

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE SMT. JUSTICE ANIS

WRIT PETITION NO.7229 OF 2013

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This writ petition is preferred by the Government of Andhra Pradesh, the Principal Chief Conservator of Forests and the Conservator of Forests, Kurnool circle, calling in question the correctness of the orders passed on 29.11.2012 by the Andhra Pradesh Administrative Tribunal in O.A.No.3558 of 2012. The respondent herein while working as a Deputy Range Officer in Proddatur Wild Life Division, has instituted O.A.NO.3558 of 2012 seeking a direction to the respondents therein to take up the review of his case for promotion to the post of Forest Range Officer for the panel years 2007-2008, 2008-2009, 2009-2010 and 2010-2011 on the ground that a fresh charge-sheet was issued only on 27.03.2012 and hence, a review Departmental Promotion Committee for consideration of his case for promotion to the post of Forest Range Officer should be taken up immediately.

The case of the respondent/applicant before the Andhra Pradesh Administrative Tribunal is that he was initially recruited as a Forest Section Officer on 02.12.1983. He came to be promoted as a Deputy Forest Range Officer on 01.11.2001, in which post, his probation was also declared to have been satisfactorily completed. Thus, he was eligible for promotion as a Forest Range Officer in Zone-IV. However, he was placed under suspension, pending disciplinary proceedings on 10.10.2007. He came to be reinstated into the service on 07.07.2008, but however, his case was not taken up for consideration on the ground that disciplinary proceedings are pending against him. He earlier instituted O.A.No.509 of 2009 challenging the legality and validity of the charge memo dated 04.04.2008. In the meantime, a punishment order was passed on 31.12.2009, imposing on him the punishment of stoppage of two annual grade increments with cumulative effect. Hence, he amended

the relief sought for in O.A.No.509 of 2009 by directing the challenge against the order of punishment of withholding of two annual grade increments with cumulative effect. On 11.09.2009, O.A.No.509 of 2009 was decided, setting aside the order of punishment dated 31.12.2008. The respondents to that O.A. filed W.P.no.23521 of 2009 before this Court unsuccessfully. However, this Court granted liberty to conduct disciplinary proceedings afresh in accordance with Rules 20 and 21 of the Andhra Pradesh Civil Servants (CCA) Rules. Hence, a charge memo was once again issued on 27.03.2012. During this whole episode, his case for promotion to the post of Forest Range Officer for the panel years 2007-2008, 2008-2009, 2009-2010 and 2010-2011 has not been taken up, while several of his juniors got promotions. Since the case of the respondent/applicant has not been considered, on the ground that the disciplinary proceedings are pending on one occasion and on the other, he was undergoing punishment whereas, by virtue of the judgment rendered in O.A.No.509 of 2009, which order was confirmed in W.P.No.23521 of 2009, he is entitled to have his case considered for promotion.

It is the specific case of the petitioners herein that the Departmental Promotion Committee (D.P.C) met on 28.12.2007 for preparing the panel for the year 2007-2008. Since the respondent/applicant has been placed under suspension on 10.10.2007, a couple of months prior to the meeting of the Departmental Promotion Committee, the Departmental Promotion Committee has not recommended his case for promotion. When the Departmental Promotion Committee met on 20.01.2009, for preparing the panel for the year 2008-2009, the case of the respondent/applicant was not taken up for consideration, inasmuch as, an order of punishment was imposed on him on 31.12.2008 withholding two annual grade increments with cumulative effect. In those circumstances, his juniors came to be recommended for promotion. For the subsequent years 2009-2010, 2010-2011, 2011-2012, panels have not yet been prepared and hence, no right of the

respondent/applicant has been contravened. This apart, a charge-sheet is redrawn against the respondent/applicant on 27.03.2012, thus initiating disciplinary proceedings against him and hence, until the said proceedings are culminated, the question of consideration of his case for promotion would not arise.

The only question that falls for consideration in this case is whether, there is anything improper in not considering the case of the respondent/applicant for promotion during the panel years 2007-2008 and 2008-2009, inasmuch as, the panels for the subsequent years have not been drawn.

It is hardly in doubt that, as per Rule 6 (b) of the Andhra Pradesh State and Subordinate Services Rules, the panel year commences on 1st of September of each year to end on 31st of August of the succeeding year. Further, once a panel is prepared and to the extent of vacancies remaining unfilled, a review of the cases of those who could not be considered for inclusion in the panel as on 1st September, are required to be taken up on or after 1st of April. In the instant case, the Departmental Promotion Committee met on 28.12.2007. The respondent/applicant was placed under suspension pending disciplinary proceedings on 10.10.2007. Therefore, his case could not have been legitimately considered by the Departmental Promotion Committee which met on 28.12.2007, for his name to be included in the list of suitable candidates for promotion. Since a charge sheet has been framed on 04.04.2008, even the review benefit would not accrue to the respondent/applicant. More importantly, there is no pleading or material which supports his contention that any of his juniors came to be considered for promotion and they were so actually promoted during the panel year 2007-2008. Hence, to this extent, the question of considering the case of the respondent/applicant herein for inclusion in the panel year 2007-2008 would not arise.

For preparing the panel for 2008-2009, the Departmental Promotion Committee met on 20.01.2009. On 31.12.2008, the

respondent applicant has suffered the punishment of withholding of two annual grade increments with cumulative effect. Hence, at that stage the DPC could not have found him suitable for promotion to a higher post, as, during the currency of punishment period no one can be promoted to a post carrying higher status/responsibilities. Hence, one may not find fault with the decision of the DPC which met on 20.01.2009.

However, that may not be the end of it all. The order of punishment dated 31.12.2008, which came in his way for consideration of his case for promotion, has been interfered with and set aside by the APAT in O.A.No.509 of 2009. That order of the APAT was affirmed by this Court in W.P.No.23521 of 2009 while preserving liberty to initiate the disciplinary proceedings afresh. Hence, a charge sheet was redrawn on 27.03.2012. If, by now, these proceedings have not been finalised, resulting in imposition of any punishment on him, in accordance with law, his case for inclusion in the panel for year 2008-09 has to be reviewed. His record of service and adverse reports, if any, relating to his conduct or performance of duties, has got to be assessed carefully and his suitability for inclusion in the panel vis-à-vis his juniors whose merit is already assessed and found as suitable, has to be decided. To that extent the order of the APAT cannot be faulted.

Hence, this writ petition stands disposed of in terms indicated supra. No costs.

Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

31.03.2016
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