

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.973 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner assailing the office order No.250/ 2007, dated 06.10.2007, issued by the 1st respondent, the Vice Chairman & Managing Director of the Andhra Pradesh Forest Development Corporation Limited, whereby as per the recommendation of the Internal Promotion Committee, which met on 01.10.2007, the 2nd respondent was promoted as Assistant Personnel Officer. In the writ petition the petitioner also seeks to declare the proceedings, dated 28.11.2007, of the 1st respondent rejecting his representation, dated 24.10.2007, objecting to the said order of promotion as illegal, unjust and contrary to the guidelines.

2. Heard the submissions of *Sri A.K. Jaya Prakash Rao*, learned counsel appearing for the writ petitioner, and of *Sri A. Rajender Babu*, learned counsel appearing for the 2nd respondent. No submissions are made on behalf of the 1st respondent despite granting fair and sufficient opportunities. Therefore, it is treated that the first respondent has no submissions to make in the matter.

3. I have perused the material record.

4. It is pertinent to note that the learned counsel for the 2nd respondent specifically stated that on bifurcation of the erstwhile State of Andhra Pradesh into two States the 2nd respondent is now allotted to the State of Telangana and that in that view of the matter the Telangana State Forest Development Corporation is a necessary party to the *lis*. However, learned counsel for the petitioner asserted that there is no need to implead TSFDC

and that the petitioner is prepared to prosecute the writ petition without impleading the said authority as the said authority is not a necessary and proper party.

5. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner joined the services of the Corporation as a Senior Stenographer, on 08.07.1981, and was promoted as Personal Assistant, on 26.07.1990, and as Assistant Personnel Officer, on 15.03.2016, *vide* office order, dated 15.03.2016. He is due for retirement from service, on 30.06.2017, on attaining the age of superannuation. The petitioner joined the service with required qualifications, that is, degree in Bachelor of Commerce, Typewriting and Shorthand English Higher Grade; and, his selection was through a competitive examination and interview process against a vacancy notified through an advertisement in newspaper. The 1st respondent devised a policy to encourage the employees to acquire higher qualifications and pursue courses notified by the Board, which are useful for the organisation for effective work performance. Accordingly, orders were issued *vide* office order no.216/86, dated 13.08.1986. The petitioner acquired additional qualifications such as M.Com, LLB, Shorthand English High Speed 150 words per minute; PG diploma in Industrial Relations and Personnel Management, PG Diploma in Financial Management from Osmania University; PG Diploma in Personnel Management from National Institute of Personnel Management, Calcutta, besides two years Diploma in advanced software technology from Computer Maintenance Corporation and a certificate in Java Training Course from NetGSC. Thus, the petitioner is constantly upgrading his knowledge and qualifications for effective job performance. The 2nd respondent joined in service in lower cadre as Junior Stenographer, on 16.04.1979, and was promoted as Senior Stenographer with effect from

17.07.1980, that is, within one year of joining the service as against the required service of five years. As per Rules, the said promotion given to the 2nd respondent is irregular. He was further promoted as Personal Assistant with effect from 26.07.1990; again as Assistant Personnel Officer with effect from 06.10.2007 and as Personnel Officer with effect from 11.01.2013 *vide* office order dated 11.01.2013. He retired from service, on 31.12.2016, on attaining the age of superannuation. Academic, technical and professional qualifications of the petitioner are superior to those of the 2nd respondent, who is just a Graduate with Typewriting and Shorthand qualifications. The higher qualifications which contribute to efficiency and effective discharge of duties of a higher post have to be considered while filling up a selection post. The Internal Promotion Committee has gone wrong in selecting the 2nd respondent to the post of Assistant Personnel Officer instead of selecting the petitioner. The irregular promotion given to the 2nd respondent in the year 2007 as Assistant Personnel Officer is, therefore, challenged in the writ petition. During the pendency of the writ petition, the 2nd respondent was further promoted as Personnel Officer which is again irregular. He later retired from service. His promotion as Senior Stenographer is itself irregular for the following reasons: (i) For consideration for promotion to the category of Senior Stenographer from the Junior Stenographer, the Junior Stenographer must have five years of experience in that cadre; but, the 2nd respondent, who was appointed in the year 1979 as Junior Stenographer, did not possess the required minimum five years experience as on the date of his promotion in the year 1980 as Senior Stenographer; and, (ii) the Project Officer, Warangal, who had given him the promotion is not the competent officer to give promotion as per Rules; and, only the Vice Chairman & Managing Director was conferred with such powers. Having noticed the irregularities, the then Vice Chairman & Managing Director, while working, during his previous deputation term in the year 1999, as Chief General Manager of the

Corporation called for the promotion file and personal file of the 2nd respondent and proposed to revert him to lower post and re-fix his pay and allowances and his seniority with reference to Rules. However, the then Vice Chairman & Managing Director had not initiated any action as proposed by the then Chief Manager of the Corporation and regularised the 2nd respondent's irregular promotion and ratified the action of the Project Officer, Warangal, in irregularly promoting the 2nd respondent from the post of Junior Stenographer to the post of Senior Stenographer. And while doing so, no notices were given to the seniors in the cadre by calling for their objections, if any. This irregular promotion and subsequent irregular ratification came to the notice of the petitioner after the 2nd respondent was promoted as Assistant Personnel Officer. In fact, in the panel prepared for the promotional post of Assistant Personnel Officer, the name of the petitioner should have appeared at the top and above the name of the 2nd respondent. As per the guidelines given to Internal Promotion Committee, the Internal Promotion Committee is required to consider the confidential reports for preceding five years of eligible candidates who are under consideration for promotion. The petitioner's performance was rated as 'excellent' during the years 2002-03, 2003-04, 2004-05 and 2005-06 except in the year 2006-07 during which the performance was recorded as 'average' without valid grounds. The said remark was entered deliberately due to a mischief played by the reporting officer just to favour the 2nd respondent who was working as Personal Assistant to the Vice Chairman & Managing Director. In the entire service of the petitioner, according to his belief, his performance was rated in the Annual Confidential Report (ACR) as 'excellent'. All the superior officers, under whom the petitioner worked, recorded in the ACRs that his performance was 'excellent'. The guidelines say that the evaluation of the confidential report should be fair, just and non-discriminatory and that the Internal Promotion Committee should not be guided merely by overall

grading, if any, that is recorded in the confidential reports but it should make its own assessments on the basis of confidential reports as sometimes it is noticed that the overall grading in a confidential report may be inconsistent with the grading under various parameters and attributes. There should be overall consistency in the performance rated in the confidential reports. The Internal Promotion Committee shall also consider as to whether or not any punishments were imposed against the candidates who are being considered for promotion or whether any such candidates have incurred the displeasure of the superior officer/s and whether any such instances are reflected in the confidential reports. The Internal Promotion Committee has not gone into and considered various factors and merely considered the overall grading recorded by the officers concerned and failed to exercise its wisdom in a judicious manner while selecting the best candidate for promotion. The Internal Promotion Committee consists of Vice Chairman & Managing Director, as the Chairman, and the Chief General Manager and a counter part in the Forest Department, who is an IFS officer. Accordingly, Personal Assistant to Vice Chancellor & Managing Director, that is, the 2nd respondent was selected for promotion. As per guidelines, the Internal Promotion Committee must draw detailed minutes and should specify specifically in the minutes recorded as to why the other candidates are not considered and why the candidate selected for promotion was considered. However, it appears that the same was not done. The administrative duties imposed upon the officers of various levels have not been discharged properly and thereby the petitioner was put to irreparable loss and damage. On retirement of the 2nd respondent, on 31.12.2016, all terminal benefits were paid. If the writ petition is allowed, no damage would be done to the 2nd respondent. Hence, the writ petition may be allowed with all consequential benefits duly promoting the petitioner as Assistant Personnel Officer with effect from 06.10.2007, that is, the date from which the 2nd respondent was promoted vide office order, dated

06.10.2007, and as Personnel Officer with effect from 11.01.2013, that is, the date from which the 2nd respondent was promoted as Personnel Officer vide order, dated 11.01.2013.

6. As already noted, no submissions were made on behalf of the 1st respondent. However, while denying the averments in the affidavit of the writ petitioner and while stating the various guidelines governing various terms governing various posts, it is, *inter alia*, contended in the counter of the 1st respondent as follows:

The vacancy in the category of Assistant Personnel Officer arose, on 31.08.2007, consequent upon the retirement of the person holding the said post. At the time of consideration for promotion to the said post, from out of the four feeder categories, there were no eligible candidates available in the feeder categories of Personal Secretary to the Managing Director and Senior Accountant; however, there were eligible candidates from the feeder categories of Personal Assistants and Special Assistants for being empanelled. As per seniority and as per the judgment of the High Court, dated 24.01.2006 in W.P.Nos.24345 of 2005 and 25518 of 2005, the seniority of the panellists to be considered for promotion was as follows:

1. Sri N. Mukesh, Personal Assistant (2nd respondent)
2. Smt. Ch. Subba Lakshmi, Special Assistant
3. Sri B.D. Nageswara Rao, Personal Assistant (petitioner)
4. Sri W. Krishna Murthy, Special Assistant.

Before the Internal Promotion Committee, which met on 01.10.2007, ACRs for the five preceding years, that is, from the years 2002-03 to 2006-07 along with agenda and other information were placed. After going through the selection guidelines in vogue and the gradation of marks to be awarded for each year of confidential reports, agenda, panel information and the ACRs,

the Internal Promotion Committee made the following assessment of each candidate in the panel.

Panel S.No.	Name of the Candidate	Total marks awarded
1.	Sri N. Mukesh, PA	14
2.	Smt. Ch. Subbalakshmi, Special Assistant	8
3.	Sri B.D. Nageswara Rao, Personal Assistant	13
4.	Sri W. Krishna Murthy, Special Assistant	10

Based on the above assessment, the Internal Promotion Committee has recommended the names of the 2nd respondent, who secured 14 marks, and the petitioner, who secured 13 marks. The Internal Promotion Committee has also drawn its minutes and the same were signed by the members of the committee, on 01.10.2007. As the Internal Promotion Committee placed the 2nd respondent at No.1 position in the approved panel for consideration for promotion to the post of Assistant Personnel Officer, the 1st respondent, who is the appointing authority, has promoted the 2nd respondent as Assistant Personnel Officer. Accordingly, he joined duty as Assistant Personnel Officer, on 08.10.2007. For all the reasons narrated, the promotion of the 2nd respondent is in accordance with selection guidelines prescribed. Hence, the contrary contentions in the writ petition of the petitioner are denied. The post of Assistant Personnel Officer is a selection post. The promotion of the 2nd respondent from Junior Stenographer to Senior Stenographer is not contrary to law for the reason that the powers of the Board in regard to appointment of all categories of staff within the divisions were delegated to the Project Officers who were working by then *vide* Standing Order No.VII, dated 01.12.1975. Since the post of Junior Stenographer carried a pay scale of Rs.150-300 and the post of Senior Stenographer carried a pay scale of Rs.200-400 and as the starting basic pay was Rs.200/- and below per month, the then Project Officer was competent to promote an individual from the

post of Junior Stenographer to the post of Senior Stenographer. The appointing authority in respect of Junior Stenographer as well as Senior Stenographer was the Project Officer within the division. The 2nd respondent was a declared probationer in the post of Junior Stenographer on completion of period of probation successfully with effect from 15.04.1980 AN. Both the petitioner and the 2nd respondent were promoted to the next category of Personal Assistant vide orders, dated 25.07.1990. The seniority list of Personal Assistants as on 31.12.1993 was communicated to the individuals by proceedings dated 19.09.1994. In the said seniority list, the 2nd respondent was placed at S.No.7 whereas the petitioner was placed at S.No.8. He did not challenge the said seniority list. The seniority list of Personal Assistants as on 30.06.2001 was also communicated to the individuals concerned on 31.07.2001; in the said seniority list, the 2nd respondent was placed at S.no.6 whereas the petitioner was placed at S.no.7. The petitioner did not challenge the said seniority list also. In the year 1998, notices were issued to all the persons promoted to the post of Senior Stenographer to show cause as to why their date of promotion as Senior Stenographer in the category of Senior Stenographer should not be revised. The 2nd respondent was also issued a similar show cause notice. He submitted his reply to the said show cause notice along with others who were issued similar notices. The Vice Chairman & Managing Director while considering cases of all such individuals held that the promotions effected during the past years in the category of Senior Stenographer were found to be in order for the following among other reasons: 'As per rules of the Corporation, no experience is prescribed to the post of Senior Stenographer in Direct Recruitment. Certain internal candidates including the 2nd respondent were considered for promotion as Senior Stenographer, as they fulfilled the prescribed/ requisite qualification to the post of Senior Stenographer in direct recruitment i.e., shorthand and typewriting higher grade with Graduation. Further, none of the employees

had raised any objection/ dispute on the promotion of the 2nd respondent as Senior Stenographer even subsequently also.' The reporting officer will write the ACR of the employee working under him and indicate the performance level of the employee. Reviewing authority and accepting authority will endorse the view of the reporting authority or otherwise in the confidential report of each year. Accordingly, ACRs of the petitioner and others were written. The reporting authority is not required to be influenced by the assessment of ACRs of earlier years and the reporting authority will not have access to the previous ACRs while writing ACR of an employee for a particular period and as such the averments in the writ petition are incorrect. The petitioner had put in a representation, dated 24.10.2007, to the 1st respondent requesting to examine the whole matter and do justice by promoting him as Assistant Personnel Officer with effect from the date of the promotion of the 2nd respondent by considering his qualifications and service in the organisation. The 1st respondent examined the representation with reference to the records in its entirety and the petitioner was informed that no intervention in the matter is necessary and that the representation of the petitioner is rejected. The petitioner is a junior to the 2nd respondent in the categories of Senior Stenographer and Personal Assistant and there is no weightage provision for possessing/ acquiring additional qualifications. Hence, the writ petition may be dismissed.

7. Learned counsel for the 2nd respondent submitted as follows: "Promotions were given to the 2nd respondent based on his qualifications, merit and eligibility for promotion. There was no irregularity and illegality in his promotions. The petitioner is not entitled to question the promotion of the petitioner from the post of Junior Stenographer to the post of Senior Stenographer which was given with effect from 17.07.1980 as by that date the petitioner was not even appointed as Senior Stenographer and as the petitioner joined service of the Corporation only on 08.07.1981. Further,

even according to the case of the petitioner, the promotion of the 2nd respondent from the post of Junior Stenographer to that of the Senior Stenographer with effect from 17.07.1980 was ratified by the then Vice Chairman & Managing Director and none of the alleged seniors questioned the said ratification order. Subsequently the 2nd respondent was promoted as Personal Assistant with effect from 26.07.1990 and as Assistant Personnel Officer, on 06.10.2007, and as Personnel Officer, on 11.01.2013, during the pendency of the writ petition and retired from service, on 31.12.2016, on attaining the age of superannuation. On bifurcation of the State of erstwhile Andhra Pradesh into two States, the 2nd respondent was allotted to the cadre of Telangana State. Therefore, the petitioner and the 2nd respondent now belong to services of two different States. At this distance of time the promotions given long time back to the 2nd respondent cannot be questioned and the petitioner cannot be given promotions retrospectively on par with the 2nd respondent who joined in service much earlier to the petitioner and whose promotion as Senior Stenographer was also much prior to the appointment of the petitioner in the Corporation as Senior Stenographer, on 08.07.1981. The case of the petitioner is not comparable to the case of the 2nd respondent. Hence, the writ petition is liable for dismissal.”

8. I have given detailed and earnest consideration to the facts and submissions. Two aspects need consideration and adjudication. One issue raised is in regard to *inter se* seniority between the petitioner and the 2nd respondent. The next issue raised by the petitioner is with regard to legality and validity of the 2nd respondent's promotion as Assistant Personnel Officer as per proceedings, dated 06.10.2007, and the illegal and unjust rejection of the representation, dated 24.10.2007, of the petitioner by orders, dated 28.11.2007, of the vice Chairman & Managing Director of the Corporation.

9. Dealing first with the seniority aspect, it is to be first noted that the petitioner joined as Senior Stenographer, on 08.07.1981, and was promoted as Personal Assistant, on 26.07.1990, and as Assistant Personnel Officer on 15.03.2016. Whereas the 2nd respondent joined service as Junior Stenographer, on 16.04.1979, and was promoted as Senior Stenographer with effect from 17.07.1980, however, within one year of joining the service and without completing minimum required length of service in the post of Junior Stenographer. The petitioner first canvasses that the said promotion of the 2nd respondent is irregular for the above reason and also for the reason that the said promotion was given by the Project Officer, who is not competent to give such promotion. The petitioner also contends that only Vice Chairman & Managing Director was conferred with such powers. Be that as it may. The 1st respondent in the counter stated that such promotion of the 2nd respondent is not contrary to law for the reason that the powers of the Board were delegated to the then Project Officers vide Standing Order No.VII, dated 01.12.1975, and that in view of the basic scales of pay of the posts of Junior & Senior Stenographers, the Project Officer was competent by then to give such promotion to the 2nd respondent. Further, according to the petitioner when the above irregularity was noticed, the then Vice Chairman & Managing Director, while working, during his previous deputation term in the year 1999, as Chief General Manager of the Corporation, called for the promotion file and personal file of the 2nd respondent and proposed to revert him to lower post and re-fix his pay and allowances and his seniority with reference to Rules; nevertheless, the then Vice Chairman & Managing Director had not initiated any action as proposed by the then Chief Manager of the Corporation and regularised the 2nd respondent's irregular promotion and ratified the action of the Project Officer, Warangal, in irregularly promoting the 2nd respondent from the post of Junior Stenographer to the post of Senior Stenographer. Thus, even according to the petitioner, the irregularity, if any,

in the promotion of the 2nd respondent from the post of Junior Stenographer to the post of Senior Stenographer was ratified by the superior authority. In fact, the counter of the 1st respondent reflects that in the year 1998, notices were issued to all the persons promoted to the post of Senior Stenographer to show cause as to why their date of promotion as Senior Stenographer should not be revised and that such individuals submitted their replies in the year 1999 and that the Vice Chairman & Managing Director having considered the cases of all such individuals held, by his orders of the year 2000, that the promotions affected during the past years in the category of Senior Stenographer were found to be in order for the following among other reasons: 'As per rules of the Corporation, no experience is prescribed to the post of Senior Stenographer in Direct Recruitment. Certain internal candidates including the 2nd respondent were considered for promotion as Senior Stenographer, after fulfilling the prescribed requisite qualification to the post of Senior Stenographer in direct recruitment i.e. shorthand and typewriting higher grade with Graduation. Further, none of the employees had raised any objection/ dispute on the promotion of the 2nd respondent as Senior Stenographer even subsequently also.' The said order was not challenged and became final. Thus, the matter has attained finality in the year 2000. Therefore, the petitioner cannot be heard to now say in the year 2007-08 that the promotion of the 2nd respondent as Senior Stenographer is irregular and, therefore, all his subsequent promotions are also irregular and hence, the 2nd respondent is a junior to the petitioner in service. Therefore, there is no need to now examine the correctness of the promotion of the 2nd respondent as Senior Stenographer with effect from 17.07.1980. It is necessary to recall that the petitioner joined service as senior stenographer, on 08.07.1981, and, therefore, he was not in service by the date 17.07.1980, the date of promotion of the 2nd respondent as senior stenographer. When it is possible to hold that the said promotion of the 2nd respondent to the said

post of Senior Stenographer is just and valid, his further promotions as Personal Assistant with effect from 26.07.1990 and as Assistant Personnel Officer with effect from 06.10.2007 cannot be permitted to be challenged on the sole ground that his earlier promotion as Senior Stenographer is unjust and illegal. It is to be next noted that the petitioner and the 2nd respondent were together promoted to the next category of Personal Assistant, vide order, dated 25.07.1990. The seniority list of Personal Assistants as on 31.12.1993 was communicated to the individuals concerned by proceedings dated 19.09.1994. In the said seniority list, the 2nd respondent was placed at S.No.7 whereas the petitioner was placed at S.No.8. The seniority list of Personal Assistants as on 30.06.2001 was also communicated to the individuals concerned, on 31.07.2001; in the said seniority list, the 2nd respondent was placed at S.no.6 whereas the petitioner was placed at S.no.7. The petitioner did not challenge any of the said seniority lists. Hence, the petitioner is now estopped from contending that he is a senior in service to the 2nd respondent and that his name should have appeared above the name of the 2nd respondent in the panel of the candidates under consideration for promotion to the post of Assistant Personnel Officer. The first issue is accordingly answered.

10. Now it is necessary to deal with the next aspect viz., legality, fairness and justness in the matter of promotion of the 2nd respondent in preference to the petitioner as Assistant Personnel Officer. It is undisputed that a vacancy in the category of Assistant Personnel Officer arose on 31.08.2007 consequent upon the retirement of an employee holding the said post. It is also undisputed that there were no eligible candidates available from the feeder categories of Personnel Secretary to the Managing Director and Senior Accountant at the relevant time and that however; there were eligible candidates from the feeder categories of Personal Assistants and Special Assistants. Therefore, according to the 1st respondent, as per the seniority

and the judgment of this Court, the following four individuals including the petitioner and the 2nd respondent were empanelled for consideration for promotion to the said post.

1. Sri N. Mukesh, Personal Assistant (2nd respondent)
2. Smt. Ch. Subba Lakshmi, Special Assistant
3. Sri B.D. Nageswara Rao, Personal Assistant (petitioner)
4. Sri W. Krishna Murthy, Special Assistant.

The promotional post is a selection post. The Internal Promotion Committee met, on 01.10.2007. According to the 1st respondent, the said committee after duly considering various aspects and according to the selection guidelines & gradation of marks to be awarded for each year on confidential reports, agenda, panel information and ACPs, made the necessary assessment of the eligibility of each of the candidates and awarded 14 marks to the 2nd respondent and 13 marks to the petitioner herein and prepared a panel for selection and that, therefore, the 1st respondent, who is the appointing authority, duly appointed the 2nd respondent, who was placed at no.1 position in the approved panel for promotion as Assistant Personnel Officer and duly appointed him to the said post and that accordingly the 2nd respondent joined duty as Assistant Personnel Officer, on 08.10.2007. However, not being satisfied with the selection process and questioning the correctness of the evaluation of the eligibility of the candidates for promotion and the selection made by the promotion committee, the petitioner admittedly submitted a detailed representation, dated 24.10.2007, to the 1st respondent requesting to examine the whole matter and do justice by promoting him as Assistant Personnel Officer by considering his qualifications and service in the organisation. Since his said representation was rejected by the 1st respondent by the impugned proceedings, dated 28.11.2007, the petitioner now questioned the said proceedings also in this writ petition.

10.1 In this setting of facts, it is now to be examined as to whether any injustice has been done to the petitioner and if so, whether or not the

petitioner made out valid and sufficient grounds to grant him any relief to remedy the injustice complained of. A perusal of the material record would show that the Internal Promotion Committee awarded total marks viz., 14 & 13 respectively to the 2nd respondent and the petitioner. Except the said total marks, the marks allotted under each eligible criterion are not disclosed before this Court. It is simply stated that ACRs for five preceding years, that is, of the years 2002-03 to 2006-07 and other information along with agenda were placed before the said committee and that the said committee after going through the guidelines in vogue and the gradation of marks to be awarded for each year of confidential reports, agenda, panel information and ACRs, has awarded the marks to the empanelled individuals. The marks awarded for each year of confidential reports are also not disclosed before this Court. In this backdrop, the grievances of the petitioner which are as follows need emphasis.

As per the guidelines given to the Internal Promotion Committee, the Internal Promotion Committee is required to consider the confidential reports for preceding five years of eligible candidates who are under consideration for promotion. The petitioner's performance was rated as 'excellent' during the years 2002-03, 2003-04, 2004-05 and 2005-06 except in the year 2006-07 during which the performance was recorded as 'average' without valid grounds. The said remark was entered deliberately due to a mischief played by the reporting officer just to favour the 2nd respondent who was working as Personal Assistant to the Vice Chairman & Managing Director. In the entire service of the petitioner, according to his belief, his performance was rated in the ACR as 'excellent'. All the superior officers under whom the petitioner worked recorded in the ACRs that his performance was 'excellent'. The

guidelines say that the evaluation of the confidential report should be fair, just and non-discriminatory and that the Internal Promotion Committee should not be guided merely by overall grading, if any, that is recorded in the confidential reports but it should make its own assessment on the basis of confidential reports as sometimes it is noticed that the overall grading in a confidential report may be inconsistent with the grading under various parameters and attributes. There should be overall consistency in the performance rated in the confidential reports. The Internal Promotion Committee shall also consider as to whether or not any punishments were imposed against the candidates being considered for promotion or whether any such candidates has incurred the displeasure of the superior officer/s and whether any such instances were reflected in the confidential reports. The Internal Promotion Committee has not gone into and considered various factors and merely considered the overall grading recorded by the officers concerned and failed to exercise its wisdom in a judicious manner while selecting the best candidate for promotion. The Internal Promotion Committee consists of Vice Chairman & Managing Director as the Chairman and the Chief General Manager and a counterpart in the Forest Department, who is an IFS officer.

Thus, the ACRs of the petitioner were consistently 'excellent' except during the year 2006-07, which is the last year. By giving one mark more to the 2nd respondent, the petitioner was denied promotion. At the relevant time, the 2nd respondent was working as Personal Assistant to the Vice Chairman & Managing Director, who was also the Chairman of the Internal Promotion Committee. Though it was necessary, in the facts and circumstances of the

case, to show that the Internal Promotion Committee acted in a just and fair manner in selecting and enlisting the selected candidates for promotion, the minutes of the said Committee and the marks assigned for ratings in the ACRs and the other parameters for grading and assigning marks under each parameter or criterion are not disclosed and only the total marks awarded to each individual under consideration for promotion were disclosed. Even the ratings in the confidential reports of the 2nd respondent during the relevant period from 2002-03 to 2006-07 are not disclosed to this Court. Therefore, the petitioner was fully justified in making a request to the 1st respondent to examine the whole matter and do justice to him. In this setting of facts, the 1st respondent, while rejecting the representation of the petitioner, ought to have passed a detailed order referring to various aspects disclosing the objective manner in which the Internal Promotion Committee dealt with the issue. However, the 1st respondent passed a cryptic order which reads as under:

‘...The representation of Sri B.D. Nageswara Rao, P.A., has been examined with reference to the records in all its entirety and it is informed as follows:

The post of Assistant Personnel Officer is a Selection Post as per rules. There is only one (1) post of Assistant Personnel Officer, as per the sanctioned strength. The Agenda and Panel information for the post of Assistant Personnel Officer were prepared as per the service record of each eligible individual and rules. The Agenda and Panel information together with the Confidential Reports and Rules governing the Selection Posts were placed before the Internal Promotion Committee of A.P.F.D.C on 01.10.2007 for recommending the candidate(s) to consider promotion to the post of Assistant Personnel Officer. The Internal Promotion Committee, after going through the record, has recommended the candidate, based on merits, to consider promotion. Accordingly, as recommended by the Internal Promotion Committee, the candidate has been promoted as Asst. Personnel Officer and he has joined on 08.10.2007.

In view of the above and since the present representation of Sri B.D. Nageswara Rao, P.A., does not necessitate the intervention of this office, his representation is hereby rejected.’

The above said order does not reflect as to on what basis the competence and merit of the candidates are adjudged by the Internal Promotion Committee and on what criteria the 2nd respondent was found more suitable than the petitioner for the post of Assistant Personnel Officer. The above said order just endorsing the selection made by the Internal Promotion Committee without assigning any reasons for accepting the selection made by the Internal Promotion Committee is unsustainable, in the facts and circumstances of the case. In that view of the matter, this Court is of the considered view that the petitioner could make out that in his case there is something more than that meets the eye and that, therefore, the rejection order, which is bereft of reasons much less valid reasons, is liable to be set aside and that the matter requires a re-examination in an objective manner by the Vice Chairman & Managing Director, that is, the 1st respondent herein in order to remedy the injustice, if any, done to the petitioner.

11. Before parting, it is necessary to refer to the following observations and findings in the decision in ***Commissioner, Karnataka Housing Board v. C.Muddaiah***¹.

The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where *ex facie* injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged.

¹¹ (2007) 7 SCC 689

12. Viewed thus, this Court finds that the writ petition can be partly allowed granting the following relief.

13. In the result, the Writ Petition is allowed in part. Accordingly, the order, dated 28.11.2007, of the 1st respondent is set aside with a direction to the said respondent to re-examine objectively the representation of the petitioner, dated 24.10.2007, with reference to the records in entirety and pass appropriate reasoned orders within fifteen (15) days from the date of receipt of a copy of this order. It is made clear that in case it is found that even if a semblance of injustice has been done to the petitioner, the 1st respondent shall grant the petitioner the necessary and appropriate relief as per his entitlement and eligibility. The 1st respondent may also consider granting of compensatory special grade increments with attendant monetary benefits or some such relief to the petitioner if granting of promotion retrospectively may not be permissible.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

01.06.2017
Vjl