

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT PETITION No.1830 of 2018

ORAL ORDER: (Per Suresh Kumar Kait, J)

Vide the present petition, petitioner has challenged order dated 19.12.2017 passed by the Andhra Pradesh Administrative Tribunal in O.A.No.3388 of 2017, whereby the learned Tribunal has dismissed the application filed by the petitioner under Section 19 of the Administrative Tribunals Act, by recording that petitioner filed the O.A., praying to quash/set aside the impugned Government Orders, as said orders are promotions to the next higher cadre of Chief Engineer, R&B from the cadre of Superintending Engineer.

The Tribunal further recorded that in-charge arrangements contemplated by way of impugned order therein, as rightly contended by the learned Government Pleader fairly, does not amount to promotion of the unofficial respondents to the post of Chief Engineer (R&B).

The Tribunal relied upon a judgment of the Supreme Court in the case of *Ramakant Shripad Sinal v. Union of India*¹, wherein it was held as under:

“The distinction between a situation where a Government servant is promoted to a higher post and one where he is merely asked to discharge the duties of the higher post is too clear to require any reiteration. Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher post; but gets only that in service parlance is called a "charge allowance". Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement.”

“in charge arrangement is not a recognition of or is necessarily based on seniority and that, therefore, no rights, equities or expectations could be built upon it.”

¹ AIR 1991 SC 1145

The Tribunal further held that the 1st respondent therein placed the unofficial respondents therein who are holding the substantive posts of Superintending Engineers as in-charge Chief Engineers (R&B) on their own scale of pay, with a condition that placing them as in charge Chief Engineers (R&B) do not confer any right or claim for the post of Chief Engineer (R&B) or to claim for any seniority or promotion, in future and that the case before it is squarely covered by the judgment of the Supreme Court referred above.

Learned counsel for the petitioner has drawn our attention to the following averments made in the O.A., filed before the Tribunal:

“The Memorandum No.1552/Services. D/76-D, dated 19.08.1976 which deals with G.O.Ms.No.770, Gen.Admn. (Servcies-D) Dept., dated 15.11.1975 clarifies that in the case of candidates other than SC & ST to be appointed by promotion or transfer has to be made on the basis on comparative merit, seniority being considered only where the merit and ability of the competing are approximately equal. In the case of SC/ST candidates however, the criteria for selection will be different. If the turn of the SC/ST candidates for promotion has come on the basis of seniority list, such SC/ST candidate should be promoted or appointed so long as such candidate is considered fit to hold the post for which he is considered for promotion or appointment. In other words, the SC/ST candidates do not have to compete with others on the basis of comparative merit and no SC/ST candidate who is fit for appointment can be suspended by any junior on the grounds that the latter possess super merit and ability.”

“Thus being the ground reality the then Engineer-in-Chief vide letter No.3939/Ser-1(3)/2015, dated 23.03.2017 has submitted the panel of candidates for the promotion to the post of Chief Engineers to the 1st respondent. The name of the applicant is figured at Sl.No.3 for the panel year 2008-09. However, the unofficial respondents junior to the applicant were promoted, by ignoring the applicant.”

“Because promoting the private respondents ignoring the applicant as in-charge Chief Engineer who is senior to the private respondents in granting promotion amounts to patent arbitrariness, mala fide, illegal and violative of Article 14 of the Constitution of India.”

We note, the petitioner filed the O.A., before the Tribunal to quash and set aside Government Orders and to direct the respondents to grant promotion to her to the post of Chief Engineer on regular basis strictly as per the rules in vogue. However, in the prayer, petitioner failed to make a prayer before the Tribunal that she, being senior to 3 candidates among total 10 candidates, was not given ad hoc promotion, in terms of the rules in vogue.

In that view of the matter, we hereby set aside the order dated 19.12.2017 passed by the learned Tribunal in O.A.No.3388 of 2017, by giving liberty to the petitioner to get the O.A., revived. Thereupon, the learned Tribunal shall permit the petitioner to amend the prayer and, thereafter, shall adjudicate the O.A., on merits, by considering the issues raised by the petitioner. Since it is second round of litigation, we expect the learned Tribunal to dispose of the O.A., as expeditiously as possible, but not later than three months from the date of receipt of this order.

The petition is accordingly disposed of. No order as to costs.

Miscellaneous petitions if any pending in the petition shall stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

January 31, 2018
MRR