

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

**WRIT PETITION NOs.43182 OF 2016; 1045, 2449, 2451, 2688,
3188, 3576 AND 5988 OF 2017**

WP No.43182 of 2016:

Between:

A.Jalender Reddy, S/o Sathi Reddy, Aged about 54 years,
Occu: District Town & Country Planning Officer,
O/o DTCPO, R.R.District, 640-AC Guards, Hyderabad,
r/o.H.No.12-13-528 & 529, F/201, Street No.14,
Tarnaka, Secunderabad.

.....Petitioner

and

The State of Telangana, rep.by its Principal Secretary,
Municipal Administration & Urban Development (Vig-III)
Department, Secretariat, Hyderabad and another.

.....Respondents

JUDGMENT PRONOUNCED ON : 17.04.2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : No
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : **Yes**
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : No
See fair Copy of the Judgment ? :

***HON'BLE SRI JUSTICE P.NAVEEN RAO**

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% 17.04.2017

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.... Respondents

!Counsel for the petitioners :

Sri N.Ramesh, counsel for petitioner in WP No.43182 of 2016;
Sri Pillix Law Firm for petitioner in WP No.1045 of 2017;
Sri S.Gopal Rao, counsel for petitioner in WP No.2449 of 2017;
Sri MVS Sai Kumar, counsel for petitioner in WP No.2451 of 2017;
Sri KV Rajendra Prasad, counsel for petitioner in WP 2688 of 2017;
Sri Ch.Jagannatha Rao, counsel for petitioner in WP 3188 of 2017;
Sri M.Ratna Reddy, counsel for petitioner in WP 3576 of 2017;
Sri K.R.Srinivas, counsel for petitioner in WP 5988 of 2017.

Counsel for the Respondents:

Govt. Pleader for Municipal Admn.(TG) for respondents 1 & 2 in WP NO.43182 of 2016;
Govt.Pleader for Revenue (TG) for respondent No.1, Govt.Pleader for Land Admn.(TG) for respondent No.2 and Sri V.Ravi Kiran Rao, Spl.PP, for ACB Cases (TG) for respondent No.3 in WP No.1045 of 2017;
Govt.Pleader for Services-I (TG) for GP for Revenue in WP 2449 of 2017;
Govt.Pleader for Municipal Admn. (TG) for respondents 1 & 2 in WP 2451 of 2017;
Govt.Pleader for Services-I (TG) for G.P. for Home for R1 to R3 in WP No.2688 of 2017;
Govt.Pleader for Services-I (TG) for G.P. for Revenue (TG) for Respondents 1 to 4 in 3188 of 2017;
Govt.Pleader for Services-I (TG) for G.P. for Revenue (TG) for respondents in WP NO.3576 of 2017;
Govt.Pleader for Services-I (TG) for G.P. for Revenue (TG) for respondents in WP No.5988 of 2017

<Gist :

>Head Note:

? Cases referred:

1990 (Supp) SCC 738; 1991 Supp (2) SCC 199; (1991) 2 SCC 220;
(1991) 4 SCC 109; (1993) 3 SCC 196; (1993) 3 SCC 204 ; (1998) 3 SCC 394;
(1999) 5 SCC 762; (2000) 4 SCC 394; (2007) 9 SCC 625; (2007) 6 SCC 704;
(1995) 2 SCC 570; (2005) 6 SCC 636; (2007) 14 SCC 49; (2009) 7 SCC 305;
(2013) 6 SCC 530; 2010 (4) ALT 374 (DB); 2010 (1) ALD 144; (1991) 4 SCC 129

HONOURABLE SRI JUSTICE P.NAVEEN RAO

**WRIT PETITION NOS.43182 OF 2016; 1045, 2449, 2451,
2688, 3188, 3576 AND 5988 OF 2017**

COMMON ORDER:

In these writ petitions, the vexed question, whether petitioners are entitled to be considered for promotion pending disciplinary/criminal proceedings against them, that visits this court more often than any other issue, falls for consideration. As the core issue is common in all these writ petitions they are disposed of by this common order.

2. Ordinarily, an employee is entitled to be considered for promotion as per his seniority. If promotion is based on seniority, as a matter of course, senior should be granted promotion unless he is otherwise declared as unfit to be promoted. If promotion to the next cadre is based on selection, employee is entitled to be considered as per seniority along with all other eligible candidates by Departmental Promotion Committee and if Promotion Committee recommends, he is entitled to be promoted.

3. In service matters, one of the biggest contributors to litigation and occupying huge legal space is disputes relating to claim for promotion by employee as against employer's desire to defer promotion on the ground of pendency of disciplinary action/criminal action.

4. The substratum of litigation is competing claims of employee and employer. Employee wants promotion when due notwithstanding alleged misconduct, criminal or departmental and employer's desire to at least deny elevation in status to employee

when he is facing disciplinary action/criminal action, more particularly on grave allegations. Broadly, there are four categories of cases, (i) contemplated disciplinary proceedings; (ii) no formal charge sheet is drawn/drawn but not served in disciplinary proceedings/no charge sheet is filed in criminal proceedings; (iii) not concluding the pending disciplinary proceedings/criminal proceedings for a long time and denying promotion; and (iv) dropping of disciplinary action/clearing of disciplinary proceedings/acquittal in criminal proceedings which was the basis for earlier deferment.

5. There is plethora of precedents on the substratum of the litigation. It is expedient to discuss some of the leading decisions on the subject in seriatim of the decisions.

6.1. **State of Madhya Pradesh v. Bani Singh and another**¹ was an appeal against decision of the Central Administrative Tribunal in two OAs filed by Bani Singh. In one OA, he challenged adverse entries in service record and sought retrospective promotion and in another OA, he challenged initiation of disciplinary proceedings on the ground of inordinate delay. Both OAs were allowed. The Supreme Court upheld the decision of Tribunal. Supreme Court observed as under:

“4. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.

6. ***Normally, pendency or contemplated initiation of disciplinary proceedings against a candidate***

¹ 1990 (Supp) Supreme Court Cases 738

must be considered to have absolutely no impact upon his right to be considered. If the departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the normal procedure followed as mentioned by the Tribunal was 'sealed cover' procedure but if the disciplinary proceedings had not reached that stage of framing of the charge after prima facie case is established the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings. Deferring the consideration in the Screening Committee meeting held on November 26, 1980 on this ground was therefore insupportable. In fact, even in respect of the adverse remarks which has been now quashed the respondent officer had made his own representation and the representation also was pending consideration at that time and it was disposed of only in December 1986. The remark, therefore, should not be taken to have become final so as to enable the Committee to take that remark into consideration. The deferring of the consideration in the meeting held on November 26, 1980, therefore, could not be considered as valid.”
(emphasis supplied)

6.1.1. In **C.O.Arumugam and others v. State of Tamil Nadu and others**², Supreme Court held,

“5. As to the merits of the matter, it is necessary to state that every civil servants has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. *The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded.* They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.”
(emphasis supplied)

6.1.2. In **New Bank of India v. N.P.Sehgal and another**³, the main contention urged by the respondent was, as a consequence to grant of promotion, all the earlier alleged misconducts gets wiped out and it is not permissible to conduct disciplinary proceedings. Supreme Court held as under:

“7. On a plain reading of this clause it is clear that even if disciplinary action is in process against an officer of the

² 1991 Supp (2) SCC 199

³ (1991) 2 SCC 220

appellant Bank, that would not entitle the appellant Bank to exclude from consideration for promotion the officer concerned if he is otherwise entitled to be so considered. The only right given to the appellant in such cases is that, in case such an officer is otherwise found fit for promotion and selected for promotion, that promotion can be withheld until the officer is exonerated from the charges. It is significant that the said clause goes to state that in case such an officer is exonerated from the charges, promotion will have to be given effect to from the date on which it would have been otherwise effective but for the disciplinary action. ***This rule gives rise to the implication that till disciplinary action is in process or initiated, the officer concerned, against whom allegations of misconduct might be made, can neither be excluded from consideration for promotion if he is entitled to be considered otherwise nor can the promotion be denied to him.*** In these circumstances, when the promotion from Scale II to Scale III was granted to respondent 1 on July 17, 1984, ***there could be no question of condonation of the earlier acts of misconduct by reason of this promotion*** because in law and in view of the said clause (9) the appellant had no option but to consider respondent 1 for promotion and if he was otherwise found fit for promotion to promote him. In view of this conclusion, it must follow that the charge sheet submitted against respondent 1 and the disciplinary proceedings pursuant to the said charge sheet cannot be said to be bad in law and cannot be interfered with on the ground of condonation. In our view, the courts below were in error in holding that the earlier alleged acts of misconduct of respondent 1 had been condoned by the appellant and basing their conclusions thereon.” (emphasis supplied)

6.2.1. Government of India notified office memorandum on 30.01.1982 laying guidelines for adopting sealed cover procedure. This memorandum was subject matter of challenge before the Central Administrative Tribunal. The decision rendered by the Full Bench of Central Administrative Tribunal and the benches of the Central Administrative Tribunal were assailed before the Supreme Court by the Union of India in batch of appeals in the case reported as **Union of India and others v. K.V.Jankiraman and others**⁴. The common questions involved in all the matters relate to sealed cover procedure. Three questions were considered by the Supreme Court: (1) What is the date from which it can be said that

⁴ (1991) 4 SCC 109

disciplinary/criminal proceedings are pending against an employee; (2) what is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal; (3) to what benefits an employee who is completely or partially exonerated is entitled to and from which date.

6.2.2. Insofar as the present issue is concerned, the first question considered by the Supreme Court is relevant. On this issue, Supreme Court upheld the decision of the Full Bench of the Tribunal. Full Bench of the Tribunal held that only if a charge memo in disciplinary proceedings or a charge sheet in criminal prosecution is issued to the employee that it can be said that departmental proceedings/criminal prosecution is initiated against an employee.

6.2.3. Supreme Court held that the sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued. It is held:

“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. **The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point.** The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to

