The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Sri Justice G.Shyam Prasad

Writ Petition No.19769 of 2016

Date: 23.06.2016

Between:

Union of India
rep. by the Secretary
New Delhi and 4 others

..Petitioners

and

Shambhoo Nath and another

..Respondents

Counsel for the petitioners: Mr.B.Narayana Reddy,
Asst.Solicitor General

Counsel for respondent No.1: Mr.N.Vijay

The Court made the following:

Order: **(Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

This is an unfortunate case where respondent No.1's efforts to earn his promotion, which he is legitimately entitled to, are entangled in knots created by the petitioners, as a result of which, he is subjected to multiple rounds of needless litigation.

The admitted facts of the case as borne out by the record are that while respondent No.1 was working as Assistant Commissioner of Customs in the Land Custom Station (LCS), Raxual, East Champaran District, Bihar, the Central Bureau of Investigation (CBI) conducted a surprise check on 12-12-1997 and registered a First Information Report (FIR) alleging that during the surprise check, a sum of Rs.38,005/- of different denominations of Indian and Nepali currency was recovered from the possession of one Manish Goutham, Inspector of Customs. It was alleged in the FIR that the said amount was meant for distribution among the Officers posted at Raxual. The CBI, however, submitted a final report on 03-03-2012 before the Special Judge (N), CBI, Patna, to the effect that their investigation did not reveal any criminal act on the part of any of the fourteen accused persons. Accordingly, all the fourteen accused were discharged of the charges. Though the criminal conspiracy and misconduct could not be established, the CBI recommended initiation of disciplinary proceedings against the persons mentioned in the FIR and final report. Respondent No.1 pleaded that he was not one among those included in the FIR and final report.

Be that as it may. Respondent No.1 was promoted as Joint Commissioner in September, 2002, and posted to Hyderabad. After more than five years of the surprise check by the CBI, respondent No.1 was served with chargesheet on 27.03.2003. As the petitioners have failed to proceed with the enquiry, respondent No.1 filed OA.No.136 of 2004 before the Central Administrative Tribunal, Hyderabad (for short 'the Tribunal') complaining of the inordinate delay in concluding the disciplinary proceedings. The said OA was disposed of by the Tribunal with the direction to the petitioners to complete the disciplinary proceedings and pass a final order within four months. On the applications filed by the petitioners, the time stipulated by the Tribunal was extended on as many as three occasions. When a fourth extension was sought, the Tribunal by order, dated 17-08-2006, has rejected the request for further extension.

While things stood thus, the disciplinary authority has issued show cause notice, dated 25-07-2006, proposing a minor penalty. Feeling aggrieved thereby, respondent No.1 has filed OA.No.246 of 2007. By Order, dated 30-08-2007, the Tribunal has quashed the said show cause notice on the reasoning that with the failure of the petitioners to complete the disciplinary proceedings within the time extended from time to time, the disciplinary proceedings stood quashed and that therefore, the show cause notice was without jurisdiction.

As respondent No.1 was denied non-functionary selection grade (NFSG) in the junior administrative grade, he had to approach the Tribunal by way of OA.No.806 of 2008 and in pursuance of Order, dated 18-03-2009, passed therein by the Tribunal, respondent No.1 was re-designated as Additional Commissioner with effect from 04-05-2009.

Though respondent No.1 was due for further promotion as Commissioner of Customs and

Central Excise, he was denied promotion. Therefore, he was constrained to make representations, dated 05.02.2014 and 12.02.2014, to the Finance Ministry for consideration of his case for promotion along with the 1991 Batch of Indian Customs and Central Excise Service Officers. As the said representations did not yield any response, respondent No.1 filed OA.No.228 of 2014. In pursuance of the notice issued by the Tribunal, the petitioners have filed a reply statement wherein they have stated that the case of respondent No.1 was considered by the D.P.C., held on 29-01-2014 for promotion to the grade of Commissioner of Customs and Central Excise on *ad hoc* basis for the vacancy year 2013-14; that, however, the assessment of the DPC was kept in a sealed cover due to chargesheet, dated 27.03.2003, which was stated to be pending. They have further stated that the vigilance status report furnished to the DPC has referred to Order, dated 30-08-2007, in OA.No.246 of 2007 of the Tribunal and pendency of WP.No.5821 of 2008 with MP.No.7576 of 2008. Considering the contents of the said reply statement, the Tribunal has allowed OA.No.228 of

2014 with a direction to the petitioners to consider the case of respondent No.1 for promotion along with his batchmates and pass a reasoned order on his representations within 45 days. Despite the said order passed on 29-04-2014, the petitioners have not passed any order.

Later, the DPC is stated to have examined the matter and made the following recommendations in favour of respondent No.1:

> "Having examined the character rolls/APARs of Shri Shambhoo Nath (SC), the Departmental Promotion Committee assessed him as 'Fit'. On the basis of this assessment, the Committee recommended that his name may be included in the panel for promotion on provisional and *ad hoc* basis for the year 2013-14 at Sl.No.7-A below Shri P.K.Behera (SC) (Sl.No.7) and above Shri Ganesh Havnur (ST) Sl.No.8) subject to his securing a clearance in the vigilance case pending against him and furnishing the requisite integrity certificate by the competent authority in this regard."

The DPC has, accordingly, sent proposal to DOPT on 3.12.2014 for obtaining approval of the competent authority for promotion of respondent No.1 to the grade of Commissioner with effect from the date of promotion of his immediate junior and a speaking order, dated 16-12-2014, was issued by petitioner No.2 in this regard. However, the DOPT and petitioner No.3 *vide* their OM, dated 22-08-2015, returned the proposal with a direction to await the outcome of WP.No.5821 of 2008 pending before this Court. Therefore, respondent No.1 was constrained to file OA.No.1221 of 2015.

On a thorough consideration of the aforementioned facts, the Tribunal allowed the OA by holding that with the failure of the petitioners to conclude the enquiry within the original as well as the extended period of time stipulated by it in OA.No.136 of 2004, the departmental proceedings stood quashed and that with the further quashing of the show cause notice, dated 25-07-2006, issued by the petitioners for a minor penalty, in OA.No.246 of 2007, no disciplinary proceedings can be treated as pending. The Tribunal further reasoned that mere pendency of WP.No.5821 of 2008 would not revive the disciplinary proceedings and that therefore, denial of promotion to respondent No.1 is wholly illegal.

Having heard Mr.B.Narayana Reddy, learned Assistant Solicitor General, and Mr.N.Vijay, learned Counsel appearing for respondent No.1, we are of the opinion that there is absolutely no legal justification for the petitioners to prolong the agony of respondent No.1 by denying him the promotion, which is legitimately due to him, on a jejune ground. Though the Writ Petition filed against the order of the Tribunal quashing the show cause notice is pending, the fact remains that the petitioners failed to secure any interim order, having the effect of reviving the disciplinary proceedings, which ended with the quashing of the show cause notice. In these facts and circumstances of the case, we cannot, but, refrain from terming this Writ Petition as a vexatious piece of litigation and we, accordingly, dismiss the same with costs of Rs.10,000/-.

As a sequel to dismissal of the Writ Petition, WPMP.No.24286 of 2016, filed by the petitioners for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(G.Shyam Prasad, J)

Dt: 23rd June, 2016
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