**SUPREME COURT OF INDIA**

Rama Rao

Vs.

M.G. Maheshwara Rao

C.A.No.7478-7481 of 2003

(H.K. Sema and P.K. Balasubramanyan JJ.)

27.08.2007

**JUDGMENT**

**P.K. BALASUBRAMANYAN, J.**

1. By the judgment under appeals the High Court partly allowed the writ petition filed before it by the employees in the ministerial cadre of the Karnataka Administrative Tribunal. Writ Petition Nos.16143-1646 of 1997 challenged the decision of the Administrative Tribunal dismissing an application filed by them before the Tribunal. Feeling aggrieved by the decision rendered by the High Court in the writ petitions both sides are before us with these appeals.

Civil Appeal Nos.7474-7477 of 2003 is filed by those belonging to the Stenographer Cadre and Civil Appeal Nos.7478-7481 of 2003 filed by the ministerial cadre.

2. For convenience, hereafter, the parties are referred to as Stenographers and Assistants.

3. The Karnataka Administrative Tribunal was constituted on 6.10.1986. The Government of Karnataka sanctioned the cadre strength and framed the Cadre and Recruitment Rules, 1986. The appointments of stenographers were made in the year 1988. The Government published on 23.9.1992 a new set of draft rules. The stenographers filed objections to the draft rules. On 31.5.1993 the Government published the Recruitment Rules.

Though the stenographers made representations to the Government, their representations were rejected. Thereupon they filed application Nos.2250-2252 of 1993 and 2253-2258 of 1998 before the Administrative Tribunal challenging the prescription of degree and test as qualifications for promotion to the post of Junior Judgment Writer in the Rules. It is seen that the assistants or any one that would be affected from that branch by an adjudication, were not impleaded in the proceeding. The Administrative Tribunal allowed the applications and quashed the Rules in part.

Essentially, what the Administrative Tribunal did was to alter the qualifications provided for promotions in the cadre of stenographers by doing away with the higher qualifications prescribed. The striking down of the Rules was done by a Bench presided over by the Vice-Chairman of the Administrative Tribunal. Thereafter the vice-chairman proceeded to promote the stenographers on the basis of the qualification prescribed by him on the judicial side. The assistants felt aggrieved by the promotions thus given. They, therefore, moved application Nos.3585-3592 of 1995 and other connected applications before the Administrative Tribunal challenging the decision of the

Administrative Tribunal dated 6.7.1994 as also the promotions given to the respondents in those applications, the promoted stenographers. The applications were opposed on various grounds. By order dated 21.4.1997, the Administrative Tribunal dismissed the applications. It was challenged by the Assistants before the High Court in the writ petitions already referred to. The High Court, by the judgment under appeal, allowed the writ petitions in part holding that the Administrative Tribunal had no jurisdiction to alter the qualifications for promotions as it had done and since promotions were made on the basis of this unauthorized interference with the Rules prescribing qualifications for promotions, the promotions were bad. As a logical follow up, instead of setting aside all the promotions, the High Court set aside only the promotions of non-graduate stenographers and declined to interfere with the promotions of the graduate stenographers. The non-graduate stenographers are aggrieved by the setting aside of the judgment of the Administrative Tribunal and the quashing of the promotions of non-graduates. The Assistants are aggrieved by what they call the failure of the High Court to give effect to its own judgment and in not setting aside the illegal promotions given to all stenographers including the graduate stenographers. That is how these sets of appeals are before us.

4. Logically it would be proper to deal first with the appeal filed by the stenographers against the judgment of the High Court. For, if we were to agree with the contentions of the appellants therein, the judgment of the High Court setting aside the order of the Administrative Tribunal will have to be set aside and in that case no further orders would be required except to restore the order of the Tribunal. Only if we were to dismiss the appeals filed by the Assistants and were to uphold the decision of the High Court on the main aspect, we need consider the grievance of the assistants that the High Court should have, as a consequence of its own decision, set aside the promotions of graduate stenographers as well, since those were illegal promotions.

We will, therefore, first deal with the appeals by the stenographers.

5. It is argued on behalf of the stenographers that the High Court was in error in setting aside the order of the Administrative Tribunal dated 6.7.1994 when the assistants had not taken any step to get that order reviewed or modified. It is submitted that only after the decision in the case of L. Chandra Kumar vs. Union of India and others 1997 (3) SCC 261) that the High Court got jurisdiction to entertain a proceeding against the decision of the Administrative Tribunal and when the order was passed on 6.7.1994 by the Administrative Tribunal, only an appeal could have been filed to the Supreme Court and in that situation, in the subsequent writ petition, the High Court was not competent to quash the order of the Administrative Tribunal dated 6.7.1994. It is also contended that in any subsequent application filed by the assistants under Section 19 of the Administrative Tribunals Act (for short the Act), the Administrative Tribunal could not have considered the correctness or otherwise of the decision it had rendered earlier and which had become final and consequently the High Court while entertaining the writ petition challenging the dismissal of the subsequent application by the Administrative Tribunal, could not have set aside the order earlier made on 6.7.1994 on the application filed by the stenographers. This contention raised, was met by the High Court by pointing out that even though the assistants belong to a different cadre, since there was a confluence of the two streams leading to the promotional posts, the assistants had locus standi to file an application under Section 19 of the Act in which, to ventilate their grievances they could canvass the correctness of the decision earlier rendered on 6.7.1994 by the Administrative Tribunal. The High Court referred to the decision in K. Ajit Babu and others vs. Union of India and others [(1997) Supp 3 S.C.R. 56] to find that the proper procedure to adopt by persons situated like the Assistants in this case and who were not made parties to a prior decision which had effect on their career, was to move an application under Section 19 of the Act. In that decision, this Court

noticed that even though the judgment of an Administrative Tribunal may only be a judgment in personam, occasionally, it could also operate as a judgment in rem and those affected by it had the right to approach the Tribunal again with an application under Section 19 of the Act when they are affected as a consequence of the earlier decision and are entitled to seek reconsideration of the view taken in the earlier decision. The High Court, following it, held that the assistants had the locus standi to move the application under Section 19 of the Act before the Tribunal and seek reconsideration of the earlier decision passed by it without notice to them and to show that the said order required reconsidered or that it was not a legal or a proper one. We see no reason not to accept the reasoning adopted by the High Court. After all, the assistants who were not impleaded in the earlier proceeding, must have an avenue to ventilate their grievances. This Court has indicated that that avenue is an approach to the Tribunal and that was in a case in which the very same Act was involved. This Court had also pointed out, what the Administrative Tribunal could do in such a situation. If this were not the position, the assistants would be able to say that since they were not parties to the earlier proceedings, they were not bound by it and they are entitled to ignore the decision therein and that the said decision cannot affect them since it would be a decision that is void in law for non-compliance with the rules of natural justice. There is, therefore, no grace in the submissions that the assistants could not have approached the Administrative Tribunal with their grievance and the Tribunal could not have consider their grievance or gone back on its earlier decision. We are in agreement with the approach made by the High Court and the conclusion arrived at by it and hence have no hesitation in overruling this contention. The argument that the jurisdiction of the High Court came to be recognized only later, cannot change the situation, since when the High Court entertained the writ petition it had the jurisdiction to do so and it had jurisdiction also to consider what was the effect of the earlier order or the proceeding before it and whether the earlier order was legal and justified in the context of the decision of this Court in Ajit Babus case (supra).

6. It is then contended that the Administrative Tribunal was justified in passing the order dated 6.7.1994 since the qualifications prescribed for promotion were unreasonable. According to the stenographers, the Rules clearly provided for double promotion and since the assistants had not challenged the validity of the rules either before the Administrative Tribunal or the High Court or in this Court, the actions taken as a consequence, were also not open to challenge in the light of the decisions of this Court in Karam Pal and others vs. Union of India and others (1985 (2) SCC 457) and Mohan Sing and others vs.

State of Punjab and others (1995 (4) SCC 151).

7. We agree with the High Court that when it passed the order on 6.7.1994, the Administrative Tribunal had acted beyond jurisdiction in prescribing qualifications of its own while striking down what according to it was unreasonable provisions. First of all, there is nothing unreasonable prescribing qualifications of promotion as was done in this case and as rightly found by the High Court. Secondly, even if the relevant rules were liable to be struck down, it was not for the Administrative Tribunal to re-enact that Rule as it thought considered proper. Once that conclusion is reached and as has been found by the High Court no invalidity could be found in the relevant rules for promotion, the obvious consequence would be that all the promotions of the stenographers became illegal. In fact, the High Court in its judgment has considered the relevant aspects and has come to the conclusion that the decision dated 6.7.1994 was unsustainable. We do not think it necessary to reiterate the reasons given by the High Court which has also noticed the decision of this Court in J. Ranga Swami vs. Government of Andhra Pradesh and others (AIR 1990 SC 535). We approve of the findings of the High Court.

8. We also find it somewhat unpalatable that the same vice-chairman, in the absence of the Chairman, sat on the judicial side, quashed the rule and prescribed his own qualifications for promotion of stenographers and on the administrative side implemented that decision and promoted the stenographers. It would have been better if he had awaited the appointment of a Chairman and left it to the Chairman to implement the direction issued by the Administrative Tribunal earlier. A thing that is to be done has not only to be done properly but also appear to be done properly. But this is only incidental and has no relevance to the question falling for decision except for the contention that the Vice-Chairman has no power to appoint, with which we will deal later, if it becomes necessary.

9. Suffice it to say that we agree with the conclusion of the High Court that the decision dated 6.4.1997 rendered by the Administrative Tribunal was totally unsustainable and the question of promotion has to be on the basis of the Rules as they stood prior to the interference with it by the Tribunal.

10. Thus, we find no merit in the appeals filed by the stenographers and the cancellation of their promotions on the basis they did not possess the requisite qualifications for promotion as per the Rules.

11. We then come to the appeals filed by the assistants. Their grievance is that the High Court having found that the order of the Administrative Tribunal dated 6.4.1997 was unsustainable and having found that the amendments brought to the rules by it were also illegal and unsustainable, should have followed up that finding by setting aside the promotions of all the stenographers and ought to have ordered a fresh consideration of the question of promotions taking into account both the feeder channels.

We see considerable force in this submission. What the High Court has done is to try and avert the cancellation of certain stenographers who had graduate qualification, a qualification prescribed by the Rules. But having found that the very order granting promotion, based as it was on a wrong footing and that required interference in the light of its decision, the High Court ought not to have shied away from giving effect to its own conclusion. After all, graduate stenographers, if they are entitled to promotions as per the Rules, would secure the promotion by the fresh exercise undertaken. We have also indicated that the whole method adopted by the vice-chairman was not proper and the promotions were made improperly, was an irresistible conclusion. In the light of all this, we think that the interests of justice would be sub-served only if the entire promotions of stenographers made on the basis of the Rules framed by itself by the Administrative Tribunal on its judicial side are set aside. To that extent we find substance in the appeal filed by the assistants.

12. We think that the proper course to adopt is to undertake a fresh exercise of promoting the officers from both streams in accordance with the Rules framed in that regard. But as the High Court held, the stenographers who had been promoted and whose promotions have now been cancelled, need not be visited with the penalty of having to refund the higher salaries and allowances they have received in the promotional posts. Therefore, even while cancelling all the promotions and directing a fresh exercise to be undertaken, we direct that no recovery shall be made from the salaries paid to the stenographers in regard to the period they have worked in their promoted posts on the ground that their promotions have now been quashed.

13. In the result, we dismiss Civil Appeal Nos.7474- 7477 of 2003 and allow the Civil Appeal Nos.7478-7481 of 2003. We substantially affirm the decision of the High Court but set aside in that

part of it by which it declined to set aside the promotions of graduate stenographers. We direct the undertaking of a fresh exercise regarding promotions of those who are qualified in accordance with the Rules by the concerned as expeditiously as possible. We direct that there shall be no recovery from the salaries and allowances paid to the stenographers whose promotions are cancelled by the High Court and by us while they worked in their promoted posts. The parties are directed to suffer their respective costs in this Court.