

**HON'BLE SRI JUSTICE GODA RAGHURAM**

**W.P.NO. 7506 OF 1997**

**DATED: 31.1.2007**

Between:

R.V. Ramanaiah

... Petitioner

and

Vice-Chairman and Managing Director,  
APSRTC and another

...

Respondents

**HON'BLE SRI JUSTICE GODA RAGHURAM**

**W.P.No.7506 of 1997**

**ORAL ORDER:**

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Heard Sri G. Vidyasagar, the learned counsel for the petitioner. When the matter is called, there is no representation on behalf of the respondents though the name of Sri R. Manmadha Reddy, the Standing Counsel for the APSRTC is reflected in the cause list. There is however a counter affidavit dated 22.12.1997 filed by the Chief Law Officer, on behalf of the respondents.

The petitioner is aggrieved that his case is not considered, on par with his juniors, for promotion to the post of a Controller/Assistant Depot Clerk (for short 'ADC'). He is also aggrieved vide proceedings dated 22.3.1997, whereunder his juniors were promoted as Controllers/ADCs, superseding his legitimate claims.

**Facts according to the petitioner:**

(A). The petitioner was appointed as a conductor on 12.4.1977 and posted to Kurnool. At his request he was transferred to Nellore depot on 14.6.1977 and

accordingly was entitled to reckon his seniority in the post of a conductor at the Nellore depot, only with effect from 14.6.1977.

(B). He fell ill on 13.1.1995 and abstained from duty on 16.1.1995. On account of unsanctioned absence from duty during 13.1.1995 to 16.1.1995, the petitioner was issued a charge-sheet on 23.1.1995, alleging unauthorized absence during the aforesaid period. Another charge framed was irregular attendance during January 1994 to December 1994. The petitioner submitted his explanation on 25.1.1995, denying the allegations. An enquiry was conducted and a show cause notice dated 4.4.1995 issued; the petitioner submitted his explanation to the show cause notice on 18.4.1995.

(C). Meanwhile, vacancies arose in the category of Controller/ADC. The petitioner was eligible in accordance with his seniority. According to the relevant regulations, in a unit of 100 vacancies, 75 vacancies of ADCs/Controllers are to be filled in by promotion through selection of suitable conductors.

(D). In the seniority list of conductors, relevant to the Nellore depot, the petitioner's name is reflected at

Sl.No.207. By an order dated 22.3.1997 issued by the 2<sup>nd</sup> respondent, some of the petitioner's juniors at Sl.No.214 onwards were recommended by the Departmental Selection Committee and appointed as ADCs/Controllers, superseding the legitimate claim of the petitioner.

(E). The petitioner submitted a representation on 25.3.1997 aggrieved by his supersession. There is no response. On 8.5.1997, the petitioner was visited with the penalty of deferment of increment by six months without cumulative effect for the charges found proved against him *qua* the enquiry pursuant to the charge-sheet dated 23.1.1995.

(F). The APSRTC issued a circular No.PD-120/1988 dated 3.11.1988, setting out the instructions for consideration of conductors and drivers as Controllers/ADCs by promotion, during the course of their undergoing punishment. The circular is intended to be a clarification and compendium of the guidelines on the issue.

(G). The relevant regulations enable promotion of conductors to the category of ADC/Controller on the basis of seniority with 1 year of clean service. The

circular dated 3.11.1988 states that clean or satisfactory record would mean that if the record of an employee is free from penalties (specified at Sl.Nos. (i) to (v) of Clause (1) of Regulation 8 of the CC and A Regulations, for one year preceding the period of review), it should be considered as satisfactory record. Paragraph (4) of the operative portion of the circular states that normally the date of offence should be the date to consider the clean record. If the punishment is given within a period of one year preceding the date of interview based on an earlier offence, the Selection Committee shall take into consideration whether the concerned employee had been subsequently involved in any other offence; what is important is whether any adverse conduct of a candidate had come to the notice of the selection committee. It further states that if the charges are pending, the nature of charges shall be gone into.

According to Sri G. Vidyasagar, the learned counsel for the petitioner, since date of offence is the relevant criterion to consider the record of service and as the charge-sheet dated 23.1.1995 inter alia mentions unauthorized absence during 13.1.1995 to 16.1.1995,

the period of offence being prior to the one year period, reckoned from the date of the interview for promotion i.e. 22.3.1997, such conduct could not have been lawfully considered as detracting from a clean record of the service of the petitioner as he has no other adverse material against his record of service.

On the above circumstances, the petitioner claims review/consideration for promotion as ADC/Controller with all consequential and incidental benefits on par with his juniors, who were so promoted by the impugned proceedings dated 22.3.1997.

The relevant portion of the counter affidavit filed by the respondents states that while the selection of candidates was under consideration, a show cause notice proposing the petitioner's removal from service was pending on the charge of irregular attendance and unauthorized absence and therefore he was not considered in the light of the circular dated 3.11.1988. The counter affidavit admits that the operational and governing criteria are the guidelines issued in the circular dated 3.11.1988. No explanation is vouchsafed in the counter affidavit as to why the petitioner's adverse record of service anterior to the one year

period from the date of the interview in question, was considered as disentitling him for promotion to the post of ADC/Controller, contrary to the circular instructions.

Since the respondents admit the applicability of the circular dated 3.11.1988 and since the factual aspects are not in disputation, in view of paragraph (4) of the circular, the date of offence being the criterion and since the petitioner's irregular attendance was during the period 1994 and unauthorized absence was during 13.1.1995 to 16.1.1995, both species of misconduct being more than 1 year anterior to the date of interviews for the post of ADCs/Controllers, the petitioner ought to have been considered. The fact that the petitioner is senior to persons who were promoted as ADCs/Controllers by the proceedings dated 22.3.1997, is not in dispute. The conduct of the respondents in superseding the petitioner's just claims contrary to the circular dated 3.11.1988 is therefore unsustainable. The petitioner is therefore entitled to relief.

On the aforesaid analysis, the writ petition is allowed. The respondents are directed to consider the case of the petitioner ***de novo***, forthwith and in any

event within a period of 30 days from the date of receipt of a copy of this order, for promotion as ADC/Controller, in accordance with the observations and analysis hereinabove and in conformity with the guidelines for promotion and consideration of clean record issued in the circular of the 1<sup>st</sup> respondent dated 3.11.1988. On such consideration, if the petitioner is found fit and eligible for promotion, he shall be treated as having been so promoted with effect from the date on which his juniors were so promoted, by the proceedings dated 22.3.1997, and the petitioner shall be entitled for all consequential and incidental benefits as to seniority, emoluments and arrears. It is open to the respondents to follow the appropriate administrative procedure for restoring the seniority of the petitioner vis-à-vis persons already promoted, so as to avoid interminable and regnant procedural wrangles and challenges on the ground of violation of principles of natural justice. There shall be no order as to costs.

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**GODA**

**RAGHURAM, J**

**Date: 31.1.2007**

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