

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 508 OF 2016**

Babulal Varma .. Petitioner.
vs.
Union of India and anr. .. Respondents.

Mr. Saikumar Ramamurthy for the Petitioner.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.**

DATE : 08 MARCH 2016.

P.C.:

1] The challenge in this petition is to the judgment and order dated 17 October 2014 made by the Central Administrative Tribunal (CAT), Mumbai Bench in Original Application No. 729 of 2010 instituted by the petitioner.

2] The petitioner, in his Original Application No. 729 of 2010 had made a grievance that with regard to denial of ad-hoc promotion to the senior scale or at least up-gradation of his pay scale by the respondents. The respondents, have declined such benefits to the petitioner on the ground that criminal prosecution in respect of serious charges of corruption are pending against the petitioner before the Special Court at Ahmedabad.

3] Mr. Saikumar Ramamurthy, learned counsel for the petitioner, has submitted that in the present case, the petitioner is not demanding for any regular promotion, but the petitioner merely seeks up-gradation in pay scale, failing which, ad-hoc promotion, which can always be made subject to the out come of the pending criminal prosecution. In this regard, Mr. Ramamurthy has placed reliance upon Office Memorandum (OM) dated 16 June 2003, which deals with up-gradation of 80% of Group 'B' posts in all departments (other than accounts department) and provides for procedure for allotment of such higher scale. Mr. Ramamurthy has also relied upon the OM dated 21 January 1993, which deals with the aspect of promotion from Group 'B' to Group 'A' of Railway Officers against whom disciplinary/court proceedings are pending and the procedure and guidelines to be followed. Mr. Ramamurthy has submitted that the respondents are duty bound to resort to the sealed cover procedure and in case, the criminal prosecution is not concluded expeditiously, to grant the petitioner ad-hoc promotion, pending such prosecution. Mr. Ramamurthy has submitted that the impugned judgment and order made by the CAT has failed to take into consideration the

petitioner's case in the proper perspective and therefore, same warrants interference under Articles 226 and 227 of the Constitution of India.

4] We have considered the contentions raised by Mr. Ramamurthy, perused the impugned judgment and order as also the record. We are, however, unable to fault the impugned judgment and order, in the facts and circumstances of the present case.

5] The record indicates that the Central Bureau of Investigation (CBI) raided the Surat Railway Station, where the petitioner was posted and after investigation, filed a chargesheet against the petitioner and certain other railway employees in the Special Court at Ahmedabad for serious offences of corruption. This prosecution is pending. Criminal Revision Application No. 634 of 2012 instituted by the petitioner before the High Court of Gujarat at Ahmedabad came to be dismissed on 4 December 2014. the learned Single Judge of said High Court has declined to interfere with the order, by which charge came to be framed

against the petitioner. In the said judgment and order dated 4 December 2014, it is noted that one of the reasons for prosecuting the petitioner is his alleged involvement in a criminal conspiracy of having used plain unsigned refund application by condoning delay. Such applications are stated to have been signed by the petitioner and other accused persons including senior ticket checkers, but not the passengers. As a result of this modus operandi, it is alleged that the refund amounts may have been siphoned off by the accused persons, though in the name of passengers. At least the charge, is quite a serious one.

6] The departmental proceedings had also been initiated against the petitioner. The petitioner, by instituting Writ Petition No. 2210 of 2007, had attempted to stall the progress in the departmental enquiry, on the ground of pendency of criminal prosecution. The writ petition was however, dismissed by the Division Bench of this Court by order dated 17 January 2008 and directions were issued in the matter of conclusion of departmental proceedings. The departmental proceedings are stated to have been concluded and the petitioner, has been found guilty of only

some of the charges.

7] The OM dated 16 June 2003, no doubt provides for up-gradation of 80% of the Group 'B' posts and the award of higher scale of Rs.8000-13500. Clause 4.3 of this OM, *inter alia*, provides that the same procedure for assessment of suitability, as has been prescribed for ad-hoc promotion of Group 'B' officers to senior scale, will be adopted by the Committee for placement of Group 'B' officers in the higher Group 'B' scale of Rs.8000-13500, i.e., the Committee may assess the fitness of the officer based on his performance as reflected in his Confidential Reports for the preceding five years period. The Committee should categorize the officers as '*Fit*' or '*Not Yet Fit*' on the basis of overall assessment from the Reports and not merely on the basis of grading/fitness assigned in the Reports. Those categorized as '*Fit*' should be placed in the higher scale of pay in the order of their Seniority, upto the number of posts in the higher scale which are required to be filled.

8] From the aforesaid, it is quite clear that the same procedure which is to be followed for assessment of suitability, as

has been prescribed for ad-hoc promotion of Group 'B' officers, is required to be followed for up-gradation of 80% of the Group 'B' posts and placement of higher scale. Mr. Ramamurthy submitted that since the petitioner was not demanding for actual promotion on regular basis, pendency of criminal prosecution need not come in his way. Since, in terms of O.M. dated 16 June 2003, the same procedure for assessment of suitability, as prescribed for ad-hoc promotion is to be followed, pendency of criminal prosecution, involving serious charges of corruption, cannot be regarded as any irrelevant circumstance.

9] The O.M. dated 21 January 1993, with regard to sealed cover procedure also does not assist the case of the petitioner. The procedure and the guidelines prescribed therein, are basically for the purposes of ensuring that departmental proceedings and if possible, criminal prosecutions, are disposed of expeditiously. There are provisions with regard to ad-hoc promotion, by taking into consideration several aspects referred to in Clause '5' of the said O.M.. Based upon the same, however, the

petitioner cannot claim any entitlement as such for ad-hoc promotion.

10] The CAT has considered the matter in its proper legal and factual perspective. There is no jurisdictional error in making of the impugned order. The CAT, has also issued certain directions to the respondents, in the matter of expedition of criminal prosecution.

11] For all the aforesaid reasons, there is no case made out to interfere with the impugned judgment and order. This petition is, therefore, dismissed. There shall however, be no order as to costs.

CHIEF JUSTICE

(M.S.SONAK, J.)