THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.31977 of 2016

ORDER: (Per Justice Sanjay Kumar)

The petitioner is the applicant in O.A.No.1155 of 2016 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. The said O.A. was dismissed subject to certain observations vide order dated 28.03.2016. The prayer of the petitioner in the said O.A. was to consider his case for promotion to the cadre of Deputy Commercial Tax Officers in the existing vacancies in accordance with the seniority in the Cadre of Assistant Commercial Tax Officers, despite the pendency of disciplinary proceedings initiated against him vide G.O.Rt.No.369 dated 04.05.2015. The Tribunal took note of the fact that the mere pendency of disciplinary proceedings would not have the effect of disentitling the petitioner to be considered for promotion in the light of the law laid down by the Supreme Court in New Bank of India v. N.P. Sehgal[1]. However, having stated so, the Tribunal observed as under:

> "That does not mean that the applicant's case for promotion has to be considered, by keeping the disciplinary proceedings aside and without taking note of the pending disciplinary proceedings."

The Tribunal concluded by stating that if the petitioner was otherwise fit for promotion, the authorities were at liberty to consider his case for promotion in spite of the pendency of disciplinary proceedings.

Aggrieved by the observation made by the Tribunal set out supra, the petitioner is before this Court.

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[1] (1991) 2 SCC 220

The Commissioner of Commercial Taxes, Andhra Pradesh, filed a counter affidavit stating that the case of the petitioner was considered for promotion to the post of Deputy Commercial Tax Officer during the panel year 2015-16 but it was deferred owing to the pendency of charges against him.

Learned Government Pleader would state that the case of the petitioner would again be considered for the panel year 2016-2017.

Sri V. Jagapathi, learned counsel for the petitioner, would contend that the manner in which the observation was made by the Tribunal, as set out supra, may have a negative impact upon the authorities and the Departmental Promotion Committee which would consider the case of the petitioner for promotion.

We find merit in this submission as the negative phraseology used by the Tribunal may send out a wrong signal.

We accordingly dispose of the writ petition directing the authorities to consider the candidature of the petitioner for promotion to the post of Deputy Commercial Tax Officer strictly in accordance with the principles laid down by the Supreme Court in N.P.Sehgal[1] and as per relevant rules, notwithstanding the pendency of disciplinary proceedings against him.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

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N. BALAYOGI, J

19th April, 2017
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