IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

[*Special Original Jurisdiction*]

THURSDAY THE TWEINTIETH DAY OF JULY
TWO THOUSAND AND SEVENTEEN

PRESENT

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE DR.JUSTICE SHAMEEM AKTHER

WRIT PETITION No. 23958 OF 2017

Between:

B. Balya ... Petitioner

V/s.

The Secretary
Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi & Ors. ... Respondents

Counsel for the Petitioner : Dr. A. Raghu Kumar

Counsel for the Respondents :

The court made the following: : [order follows]

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
A N D
HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION No. 23958 OF 2017

ORDER : (Oral, Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present writ petition, the petitioner assailed the order dated 06/06/2002 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, in O.A.No. 905 of 2015, whereby the application filed under section 19 of Administrative Tribunal Act, 1985 has been dismissed.

2. The case of the petitioner is that the petitioner along with similarly situated Deputy Commissioners was considered by the DPC held on 20/12/2003 for promotion to the cadre of Joint Commissioner of Custom and Central Excise. It has been alleged that the petitioner was illegally denied promotion. He had preferred a representation on 06/1/2004 and retired from service on 30/04/2005. Just before the day of his retirement he was served with a charge-sheet dated 26/04/2005 under Rule 14 of CCS [CCA] Rules, 1965, which was later on dropped by considering the defence put in by the petitioner. The petitioner had

again preferred a representation on 22/12/2008and sought promotion to the cadre of Joint Commissioner on par with his juniors. He was informed vide letter dated 25/02/2009 that his case could not be considered by the DPC held on 20/12/2003 for want of his ACRs for the relevant period and in the review DPC held on 07/03/2005 found him unfit on the basis of ACRs as he did not meet the prescribed benchmark.

3. It is informed that in subsequent DPC held on 24/04/2005, he was again adjudged as unfit. Thereafter, the petitioner preferred several representations for promoting notionally by giving him financial benefits and also filed OA.No. 278 of 2010 for the said relief but the said OA was dismissed on the sole ground of delay and the merit of the case was not considered.

4. We note, vide O.A.No. 278 of 2010, which was disposed of vide order dated 02/7/2010 following relief sought by the petitioner:

> *"To call for the records relating to the respondent/DPC for the relevant period and examine the matter in the light of existing OMs as stated in the applicant's OA and filed the relevant office memorandums as annexures herewith and consequently direct the respondent to grant promotion to this applicant to the grade of Joint Commissioner and award consequential reliefs and attendant benefits etc., to this applicant's favour or else this applicant shall suffer irreparable losses and serious injury."*

5. In view of the above, it is established that the petitioner had made several representations to the respondents to grant him promotion but they have failed to consider his claim.

6. After going through the material papers available on record, the Tribunal found the petitioner was not considered in DPC held on 20/12/2003 by which assessed him unfit. The review DPC held on 07/03/2005 assessed him unfit on the basis of SR, therefore, he did not prescribe benchmark.

7. In subsequent DPC meeting held on 25/04/2005, the petitioner was again found unfit. Accordingly, it has been categorically held that the petitioner was considered in the year 2003, 2005 before charge memo was issued and therefore, no question of adopting sealed cover procedure.

8. It is evident that the above noted O.A. was dismissed by the learned Tribunal not only on the ground of limitation but on merit as well. It is the contention of the petitioner that sealed cover procedure was not adopted in his case was well considered by the Tribunal and has

rightly been held that the sealed cover procedure is adopted when an employee is considered for promotion during the pendency of disciplinary proceedings. The petitioner was considered for promotion prior to issuance of charge memo, therefore, the question of adopting sealed cover procedure does not arise.

9. Considering the order dated 02/7/2010 passed by the Central Administrative Tribunal which has been up-held by this Court as well as Hon'ble Supreme Court, we are of the considered opinion that the learned Tribunal has rightly dismissed the subsequent O.A. filed by the petitioner. In the previous O.A. as well as the present O.A. the petitioner seeks promotion to the post of Joint Commissioner of Customs and Excise, which has already been considered and rejected by enormous orders communicated to the petitioner, however, the petitioner continued to make the representation one after another and this is the second round of litigation.

10. In view of the above, finding no merit, the present writ petition is dismissed with no order as to costs.

11. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE SURESH KUMAR KAIT

Dr. JUSTICE SHAMEEM AKTHER

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HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE DR.JUSTICE SHAMEEM AKTHER

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WRIT PETITION No.23958 OF 2017
[DISMISSED]
(Order of the Division Bench delivered by
Hon'ble Sri Justice Suresh Kumar Kait)

Date. 20-07-2017
Court Master: I s L
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