

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 21.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE V.PARTHIBAN
W.P. No.2684 OF 2017

- 1 Union of India
rep by Secretary Ministry of Commerce &
Industries Department of Industrial Policy
& Promotion Government of India Udyog
Bhawan New Delhi-110011
- 2 Salt Commissioner
Office of the Salt Commissioner Government
of India No.2A Lavan Bhawan Lavan Marg
Jhalana Doongri Jaipur ... petitioners

versus

- 1 The Registrar
Central Administrative Tribunal Chennai
- 2 Mr.H.K.Sharma ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records from the file of the 1st respondent made in O.A. No.310/ 00202/ 2016 dated 13.07.2016 and quash the same.

For petitioners : Mr.Su.Srinivasan, A.S.G.
For Respondents : Mr.Karthick Raja, for R-2

O R D E R

(made by K.K.SASIDHARAN, J.)

The facts:-

The Department of Industrial Policy and Promotion, (Salt Section, Ministry of commerce and Industry), pursuant to the recommendation made by the Departmental Promotion Committee, in its meeting dated 22 July 2014, conveyed its approval for promotion of the second respondent as Deputy Salt Commissioner, along with Dr.R.S.Kashyap. Even before passing the consequential order promoting the second respondent, the Ministry of Commerce and Industry, by order dated 1 August 2014, suspended the second respondent from service, pending initiation of disciplinary proceedings. The petitioner therefore filed an original application in O.A.No.310/01039/2015 before the Central Administrative Tribunal. The Tribunal directed the second

respondent to submit a representation. The petitioners were directed to consider the representation and pass appropriate orders on merits.

2. The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, by order dated 17 December 2015, rejected the representation for promotion primarily on the ground that the disciplinary proceedings are pending.

3. The order dated 17 December 2015 was challenged by the second respondent before the Central Administrative Tribunal in O.A.No.310/00202/2016. The second respondent wanted the Tribunal to quash the order dated 17 December 2015 and promote him to the post of Deputy Salt Commissioner on regular basis with effect from 22 July 2014, the date on which his immediate junior was promoted.

4. The original application was opposed by the petitioners by placing reliance on the Memorandum dated 14 September 1992.

5. The Tribunal allowed the application on the ground that a vested right accrued to the second respondent by giving him promotion and the same cannot be taken away by order dated 1 August 2014, suspending him from service. The Tribunal therefore directed the Department to promote the second respondent to the post of Deputy Salt Commissioner on regular basis with effect from 22 July 2014 and pay him all the consequential benefits. Feeling aggrieved, the Union of India is before us.

Submissions:-

6. The learned Assistant Solicitor General, by placing reliance on the Office Memorandum dated 14 September 1992, issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, contended that while directing the Department to promote the second respondent, the Tribunal failed to consider Clause 7, which provides that in case an officer is suspended after the recommendation of DPC, his case has to be placed in a sealed cover, and he shall not be promoted until he is completely exonerated of the charges. According to the learned Assistant Solicitor General, the letter dated 1 August 2014 was in the nature of an inter departmental communication and the Department has to pass a consequential order, promoting the second respondent pursuant to the recommendation made by the Departmental Promotion Committee. Even before issuing such consequential order of promotion, the second respondent was placed under suspension. The Tribunal was therefore not correct in directing the Department to promote the second respondent.

7. The learned counsel for the second respondent contended that the immediate junior of the second respondent was promoted with effect from 22 July 2014. Since there was no disciplinary proceedings pending against the second respondent as on 22 July 2014, the Tribunal was correct in directing the petitioners to promote him to the post of Deputy Salt Commissioner. The order passed by the Tribunal is therefore unassailable.

Discussion :-

8. The second respondent was functioning as Deputy Salt Commissioner on ad hoc basis. The Departmental Promotion Committee (hereinafter referred to DPC) at its meeting held on 22 July 2014, conveyed its approval for promotion of the second respondent and Dr.R.S.Kashyap, to the post of Deputy Salt Commissioner. The Department of Industrial Policy and Promotion sent a communication to the Salt Commissioner, Jaipur, on 1 August 2014. The Salt Commissioner, Jaipur was expected to pass a formal order promoting the second respondent and Dr.R.S.Kashyap as Deputy Salt Commissioner. The letter dated 1 August 2014 was not communicated to the second respondent.

9. Even before passing the consequential order promoting the second respondent to the post of Deputy Salt Commissioner, the Department of Industrial Policy and Promotion by order dated 1 August 2014, placed the second respondent under suspension with immediate effect.

10. The second respondent approached the Department on the ground that promotion order issued to his junior indicates that it was given effect from 22 July 2014. According to the second respondent, disciplinary proceedings were not pending against him as on 22 July 2014 and as such, he was entitled to be promoted as Deputy Salt Commissioner notwithstanding the order of suspension dated 1 August 2014.

The relevant Office Memorandum:-

11. The Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, issued office memorandum dated 14 September 1992 in the matter of promotion of Government Servants against whom disciplinary proceedings are pending.

12. Clause 7 reads thus :-

"7. A government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendation of the DPC are received but

before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also".

13. In the case on hand, the DPC took a decision on 22 July 2014 to promote the second respondent to the post of Deputy Salt Commissioner along with his junior. Minutes of the DPC was communicated to the Salt Commissioner, Jaipur, by Department of Industrial Policy and Promotion, along with a covering letter dated 1 August 2014. It is the admitted case of both the parties that the second respondent was placed under suspension by order dated 1 August 2014.

14. The case of the petitioner would come within the ambit of Clause 7 of the Office memorandum dated 14 September 1992. His case was recommended for promotion by DPC. However, order could not be issued in view of his suspension. The office memorandum provides that in such contingency, case of the officer should be placed in a sealed cover and he would be promoted after the completion of the disciplinary proceedings.

15. The learned counsel for the second respondent contended that the promotion was made with effect from 22 July 2014, long before the initiation of disciplinary proceedings and as such, the second respondent is correct in making a claim for promotion. We do not find any merit in the said contention. Even though the order of promotion was given retrospective effect, the fact remains that order promoting his junior was issued only after placing the second respondent under suspension. It is therefore very clear that as on the date on which the order promoting the immediate junior of the petitioner was issued, there was a disciplinary proceedings pending against him. In view of Clause 7 of the office Memorandum, the petitioners were correct in rejecting the request made by the second respondent to promote him to the post of Deputy Salt Commissioner notwithstanding the currency of the order suspending him from service. The Tribunal failed to consider the background facts in the light of Clause 7 of the office memorandum dated 14 September 1992. We are therefore of the view that the petitioners must succeed.

16. In the result, the order dated 13 July 2016 is set aside. The Original Application in O.A.No.202 of 2014 on the file of Central Administrative Tribunal is dismissed.

17. In the upshot, we allow the Writ Petition. No costs.
Consequently, W.M.P.No.2633 of 2017 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1 The Secretary
Ministry of Commerce & Industries
Department of Industrial Policy & Promotion
Government of India Udyog
Bhawan New Delhi-110011

2 The Salt Commissioner
Office of the Salt Commissioner Government
of India No.2A Lavan Bhawan Lavan Marg
Jhalana Doongri Jaipur

+1cc to Mr.Menon, Advocate, S.R.No.11082

+1cc to Mr.Su. Srinivasan, Advocate, S.R.No.10915

rj (CO)
md(14/03/2017)

सत्यमेव जयते

W.P. No.2684 OF 2017

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