

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

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

and

THE HON'BLE SRI JUSTICE M. GANGA RAO

Writ Petition No.42958 of 2017

20-12-2017

Between:

N. Babu Rao, S/o Prasad Rao, 58 years, Prohibition &
Excise Inspector, Guntur, Guntur District

... Petitioner

Vs.

Commissioner of Prohibition & Excise, State of
Andhra Pradesh, Vijayawada, Krishna District and
4 others

.. Respondents

For Petitioner : Mrs. P.V. Krishnaiah

For Respondents : G.P. for Services-I (A.P.)

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE M. GANGA RAO

Writ Petition No.42958 of 2017

ORDER: *(V. Ramasubramanian, J)*

Aggrieved by the dismissal of his Original Application challenging a show cause notice for revision of seniority list, the petitioner has come up with the above writ petition.

2. Heard Mr. P.V. Krishnaiah, learned counsel for the petitioner. Learned Government Pleader for Services (A.P.) takes notice for respondents 1 to 3 and 5. Mr. M. Sudheer Kumar, learned counsel takes notice for the 4th respondent.

3. The 4th respondent filed an appeal, to the Commissioner of Prohibition & Excise, against the seniority list issued by the Deputy Commissioner. The said appeal was allowed by an order dated 13-02-2013 and a direction was issued to the Deputy Commissioner to place the 4th respondent herein at the appropriate place in the seniority list of Prohibition and Excise Sub-Inspectors issued on 24-08-2012, above his juniors in the feeder category. This was on the ground that the seniority in the cadre of Junior Assistant was revised and finalized by the competent authorities. A direction was also issued in the Appellate Authority's order to the Deputy Commissioner to issue show cause notice under Rule 24 of the Andhra Pradesh State and Subordinate Service Rules, 1996.

4. Accordingly, a notice was issued to the writ petitioner herein. The show cause notice was challenged by the petitioner before the Andhra Pradesh Administrative Tribunal in O.A.No.3175 of 2013 on the ground that the appeal filed by the 4th respondent ought not to have been allowed without notice to the petitioner. The Tribunal dismissed the Original Application on the ground that the authority, who issued the show cause notice, had jurisdiction to do so and that therefore, it was not ultra vires Rules 24, 25 and 26 of the Andhra Pradesh State and Subordinate Service Rules, 1996. Aggrieved by the said order, the petitioner is before us.

5. On the first principle, the Tribunal was right in holding that when there is no challenge to the authority of the person who issued the show cause notice, a show cause notice cannot be interfered with. But in the case on hand, the show cause notice was issued for the revision of seniority, pursuant to a direction issued by the Appellate Authority in an order passed by the Appellate Authority on the appeal filed by the 4th respondent herein. In the appeal, there is a reference to the petitioner herein by name. Therefore, if a show cause notice is issued pursuant to a direction issued by an Appellate Authority with a direction to place the person, who was on appeal, with particular reference to some individuals, those individuals have a right to be heard even before the Appellate Authority.

6. The fact that they are given an opportunity by the first original authority, is no ground to say that they are not entitled to an opportunity before the Appellate Authority. As a matter of fact, any objection now raised by the petitioner to the show cause notice, cannot be independently dealt with by the original authority, when there is a direction from the appellate authority. It is for this reason that the appellate authority also ought to have given an opportunity to the petitioner herein.

7. In fact the petitioner has challenged before the Tribunal, the vacuum in Rules 24, 25, and 26 of the Andhra Pradesh State and Subordinate Service Rules, 1996. But principles of natural justice will always have to be read into Rules 24, 25 and 26 and all other Rules where at the instance of one person, the rights of another person are sought to be infringed. Therefore, it is not necessary to state the obvious that the Rules 24 to 26 have in built in them, the requirement to follow the principles of natural justice.

8. In view of the above, the writ petition is allowed, the order of the Tribunal, the order of the Appellate Authority and the show cause notice are set aside. It will be open to the Appellate Authority to issue a notice to the petitioner, hear both the parties and take a final decision. Once this is done, there is no necessity for the Commissioner to issue a fresh show cause notice. The matter may be finalized by the Commissioner within a period of

eight (8) weeks, since the 4th respondent is due to retire by the end of March, 2018. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

Date: 20-12-2017

Ksn

