

HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No. 4717 of 2002

ORDER :

The petitioner was appointed as Junior Lineman in the respondent organization on 28.07.1989. While so, he became sick during the year 1990 and later he made a representation to the first respondent to permit him to report for duty. The first respondent vide proceedings dated 10.05.1991 issued show-cause notice to explain as to why he was absent from duty from 02.01.1990 onwards. On receiving the explanation, the first respondent has issued proceedings No.4222/91, dated 26.10.1991 awarding the punishment of 'deemed to have resigned from service' for the post held by him with effect from 02.01.1990. Aggrieved by the same, the petitioner filed W.P.No.16555 of 1991 and the same was allowed by this Court by an order dated 18.08.1999 and set aside the proceedings of the first respondent. During the pendency of the aforesaid writ petition, there was interim direction for continuation of the petitioner, as such petitioner was permitted to join duty from 17.06.1992. The probation was also declared in the cadre of Junior Lineman with effect from 17.06.1992 for a period of 2 years for his satisfactory service by proceedings dated 04.01.2002. Since the aforesaid writ petition was allowed with all consequential benefits, petitioner was not granted promotion on par with his junior S.K.Subhan, who is at serial No.216, though petitioner rendered qualifying service. The petitioner's claim for promotion on par with his junior, was rejected by the respondents vide proceedings dated 12.02.2002. Aggrieved by the same, the present writ petition is filed.

2. Counter affidavit is filed by the respondents stating that since the petitioner can be promoted only after the punishment period of three years from 28.03.2001 to 27.03.2004, as per the recommendations of the Departmental Promotion Committee. It is stated that the petitioner's claim for promotion on par with his junior S.K.Subhan, could not be considered due to the pendency of W.P.No.16555 of 1991 and also due to the pendency of the Enquiry report from the Divisional Engineer/Enquiries, Cuddapah. It is also stated that punishment was already imposed by final orders dated 24.03.2001/28.03.2001 as charges against the petitioner are proved. Therefore, petitioner's case was not considered as per the recommendations of the Departmental Promotion Committee. It is stated that all the consequential benefits such as Annual Grade Increments from time to time and appointment to the Special Grade Post of JLM as per the Judgment of this Court in W.P.No.16555 of 1991, dated 18.08.1999 and also in terms of Board's Memo No.DS/R/DM.VII/S1-695/95-1,

dated 08.11.1995 have been sanctioned and paid. Since the punishment already imposed on the petitioner is operative up to 27.03.2004, his case cannot be considered by the DPC in view of the disciplinary proceedings still in force and sought for dismissal of the writ petition.

3. Heard Sri M.Ramalingeswara Reddy, learned counsel for the petitioner as well as Smt.Jagarlamudi Koteswari Devi, learned Standing Counsel for the respondent Corporation.

4. Learned counsel for the petitioner submits that Sri S.K.Subhan, who is junior to the petitioner was appointed along with petitioner, got promotion on 01.02.1995 as Junior Lineman and thereafter got further promotion to the next higher post as lineman on 15.03.1996. He would further contend that W.P.No.16555 of 1991 was allowed with all consequential benefits by order dated 18.08.1999, by that time, no disciplinary proceedings were initiated against the petitioner. The punishment was imposed on the petitioner on 28.03.2001, as such, the respondents could have given a notional promotion at least, on par with his junior S.K.Subhan. He would contend that as on the date of consideration of the case of S.K.Subhan, the petitioner was also entitled for promotion. He also submits that the pendency of the disciplinary proceedings is not a ground for denial of promotion. He would further contend that the petitioner also attained superannuation.

5. On the other hand, learned Standing Counsel for the respondent Corporation submits that since writ petition filed by the petitioner and also enquiry report submitted on 17.05.2000 are pending, the case of the petitioner was not considered. She submits that his case was considered only after expiry of punishment period i.e., after 27.03.2004.

6. It is to be seen that by the time of allowing of W.P.No.16555 of 1991 on 18.08.1999, there was no enquiry pending against the petitioner. Even according to the respondents, the Enquiry Officer was appointed on 17.05.2000. As such, when the W.P.No.16555 of 1991 was allowed on 18.08.1999 with all consequential benefits, the petitioner should have been promoted on par with his junior i.e., S.K.Subhan, who was appointed along with the petitioner, but the same has not been done. The respondents have also taken the same ground in their counter affidavit stating that as the writ petition and enquiry reports are pending, the case of the petitioner was not considered for promotion. Even if any enquiry is pending, the respondents should have promoted and follow the sealed cover procedure. It is to be noted that even the enquiry was initiated against the petitioner on 17.05.2000 by appointing the Enquiry Officer, which is after allowing the earlier writ petition on 18.08.1999, as such that cannot be a ground for not considering the case of the petitioner for

promotion on par with his junior S.K.Subhan. Admittedly, the punishment was imposed on the petitioner on 28.03.2001, i.e., much subsequent to the allowing the writ petition. As such, it can safely be concluded that the respondents have erroneously rejected the case of the petitioner for promotion on par with his junior S.K.Subhan. Therefore, the impugned order is liable to be set aside.

In view of the above facts and circumstances, the impugned order dated 12.02.2002 passed by the first respondent is set aside. The respondents are directed to consider the case of the petitioner for notional promotion on par with his junior S.K.Subhan.

Accordingly, this writ petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stand disposed of.

27.08.2015.
KVS

A.RAJASHEKER REDDY, J

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

W.P. No.4717 OF 2002

Date: 27-08-2015

KVS

