

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

WRIT PETITION NO.38863 OF 2015

O R D E R

(Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the applicant in O.A.No.2919 of 2015 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. His prayer in the said O.A. was to declare the proceedings dated 23.03.2015 issued by the Additional Director General of Police, Telangana State Special Police, Hyderabad, as illegal and to promote him as an Assistant Reserve Sub-Inspector on par with his juniors. By order dated 30.09.2015, the Tribunal dismissed the O.A.

The petitioner was a Head Constable in the Andhra Pradesh Special Police at Nalgonda. He was implicated in a criminal case registered under F.I.R.No.66 of 2013 on the file of Narkeptally Police Station, Nalgonda District. In connection therewith, he was placed under suspension and departmental proceedings were also set in motion against him. The criminal proceedings culminated in Sessions Case No.422 of 2013 on the file of the learned Assistant Sessions Judge, Nalgonda, and by judgment dated 13.03.2014, the Court acquitted the petitioner. However, in the departmental proceedings, he was visited with the minor penalty of postponing of his increments for one year without cumulative effect under order dated 19.04.2014. Thereunder, the period of suspension undergone by him was also directed to be treated as 'not on duty'. Aggrieved thereby, the petitioner filed an appeal before the Deputy Inspector General of Police, Telangana State Special Police Battalions, Hyderabad. By order dated 28.10.2014, the Deputy Inspector General of Police

allowed the petitioner's appeal and set aside the punishment imposed upon him. The period of suspension undergone by him was also directed to be treated as 'on duty'. In the meanwhile, as disciplinary proceedings were pending against the petitioner, his candidature was not taken into consideration at the time promotions were effected from the category of Head Constable to the posts of Assistant Reserve Sub-Inspectors. He therefore filed a representation before the Commandant, 12th Battalion, Telangana State Special Police, Nalgonda, which was rejected under proceedings dated 23.03.2015 of the Inspector General of Police, Telangana State Special Police Battalions, Hyderabad. Challenging the said proceedings, the petitioner approached the Tribunal.

Perusal of the order passed by the Tribunal reflects that the Tribunal was of the opinion that the acquittal of the petitioner in the criminal case was due to the fact that the witnesses turned hostile and as he was not exonerated of the criminal charge but was only acquitted on the benefit of doubt, he was not entitled to any relief as he was not honourably acquitted.

The guidelines relating to the eligibility for promotion of Head Constables to the posts of Assistant Sub-Inspectors are laid down in G.O.Ms.No.85, Home (Police.D) Department, dated 28.04.1997. In terms of these guidelines, the following conditions have to be satisfied for a Head Constable to aspire for promotion as an Assistant Reserve Sub-Inspector.

- “(i) He should be an approved probationer;
- (ii) He should have completed 3 years of regular services in APSP as on 1st January of the year in which the selection is made.

- (iii) He should have a good record of service. He should not be undergoing currency of a major punishment or should not have been awarded even a single major punishment or three or more minor punishments during the previous 2 years.
- (iv) He should also not be facing an oral enquiry for any delinquency, or trial or investigation in a criminal case, or a trial before the Tribunal for disciplinary proceedings.
- (v) He should not be under suspension.”

In terms of the aforestated conditions, it is clear that the petitioner does not fall within the ambit of clause (iii) as he was only visited with a minor punishment which was thereafter set aside in appeal. He was no doubt placed under suspension for a period of 170 days and during that period, clause (v) would apply to his eligibility to be considered for promotion. However, once the appellate authority set aside the punishment imposed upon the petitioner and also directed that his period of suspension should be treated as ‘on duty’ for all purposes, the bar under clause (v) supra stood wiped out. Significantly, the guidelines do not speak of either conviction or acquittal in a criminal case but only place a bar on eligibility of the candidate during the trial or investigation of such a criminal case.

That being so, this Court is at a loss to understand as to how the Tribunal attached so much importance to the acquittal of the petitioner in the criminal case. The said aspect had no relevance whatsoever and therefore the issue of the petitioner being honourably acquitted or being acquitted on the ground of benefit of doubt had no role to play insofar as his eligibility to be considered for promotion is concerned.

Given the totality of the aforestated facts, it is clear that the petitioner was eligible to be considered for promotion as an Assistant Reserve Sub-Inspector after the punishment was set aside by the appellate authority. His representation was however rejected by the Inspector General of Police on the understanding that the punishment imposed upon him was set aside on grounds of mercy. It is basing upon this understanding drawn from Circular Memo dated 11.08.2011 that the Inspector General of Police rejected the petitioner's representation for notional promotion as an Assistant Reserve Sub-Inspector on par with his juniors.

The Circular Memo dated 11.08.2011 is not even placed on record. The appellate order passed by the Deputy Inspector General of Police, Telangana State Special Police Battalions, Hyderabad, however does not indicate that the punishment imposed upon the petitioner was set aside on the ground of mercy. In fact, the said order does not even mention the word 'mercy' anywhere. Reliance on the Circular Memo dated 11.08.2011, which seems to have no relevance whatsoever, therefore cannot be taken to be a valid ground for rejection of the petitioner's representation.

In that view of the matter, the rejection of the petitioner's representation by the Inspector General of Police, Telangana State Special Police Battalions, Hyderabad, under 'Speaking Order' dated 23.03.2015 is set aside. The respondents are directed to re-consider the petitioner's representation for notional promotion on par with his juniors in the light of the observations made supra. This exercise shall be completed expeditiously and in any event, not later than six weeks from the date of receipt of a copy of this order.

The writ petition is allowed to the extent indicated above.

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

SANJAY KUMAR, J

ANIS, J

14th FEBRUARY, 2017

PGS/MSNR

