

SUPREME COURT OF INDIA

M. Bheemaiah

Vs.

Deputy Commissioner Of Excise

(2001) 10 SCC 0567

(M.Jagannadha Rao and A.P. Misra JJ.)

02.02.2000

ORDER

1. This is an appeal filed by the Appellant against the judgment of the Andhra Pradesh Administrative Tribunal in R.P. No. 641/88 dated 6.6.89. The petition before the Tribunal was filed by five Petitioners seeking a direction to the Respondent to finalise the seniority list pursuant to his proceedings dated 16.9.87 strictly in accordance with the seniority of the Petitioners in the cadre of Excise Constables only or in the alternative to reckon their seniority with effect from the date on which posts of Head Constables were created on 5.2.1982, irrespective of the date of regularisation in the cadre of Head Constables. The Tribunal dismissed the petition and against the said order this appeal has been preferred.

2. In the State of Andhra Pradesh the post of Excise Constables was lowest post in the Excise Department and the next higher post was that of Excise Head Constable. Both these posts were District cadre posts. On 7.10.69 the Government downgraded several posts of Excise Head Constables. Subsequently, on 5.2.1982 the Government issued GOM No. 158 agreeing sanction for creation of 240 posts of Excise Head Constables by upgrading the equal number of posts of Excise Constables/Tree Markers. It was also decided that the recruitment shall be made by promotion only and not by direct recruitment.

3. 240 upgraded posts were created to be distributed by the Commissioner of Excise, Andhra Pradesh amongst different Districts in the State. 75 posts came to be allotted to Zone No. VI consisting of five Districts Medak, Nizamabad, Rangareddy, Nalagonda, Mahboob Nagar. Medak District got 14 such posts which were upgraded. The Appellants before us were Constables belonging to Medak.

4. The orders relating to up gradation of these posts were communicated by the Deputy Commissioner of the Division to Excise Superintendents of each of the six districts who were the competent authorities to carry out the up gradation of posts of Excise Constables as Head Constables. Unfortunately for the Petitioners, the Deputy Commissioner, Excise conveyed the up gradation to Excise Superintendent, Medak in October, 1982 while similar orders were communicated to other districts months earlier. In view of this unfortunate event, while Excise

Constables in other districts got promotion as Head Constables in upgraded posts on the basis of their seniority, - that is the length of service as Excise Constable, - so far as the Appellants are concerned, their up gradation was held up till 16.10.1982. For example, in the District of Nalagonda the up gradation took place on 18.6.1982. If the Deputy Commissioner's communication had reached the Districts simultaneously, the up gradation and consequent promotion as Head Constable would have been on or about the same date.

5. In the counter affidavit filed by the Government it was explained before the Tribunal that the office of the Deputy Commissioner was not at fault inasmuch as information was called for from the Superintendent of Excise in Medak District and the same was sent belatedly and that was the reason why the communication with regard to the up gradation was made some time later in the case of Medak District.

6. The Tribunal did not accept the contentions of the Appellant even though the appellants only sought for notional promotion as Head Constables without the benefit of any arrears.

7. It is possible to contend that even if the concerned Deputy Commissioner was not at fault, at the same time the Appellants and other Constables of Medak District were also not at fault. If the Superintendent of Medak could not send the relevant information to the Deputy Commissioner in time, it would be possible to contend that these Constables of Medak should also not suffer.

8. Though it is possible to contend that the Appellants are not at fault, we find that assigning them any date anterior to the dates assigned to those in other districts is likely to affect the seniority of all the candidates in other districts. Candidates from the other districts have neither been made parties before the Tribunal nor in this Court. In the circumstances as all the necessary parties are not before us, we are not inclined to interfere in this appeal. The appeal is, therefore, dismissed.