

HIGH COURT FOR THE STATE OF TELANGANA  
THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN  
AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION No.28006 of 2019

Date: 30.12.2019

BETWEEN

Union of India represented by the Secretary  
to the Govt. of India, Ministry of Finance,  
Department of Revenue, North Block,  
New Delhi – 110 001.

... PETITIONER

AND

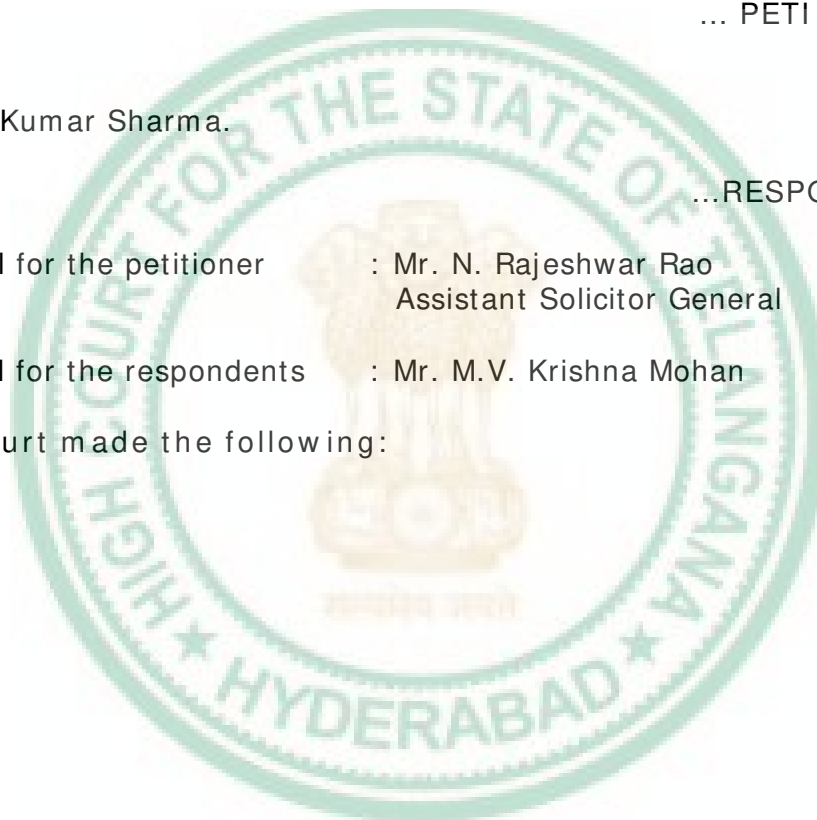
Rajesh Kumar Sharma.

...RESPONDENT

Counsel for the petitioner : Mr. N. Rajeshwar Rao  
Assistant Solicitor General

Counsel for the respondents : Mr. M.V. Krishna Mohan

The Court made the following:



**ORDER:** { Per the Hon'ble the Chief Justice Sri Justice Raghvendra Singh Chauhan}

The Union of India and others have challenged the legality of the order dated 31.01.2019 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, in O.A.No.21/841/2018 whereby the learned Tribunal had allowed the OA filed by the respondent and had issued the following directions:

"7. The respondents are, therefore, directed to consider as under:

- i) To promote the applicant on adhoc basis as Superintendent of GST, Central Excise and Customs w.e.f 10.8.2018 on par with his juniors who were promoted vide establishment orders dated 10.8.2018 subject to the condition that all other parameters for such promotion are fulfilled by the applicant.
- ii) The pay and allowances of the applicant are to be drawn and paid to the applicant in the promoted post from the date of his joining the post.
- iii) Time calendered fro implementation of the order is 3 months from the date of receipt of this order.
- iv) No order to costs."

2. Briefly, the facts of the case are that the respondent (henceforth to be referred as applicant) had appeared for the post of Inspector of Customs and Central Excise against the notification issued in 2006. After having undergone the entire selection process, the applicant was not appointed ostensibly on the ground that there was a discrepancy in his caste certificate. Since the applicant was posted in New Delhi, he filed a writ petition before the Hon'ble High Court of Delhi, namely, WP.No.9185 of 2009. Initially, the Hon'ble High Court granted interim stay in favour of the applicant by directing the respondents therein to keep one vacancy in favour of the applicant. Subsequently, the applicant withdrew the writ petition and filed an OA before the Principal Bench at Delhi, namely, O.A.No.102 of 2010. The learned Tribunal continued the interim order granted by the Hon'ble High Court

of Delhi. By order dated 03.03.2011, the OA was finally allowed in favour of the applicant. However, it took the Union of India two years time to implement the order of the learned Tribunal. Eventually, by order dated 07.01.2013, the applicant was appointed as Inspector of Customs and Central Excise against the post which was kept unfilled from 2009.

3. The petitioners issued a seniority list in 2014 wherein the name of the applicant was shown at Sl.No.592 along with others, who were appointed as per the 2006 notification.

4. According to the recruitment rules, the post of Superintendent is a promotional post. The post is to be filled up from the cadre of the Inspectors. The eligibility required is that the person should be worked as an Inspector for eight years. By letter dated 14.03.2018, the petitioner No.5, the Additional Commissioner (P&V), Central Taxes, Hyderabad Commissionerate, convened a DPC for consideration to promotion to Superintendent. Along with the letter, the list of Inspectors was enclosed clearly indicating those who have completed eight years of service on 01.04.2018 and those who did not. According to the said letter, the applicant had not completed eight years of service.

5. Since the applicant was aggrieved by the fact that the authority claimed that he had not completed eight years of service, he filed a representation on 02.08.2018. In the representation, he brought it to the notice of the petitioners, the order passed by the Hon'ble High Court of Jharkhand in WP.No.1352 of 2007 on identical facts wherein the consequential benefits were given to the petitioner therein based on notional appointment. However, the said representation did not elicit any response and therefore, the applicant filed the present OA.

As mentioned hereinabove, by order dated 31.01.2019, the OA has been allowed by the learned Tribunal. Hence, the present petition before this Court.

6. Mr. N. Rajeshwar Rao, learned Assistant Solicitor General, submits that the learned Tribunal is not justified in directing the petitioners to promote the applicant on the post of Superintendent of GST with effect from 10.08.2018 on par with his juniors, who were promoted by the order dated 10.08.2018. But according to the learned counsel, since the applicant did not work on the post of Inspector, and was finally appointed on the said post by order dated 07.01.2013, therefore, as on 14.03.2018, he had not completed the actual service of eight years. According to the learned counsel, the said position has been missed by the learned Tribunal. Therefore, the impugned order deserves to be interfered by this Court.

7. On the other hand, Mr. M.V. Krishna Mohan, learned counsel for the applicant, submits that in a catena of cases the Hon'ble Supreme Court has duly opined that in case a person could not be appointed for no fault of his, the notional appointment has to be given. Therefore, the period for which he may not have worked still needs to be counted for seeing the number of years he had served the department. According to the learned counsel, the applicant was not permitted from serving the petitioner for no fault of his. Therefore, the learned Tribunal was justified in passing the directions mentioned hereinabove. Therefore, the learned counsel has supported the impugned order.

8. Heard the learned counsel for the parties and perused the impugned order.

9. In the case of *Bal Kishan v. Delhi Administration* [1989 Supp (2) SCC 351], the Apex Court has opined that "*In service, there could*

*be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution".* Moreover, in the case of *G. Hanumantha Reddy v. Union of India* [(1986) APLJ 16], the Hon'ble High Court of Andhra Pradesh has observed as under:

"7. With due respect we are unable to agree with the reasoning adopted by the learned Judge. It is admitted on all hands that the petitioner was entitled to have his seniority in the post of Deputy Collector reckoned from 16-9-1949. If the orders were passed in time, as the Government ought to have normally done, the petitioner who had been confirmed in the rank of Deputy Collector with effect from 1-11-1956 by G.O.Ms.No.1125 dated 10-9-1979 would have been in terms of clause (I) of Rule 4, eligible for being considered for inclusion in the panel for the year 1958, on his completing 8 years as on 15-9-1957. The belated recognition of and giving effect to the legitimate rights of the petitioner, that too as a result of the relentless fight he had to carry on, should not operate to his prejudice in the matter of consideration for promotion, as the petitioner was in no way responsible for the delay. Justice has been delayed to him; but let it not be denied to him completely. Rules and Regulations, in our view, are intended to advance, not to frustrate the cause of justice. Merely on the ground that there is no positive direction in the rule to the selection committee to reckon notional seniority, in the absence of any prohibition in the rules against notional seniority being taken into account for the purpose of eligibility for being considered for inclusion in the panel, if the committee refuses to include the period covered by the notional seniority, restricting it to actual service in the post of Deputy Collector or its equivalent post, it would amount to perpetuation of injustice. It is to be also noticed that the rule also does not speak about the 'actual service'. It speaks only about 'continuous service', which could normally mean actual service, but in peculiar circumstances it could include notional service also. We must remember that the conferment of notional seniority on the writ petitioner was not a gratuitous act, but something due in recognition of his legal right. Undisputedly the petitioner would have been considered

for inclusion in the 1958 list had this recognition come in time. Because of the delay in according this recognition, to which petitioner made no contribution, the writ petitioner had suffered enough throughout the time he was in service; and it would be only a token of what he deserved if now he is treated to have been eligible for being considered for inclusion in the 1958 list on the basis of his notional seniority, which might result in his entitlement

10. Admittedly, in the present case, the applicant was to be selected against the notification of 2006. For no fault of his, he was denied appointment on 07.01.2013. Meanwhile, the persons, who were juniors in the merit list, were already appointed. Therefore, notional appointment has to be given to him. Hence, the learned Tribunal was certainly justified in directing the petitioners to promote the applicant from 10.08.2018.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. This writ petition is devoid of merit and is hereby dismissed. As a sequel, the miscellaneous petitions, pending if any, shall stand closed. There shall be no order as to costs.

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RAGHVENDRA SINGH CHAUHAN, CJ

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A. ABHISHEK REDDY, J

December 30, 2019  
DSK