.A.No.937 of 2013 on the file of the Central Administrative Tribunal, Hyderabad, seeking a declaration that the action of the Department of Personnel & Training in tampering with the number of posts sought to be filled up by promotion to the Indian Forest Service, was contrary to law, and for the grant of consequential benefits.

5. In the application before the Tribunal, the Secretary to Government, Ministry of Environment & Forests, as well as the Secretary to Government, Ministry of Personnel, Pensions and Public Grievances, Department of Personnel & Training, were impleaded as parties. It appears that the Department of Personnel & Training alone filed a reply before the Tribunal. From a perusal of the reply filed by the Department of Personnel & Training, it is not clear whether the

reply was filed both on their behalf and on behalf of the Ministry of Environment & Forests. At least, there is no such averment in the reply.

6. In the reply so filed by the Department of Personnel & Training, the only contention raised by them was that as per Rule 8 of I.F.S. (Recruitment) Rules, 1966, the number of promotion posts should not exceed 33 and 1/3rd percentage of the sum total of Senior Duty Posts, Central Deputation Reserve Posts, State Deputation Reserve Posts and Training Reserve Posts. The method of calculation to determine the cadre strength was also indicated in the reply so filed.

7. After taking note of the contents of the application filed by the individual and the reply filed by the Department of Personnel & Training, the Tribunal came to the conclusion that the only area of dispute between the Ministry of Environment & Forests and the Department of Personnel & Training, was as to whether the fraction of a post is to be ignored or taken into account. The Department of Personnel & Training took a stand that fractions are to be ignored. But unfortunately, the Ministry of Environment & Forests did not come before the Tribunal to either accept or challenge the said view of the Department of Personnel & Training that fractions are to be excluded.

8. Admittedly, in the instant case, the actual number of posts together with the fraction worked out to 44.99. Therefore, the Tribunal could have actually decided the issue by holding that with such a fraction, the total number of posts arrived at originally by the Cadre Review Committee as 45, was correct. But, in order not to tread a path exclusively reserved for the administrative domain, the Tribunal took a cautious stand that the matter should be reviewed by the Department. Therefore, by a final order, dated 01.10.2014, the Tribunal directed the respondents to consider the matter afresh and apply the same principles that they have followed in the State of Chattisgarh, *vide* a notification, dated 24.09.2013, and issue a revised notification after completing this exercise. Aggrieved by the said order, the Union of India is before us. Contending that the Tribunal, after having found that such a huge fraction could not have been ignored, ought to have given full relief to him, the individual is also before this Court.

9. It is relevant to note here that both the Union of India, represented by Secretary to Government, Ministry of Environment & Forests, as well as the Union of India, represented by Secretary to Government, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, have come up with the second writ petition. However, the affidavit in support of the writ petition is

sworn to only by the Undersecretary to Government in the Department of Personnel & Training. Nevertheless, it is stated that he is authorized to swear to the affidavit on behalf of both the Departments.

10. Be that as it may, the main contention of the Union of India in the writ petition filed by them is that in the Cadre Review Committee Meeting held on 11.09.2009, a decision was taken to revise the Senior Duty Posts from 84 to 91. The number of posts for Central Deputation Reserve at 20%, the number of posts for State Deputation Reserve at 25%, and the number of posts for Training Reserve at 3.5%, are allegedly computed, based upon the Senior Duty Posts under the State Government. Therefore, the Cadre Review Committee, even according to the Union of India, arrived at the number of promotion posts as 45, based upon the formula that the same should not exceed 33.33% of the Senior Duty Posts, Central Deputation Reserve, State Deputation Reserve and Training Reserve.

11. After having stated so in the affidavit in support of their writ petition, the Union of India has not come out with a clear indication as to how and why the total number of posts was reduced from 45 to 44. It is also not the stand of the Union of India that the decision of the Department of Personnel & Training to reduce the number of

promotion posts from 45 to 44 was ever put up before the Cadre Review Committee for approval. As a matter of fact, the role of the Department of Personnel & Training is not actually supervisory in nature over the Cadre Review Committee. It is true that the Tribunal did not go into this question as to the propriety of the Department of Personnel & Training in reducing the number of posts sought to be filled up by the Cadre Review Committee. But eventually, the Tribunal found that the reduction of the fraction, however high it may be, by the Department of Personnel & Training was a matter, which should have been examined on a much closer scrutiny. Therefore, the Tribunal merely sent the matter back, so that the Cadre Review Committee would have an opportunity to see whether their original decision itself required a review or not. Therefore, we are of the considered view that the order of the Tribunal does not call for interference.

12. Hence, both these Writ Petitions are disposed of, to the following effect:

- 1) The Department of Personnel & Training shall place before the Cadre Review Committee, the reasons as to why they sought a reduction of the number of posts from 45 to 44, within four (4) weeks.

2) The Cadre Review Committee shall take a call as to how many promotion posts should be available. Once the Cadre Review Committee finds that their original decision to fix the number of promotion posts as 45 to be correct, then the entire list should be re-worked. The Cadre Review Committee, within six (6) weeks of the Department of Personnel & Training forwarding its proposal, shall take a call and arrive at a decision.

3) Within four (4) weeks thereafter, final orders shall be passed.

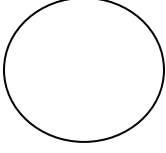
In view of the above order, we hope that the proceedings for contempt shall not proceed before the Tribunal.

Consequently, miscellaneous petitions if any pending in the writ petitions shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

26th October, 2016
cbs



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