

A V. SIVA KUMAR & ORS.
V.
SECRETARY, MINISTRY OF DEFENCE & ORS.
(C.A. No. 2945 of 2001)

B JANUARY 8, 2008
(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

Service Law:

C *Navy Grade-C Non-Industrial Posts, Store House Staff, Recruitment Rules, 1984 – Seniority – O.M dated 7.2.1986 – Para 7 – Providing seniority in respect of vacancies for which “recruitment action’ has already been taken on the date of issue” of O.M., to be governed by principles in force prior to issuance of O.M. – Held: ‘Recruitment action’ means an action*
D *taken for recruitment – Seniority of candidates empanelled prior to issuance of O.M. dated 7.2.1986 would be governed by norms existing on date of issuance of said O.M.*

Words and Phrases:

E *‘Recruitment action’ – Connotation of.*

F **The appellants and proforma respondents 45-55 were, pursuant to an advertisement dated 8.7.1983, selected in the year 1984 as Store Keepers in the direct recruitment quota under the Navy Grade-C Non-Industrial Posts, Store House Staff Recruitment Rules, 1984. Later, O.M. dated 7.2.1986 was issued prescribing new principle of seniority, in supersession of principles of earlier O.M. dated 22.12.1959. Thereafter, 99 candidates were selected for promotion in the promotional quota. The appellants and respondent nos.44-55, who all were direct recruits and were selected in the year 1984, were given appointments on 1.12.1986. In the seniority list they were shown below the candidates appointed against promotional quota. The appellants and respondents 44-55 filed O.A. No.673 of 1992 before the Central**

Administrative Tribunal. The O.A. was allowed; and as the judgment was not challenged further, it became final. In another matter, a Full Bench of the Tribunal decided certain issues. On 27.12.1996, a revised seniority list was issued purportedly in line with the judgment in O.A.673 of 1992. This was again challenged before the Tribunal which held that the Full Bench of the Tribunal did not address itself to the question of seniority of the employee selected and empanelled prior to 1.3.1986 but appointed after the said date; and, that the O.M. dated 7.2.1986 was prospective in nature. This upset the seniority of the appellants. They filed a writ petition which was dismissed by the High Court holding that the decision of the Full Bench of the Tribunal applied to the facts of the case.

In the instant appeal filed by the direct recruits, it was contended that since the judgment in O.A.673 of 1992 had become final, it was not open to be nullified by another Division Bench of the Tribunal and, that the true effect of para 7 of O.M. dated 7.2.1986 was not correctly applied as the crucial expression in the O.M. was 'recruitment action' and the term 'recruitment' could not be the same as 'appointment'.

Allowing the appeal, the Court

HELD: 1.1. Before the Full Bench of the Tribunal the first part of para 7 was under consideration and the effect of the expression "recruitment action" was not in issue. The relevant portion of para 7 refers to vacancies for which recruitment action had already been taken. There are two aspects of significance, they are; (1) there must be vacancy; and (2) the recruitment action must have already been taken. Otherwise, there was no need to use the expression "for which recruitment action has already been taken", because the appointment has to take effect from the relevant date. [para 9-10] [211-H, 212-A, B]

1.2 "Recruitment action" obviously would mean an

A action taken for recruitment. That being so, the impugned
judgment of the High Court upholding the decision of the
Tribunal that seniority of the employees appointed after
1.3.1986 would be governed by O.M. dated 7.2.1986, even
though they were empanelled and selected prior to
B 1.3.1986 is clearly untenable and is set aside. [para 1
and 13] [212-F] [208 F-G]

*K. Narayanan vs. State of Karnataka [1994] Supp. 1
SCC 44 – relied on.*

C CIVILAPPELLATE JURISDICTION : Civil Appeal No. 2945
of 2001.

From the final Judgment and Order dated 3.3.2000 of the
High Court of Judicature, Andhra Pradesh at Hyderabad in W.
P. No. 5540/1999.

D R. Venkataramani, C.K. Sucharita for the Appellants.

R. Mohan A.S.G., Y. Prabhakara Rao, Asha G. Nair, B.K.
Prasad and D.S. Mahra for the Respondents.

E The Judgment of the Court was delivered by

Dr. **ARIJIT PASAYAT**, J. 1. Challenge in this appeal is to
the judgment of a Division Bench of the Andhra Pradesh High
Court dismissing the writ petition filed by the appellants.
Challenge before the High Court was to the order of the Central
F Administrative Tribunal, Hyderabad (in short the 'Tribunal'). By
its order dated 18.2.1999 the Tribunal had directed that seniority
list of Store keepers was to be prepared on the principle that ;
(1) the OM dated 7.2.1986 is prospective in nature and not
retrospective; (2) the employees recruited after 1.3.1986, even
G though they were empanelled and selected earlier to 1.3.1986,
their seniority will be in accordance with the aforesaid OM as
they were appointed to the service after 1.3.1986 and the
impugned seniority list was to be amended with consequential
benefits in terms of these principles.

H 2. Background facts in a nutshell are as follows:

On 8.7.1983 notice for recruitment was issued for Store keepers, Class-III in the materials organization of the Vishakhapatnam Dockyard in the Direct Recruitment Quota (in short the 'DR'). In 1982-83, appellants, proforma respondent Nos.45 to 55 had applied in response to this notification. All of them were selected in the year 1984 according to the Navy Grade-C Non-Industrial Posts, Store House Staff, Recruitment Rules, 1984 (in short the 'Recruitment Rules'), 87½ % of the posts were to be filled up by promotion and 12½ % by direct recruitment. Out of every eight vacancies, the first seven are given to promotees and the last one to DR by rotation.

On 7.2.1986, new principle of seniority was fixed in supersession of OM dated 22.12.1959. As per para 7 thereof the old principles contained in the OM dated 22.12.1959 were held not applicable for any appointment made after 7.2.1986 for which recruitment process started before 7.2.1986. 99 candidates were selected for promotion in the promotional quota. Appellants who are direct recruits and respondent Nos.45-55 who were also direct recruits were appointed as Store Keepers on 1.12.1986. On 4.12.1989 inter se seniority list was prepared in which the appellants were shown at serial 4 to 44. The list was sent to all naval establishments for circulation, verification and for pointing out any discrepancy and corrections, if any.

On 21.10.1991 another seniority list was issued showing the appellant and proforma respondent Nos. 45 to 55 below respondent Nos.4-44 and they were pushed down by about 240 places.

On 21.11.1991 objections were submitted by the appellants. On 12.3.1992 final seniority list was issued showing the appellants and respondents 45 to 55 lower down.

O.A. No. 673 of 1992 was filed before the Tribunal by the appellants and respondents 45 to 55 challenging the seniority list on 25.4.1995. The same was allowed. But the judgment was not challenged by anybody and, therefore, it became final. On

A 21.11.1996, the Full Bench of Tribunal in other O.As. relating to Excise departments decided certain issues. The stand of the appellants was that the parameters indicated in para 7 of the OM were not in issue before the Full Bench.

B On 27.12.1996 revised seniority list was issued purportedly in line with the judgment in OA No. 673 of 1992. On 12.3.1997 appellants Nos.1, 4 and 7 were appointed as store keeper on the basis of the revised seniority list. On 13.2.1997 Division Bench of the Tribunal allowed OA No.1323 of 1993 relating to the Central Excise department. On 3.7.1997, OA No. C 843 of 1997 was filed before the Central Administrative Tribunal, Hyderabad challenging the revised seniority list dated 27.12.1996 and the promotion order dated 12.3.1997. In February, 1998 appellant Nos. 2,3,6,8 and 9 were promoted as store keepers on the basis of the revised seniority List dated D 27.12.1996.

3. A Division Bench of a Tribunal held in O.A. No. 843 of 1997 by order dated 18.2.1999 that the Full Bench while hearing the R.A. No. 103 of 1993 in OA No.1019 of 1992 did not address itself to the question of persons selected prior to 7.2.1986 and appointed subsequent to 7.2.1986. However, relying on the judgment of another Division Bench in OA No.673 of 1992 it was held that OM dated 7.2.1986 is prospective which upset the seniority of the appellants. On 17.3.1999 appellants filed writ petition No. 5540 of 1999 challenging the said judgment of the Tribunal in OA No. 843 of 1997. By order dated 3.3.2000 writ petition was dismissed holding that the Full Bench's decision of the Tribunal applied to the facts of the case. E F

4. It is submitted that in the counter-affidavit in OA No.843 of 1997 the respondent had accepted the plea of the appellants. G

5. In support of the appeal, it is submitted that in view of the fact that the judgment in OA No. 673 of 1992 has become final it was not open to be nullified by another Division Bench. The true effect of para 7 of the OM dated 7.2.1986 has not been H correctly applied. The Full Bench of the Tribunal considered only

the first part of the para 7 and did not advert to the second aspect highlighted in the OM. In the judgment in OA No. 843 of 1997 a Division Bench observed that the Full Bench did not deal with the aspect but proceed to rely on another Division Bench's judgment and thereby ignoring the reasoning of the earlier judgment of Kerala Bench of the Tribunal. The second part of para 7 of 1986 was also not considered. It was also pointed out that the High Court did not look into second part of the OM which is the only relevant part so far as the present dispute is concerned. The second part of the OM was not challenged by anybody.

6. It was submitted that the crucial expression in the OM is "recruitment action". Recruitment is not the same as appointment. Para 7 refers to both direct recruits as well as promotees.

7. In response, learned counsel for the respondents submitted that the OM refers to actual appointment by direct recruitment, promotion or by method of transfer. Mere inclusion in the select list confers no right and, therefore, interpretation given by the Tribunal and the High Court is rational. It is also submitted that "recruitment action" is different from "recruitment process".

8. Para 7 of the OM so far as relevant reads as follows:

"These orders shall take effect from 1st March, 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this O.M."

9. It is correct as contended by learned counsel for the appellants that before the Full Bench of the Tribunal the first part

A of para 7 was under consideration and the effect of the expression "recruitment action" was not in issue.

B 10. The relevant portion of para 7 refers to vacancies for which recruitment action has already been taken. There are two aspects of significance, they are; (1) There must be vacancy; and (2) the recruitment action must have already been taken. Otherwise, there was no need to use the expression "for which recruitment action has already been taken" because the appointment has to take effect from the relevant date.

C 11. In *K. Narayanan v. State of Karnataka*, [1994 Supp.(1) SCC 44] at para 6 it was noted as follows:

D "Article 309 of the Constitution empowers the appropriate Legislature to frame rules to regulate recruitment to public services and the post. 'Recruitment' according to the dictionary means 'enlist'. It is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well-known methods of recruitment. Even appointment by transfer is not unknown. But any rule framed is subject to other provisions of the Constitution."

E 12. There is no dispute in law and in fact none is raised that mere inclusion in the select list does not confer a right on the person whose name has been included in the select list. But that question has little significance in the present case.

F 13. "Recruitment action" obviously would mean an action taken for recruitment. That being so, the impugned judgment of the High Court is clearly untenable and is set aside.

G 14. The appeal succeeds but without any order as to costs.

R.P.

Appeal allowed.