

\* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA  
PRADESH

\* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND

\* HON'BLE SRI JUSTICE M. GANGA RAO

+ W.P.NO.38900 of 2016

% Date: 07-11-2017

# Between:

P. Balasubrahmanyam S/o. late Papaiah  
Occ: Assistant Superintendent Post,  
Rajahmundry RMS V Division,  
Rajahmundry 533101 E.G. District  
Andhra Pradesh

.... Petitioner

And

1. Union of India, rep. by its Secretary, Ministry of Personnel and Training, Public Grievances and Training, Department of Personnel and Training, North Block, New Delhi – 110 001.
2. Union of India, rep. by its Secretary and Director General Posts, Department of Posts, Ministry of Communications and IT, Dak Bhavan, Sansad Marg, New Delhi – 110 001.
3. Chief Post Master General, A.P. Circle, Dak Bhavan Abids, Hyderabad – 500 001.
4. Post master General, Visakhapatnam Region, Visakhapatnam – 530017.

... Respondents

! Counsel for the Petitioner

: Mr. D. Rama Krishna

^ Counsel for Respondents

: Mr. K. Lakshman ASG

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? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN  
AND  
HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.38900 of 2016

ORDER: (Per VRS,J)

Aggrieved by the dismissal of his application by the Central Administrative Tribunal, an Assistant Superintendent of Post Offices (later imposed with a penalty of compulsory retirement) has come up with the above writ petition.

2. Heard Mr. D. Rama Kirshna, learned counsel for the petitioner and Mr. K. Lakshman, learned Assistant Solicitor General appearing for the respondents.

3. The petitioner joined the Department of Posts as Postal Assistant in the year 1991. He was promoted to the post of Inspector of Posts in the year 1999. Subsequently, he was promoted to the post of Assistant Superintendent of Post Offices on 17.11.2008.

4. In the meantime, a notification for filling up the vacancies for the years 2003-2006, in Postal Services Group-B was issued. The petitioner applied for the Limited Departmental Competitive Examination and secured 48 marks as against the minimum of 50, prescribed in paper-4 for general category.

5. Since the petitioner secured lesser marks than the minimum, he applied for re-totaling, but the same was rejected. The petitioner filed an application in O.A.No.1012 of 2009, but the same was dismissed on 06.07.2010. However, a writ petition filed by him was allowed on 08.10.2013, in W.P.No.21345 of 2010 declaring the petitioner to have secured 50 marks.

6. Apart from declaring the petitioner to have secured the minimum of 50 marks, this Court by its order dated 08.10.2013 in W.P.No.21345 of 2010, also issued a direction in the operative portion of its order, which reads as follows:

“Hence this writ petition is allowed, and the respondent shall consider the case of the petitioner, for promotion to the post of Superintendent of Post Offices, by treating him as having secured minimum marks in Paper-IV. If all the vacancies, for which the examination was held in 2007, are filled, the petitioner shall be considered against a vacancy that arose thereafter. Such exercise shall not displace any person, who was already promoted to the post of Superintendent. The petitioner shall not be entitled to be paid any back-wages. He shall take the seniority after the last candidate, who has been appointed as Superintendent of Post Offices, on regular basis, as of now. There shall be no order as to costs.”

7. Pursuant to the said order, the respondents considered the case of the petitioner and rejected his claim on the ground that during the pendency of the writ petition, two charge memos, one dated 13.04.2010 and another dated 13.07.2012 came to be issued, one of which eventually resulted in an order of penalty dated 24.03.2017. Therefore, relying upon the Office Memorandum, dated 14.09.1992, respondents rejected the claim of the petitioner for promotion to Group-B Services.

8. Challenging the rejection of his claim, the petitioner again went before the Tribunal in O.A.No.020/00558/2015. But the Tribunal dismissed the application by an order dated 19.09.2016. Aggrieved by the said order, the petitioner is before us.

9. The Office Memorandum dated 14.09.1992 makes it very clear that if disciplinary proceedings are initiated against a Government servant, either at the time when he becomes eligible for inclusion in a panel with reference to the crucial date or at the time of actual inclusion in the panel or at the time when his actual turn for promotion comes, the case of such person need not be considered for promotion. The case of the department

is that the right of the petitioner to be promoted arose after the judgment of this Court dated 08.10.2013 in W.P.No.21345 of 2010. By this Time, two charge memos had been issued, and that therefore, the petitioner cannot be promoted.

10. But the view taken by the Department appears to be wrong. The judgment of this Court in W.P.No.21345 of 2010 dated 08.10.2013 relates to the declaration of results of an examination. The declaration of results of an examination, whenever it happens, would relate back to the date of the examination. Therefore, the declaration made by this Court on 08.10.2013 in W.P.No.21345 of 2010, would relate back to the date of the examination, viz., 2008.

11. To put it differently, if the answer paper of the petitioner had been valued properly, he would have been declared passed, along with his other colleagues, way back in 2008. At that time, the only question that would have arisen before the department would be, as to whether he was facing any disciplinary proceedings on the crucial date, or on the date of inclusion in the panel or on the date of actual promotion. The answer to these questions would have been in the negative, if the answer papers of the petitioner had been valued properly at that time.

12. In normal circumstances, the Office Memorandum dated 14.09.1992, will work out according to the time line of events. But in cases where the original rejection of the claim of a person for promotion is on the ground that he failed in examination and such original declaration is set aside subsequently by a Court, the Office Memorandum cannot be applied to the same.

13. It is submitted by Mr. K. Lakshman, learned Assistant Solicitor General that the direction issued by this Court in W.P.No.21345 of 2010 is

to consider the case of the petitioner as against the vacancies of the year 2007 or any time subsequent thereto. According to the learned Assistant Solicitor General, all vacancies for the year 2007 had been filled up and no notification was issued up to the date of issue of the first charge memo dated 13.04.2010.

14. It is not necessary for us to go into these details. On principle, the petitioner is entitled to have the benefit of the judgment of this Court in W.P.No.21345 of 2010, with effect from the date on which the declaration of results happened in respect of all his colleagues.

15. Therefore, the writ petition is allowed directing the respondents to consider the case of the petitioner, in accordance with the directions contained in paragraph-13 of the judgment in W.P.No.21345 of 2010. To make the things more clear, it is directed that if any notification had been issued after 2007, up to the date of the issue of the first charge memo, dated 13.04.2010, the petitioner shall be included in such panel and promoted. If no notification had been issued after 2007 up to the date of issue of the first charge memo, then the petitioner may not be entitled to the benefit of original order, as in such cases office memorandum dated 14.09.1992 will have application.

16. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

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V. RAMASUBRAMANIAN, J.

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M. GANGA RAO, J.

7<sup>th</sup> November, 2017  
Js.

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN  
AND  
HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.29807 of 2017



7<sup>th</sup> November, 2017

Js.