

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION (TR) NO.193 OF 2017

Date: 21.06.2017

Between:

Mohd Khaja Moinuddin S/o late Mohd. Abdul Rahaman,
Aged 68 years, Occu: Retired Incharge Superintending
Engineer, R & B Department, R/o 16-2-741/B/56,
T.V.Tower, Asmangadh, Malakpet, Hyderabad.

..... Petitioner

And

The State of Andhra Pradesh, rep.by its Principal
Secretary, Transport, Roads and Buildings (SER.II)
Department, Secretariat Buildings, Hyderabad
and another.

.....Respondents



The Court made the following:

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ORDER:

Petitioner was initially appointed as Assistant Executive Engineer and later his services were regularized as Assistant Executive Engineer. It appears, petitioner applied for leave and did not join back to duty after expiry of leave for a long time. On 18.05.1983, he submitted application for resignation. The request for resignation was accepted on 14.08.1987, retrospectively from 21.01.1981. However, before the acceptance of resignation was made, petitioner by letter dated 18.02.1987, withdrew his resignation. Thus, challenging the acceptance of resignation, petitioner filed R.P.No.5035 of 1987, which was allowed by order dated 08.09.1987. In pursuant to the orders of this Court, petitioner was reinstated and he joined service. At this stage, petitioner started agitating for grant of promotion as Deputy Executive Engineer retrospectively from the date of promotion granted to his immediate junior.

2. Alleging inaction on his request for grant of retrospective promotion, petitioner filed O.A.No.7927 of 1999. The Tribunal passed interim orders directing the respondents to consider the case of the petitioner for retrospective promotion on par with his junior, by name, Sri J.Hanumantha Rao. In compliance of the said interim orders, petitioner was granted retrospective promotion as Deputy Executive Engineer. During the pendency of O.A., and after he was granted promotion, petitioner retired from service on attaining the age of superannuation on 30.11.2002. On 08.01.2003, petitioner represented before the Tribunal that the

order of Tribunal was complied and that he was granted promotion and on promotion, he retired from service and, therefore, the cause in O.A. does not survive. Recording the said submission, O.A. was dismissed as infructuous. After the dismissal of O.A., the respondent Government took back the decision and reverted the petitioner as Assistant Executive Engineer holding that he is not entitled for promotion since the interim order merged into final order and that petitioner is not otherwise entitled to such promotion. One other development requires to be noticed, at this stage is, by order dated 17.05.1993, the period of absence from the service was regularized. By order dated 10.05.1991, the unauthorized absence period was treated as 'Dies-non'.

3. Petitioner filed O.A.No.7252 of 2010 claiming that he was erroneously denied benefits of promotion on par with junior and same should be granted to him and to regularize the period of absence as on duty in stead of treating it as 'Dies-non'. The Tribunal by interim order dated 21.10.2010, directed consideration of the representations of the petitioner dated 14.12.2009 and 26.03.2010 and pass appropriate orders. Consequent to the directions of the Tribunal, the Engineer-in-Chief passed orders on 24.08.2011 rejecting the request of the petitioner for promotion from retrospective date and by order dated 03.08.2012 rejected the case of the petitioner to regularize the period of absence instead of 'Dies-non'. These two proceedings are not challenged.

4. Learned counsel for petitioner contends that admittedly, junior to the petitioner was promoted from an earlier date as Deputy Executive Engineer, ignoring the claim of the petitioner;

consequent to the judgment of the APAT in R.P.No.5035 of 1987 setting aside the order accepting his resignation, petitioner is entitled to all consequential benefits including retrospective promotion. He further submits that consequent to the interim orders passed by APAT in O.A.No.7927 of 1999, when retrospective promotion and seniority was granted, the respondents could not have reviewed the said decision without putting the petitioner on notice and affording due opportunity. He submits that interim order was subsisting till he retired from service and before his retirement he was granted promotion and was also put in-charge as Superintending Engineer at the time of his retirement. The O.A. was disposed of as infructuous on account of his subsequent retirement. Therefore, the original relief granted to him could not have been taken away on the ground that O.A. is dismissed, without looking into the nature of disposal granted by the Tribunal. He further submits that treating the absence period as 'Dies-non' is erroneous. Once acceptance of resignation was held illegal, petitioner ought to have granted all the consequential benefits.

5. Learned Government Pleader contends that petitioner was absent from duty for a long time and has rendered hardly any service prior to his resignation and after the orders of the Tribunal, till he retired from service. According to the learned Government Pleader, after period of unauthorized absence was treated as 'Dies-non', the panel for promotion for the panel year 1984-85 was approved and during that time, his junior was promoted. He, therefore, submits that promotion granted to his junior cannot be treated as illegal as petitioner was not in service and his absence

was treated as 'Dies-non'. Unless entire period was treated as on duty and all consequential benefits are granted, petitioner cannot ask for promotion on par with his junior. Having regard to these peculiar facts, there cannot be any comparison between the petitioner and his immediate junior. He further submits that once O.A. is dismissed, the interim order merges into final order and thus no order was subsisting after the dismissal of O.A. Thus, the position obtaining prior to interim order passed by the Tribunal in O.A.No.7927 of 1999 was restored and there was no illegality committed in doing so. Detailed reasons are assigned in support of the decision made.

6. Having regard to the facts noted above, I am in agreement with the submission made by the learned Government Pleader. It is not in dispute that petitioner was absent from duty for a long time i.e., from 21.01.1981. The contention of the learned Government Pleader that the panel for the panel year 1984-85 was drawn and finalized during the absence period of the petitioner is not in dispute. Thus, when junior to the petitioner was promoted, it cannot be said that petitioner was erroneously ignored merely because petitioner was senior, more so, when during that period, petitioner was not on duty. In those circumstances, ignoring the petitioner was not illegal. The question of review of such promotion and grant higher promotion does not arise.

7. Furthermore, promotion was granted to junior to the petitioner long ago, whereas O.A. was instituted in the year 1999, claiming retrospective promotion. Interim order granted to the petitioner was complied and he was granted retrospective

promotion, but once the O.A. was dismissed, the interim order stands vacated. Merely because petitioner retired from service, does not mean that cause would not survive and O.A. would become infructuous and that authority cannot take action to restore position obtaining prior to interim order. Furthermore, retrospective promotion granted to the petitioner only in compliance of the interim orders. Having regard to the long absence from service, the very fact that petitioner was continued in service and granted benefits till he retired ought to have satisfied him instead of making unreasonable claims. I see no illegality in treating the period of long absence from duty as 'Dies-non'. Furthermore, the order was passed on 10.05.1991 has become final. In O.A.No.7252 of 2010, petitioner virtually sought reconsideration of such decision after almost 19 years and to promote on par with his junior. On the ground of inordinate delay itself, such claim ought to be thrown out at the threshold. In the peculiar facts of this case, I do not see any illegality in the decision made by the Engineer-in-Chief rejecting request of petitioner for promotion as Superintending Engineer, warranting interference by this Court.

8. The writ petition is dismissed accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE P.NAVEEN RAO

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