

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.8766 & 8768 OF 2018

Date: 12.06.2018

WP NO. 8766 OF 2018 :

Between:

K. Rajani D/o. K.Veera Raghavulu, Aged about 39 years,
Working as Senior Assistant, O/o Deputy Transport
Officer & Secretary, RTA, Kandi, Sangareddy District,
R/o. Flat No.106, Block-1, Prajay City Apartments,
Miyapur, Ranga Reddy district.

.....Petitioner

and

Transport Commissioner, Transport Bhavan,
State of Telangana, Khairatabad, Hyderabad and another.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOS.8766 & 8768 OF 2018

COMMON ORDER:

Heard Sri P.V.S.S.S.Rama Rao, learned counsel for petitioners and learned Government Pleader for respondents in both writ petitions.

2. In both writ petitions, petitioners are praying to direct grant of promotion as Administrative Officers without reference to pending disciplinary proceedings. As the issue in both writ petitions is same, these two writ petitions are disposed of by this common order.

3. Petitioners in these two writ petitions are presently working as Senior Assistants and aspiring for promotion to the post of Administrative Officer in Zone-VI in the State of Telangana. These writ petitions are filed contending that there are vacancies in the Administrative Officer cadre and as per the seniority and eligibility, they are in the immediate reckoning for promotion, but they are not being considered on the ground of pending disciplinary proceedings. Petitioners, therefore, pray for consideration for promotion without reference to pending disciplinary proceedings.

4. Petitioner in WP No.8766 of 2018 was served with charge memo dated 10.01.2018 alleging that she did not collect second vehicle tax from the individual owning more than one vehicle to a tune of Rs.27,732/-, thereby causing loss to the Government revenue for the period from 26.06.2014 to 16.02.2015. Petitioner submitted her explanation denying the allegation. Matter is standing at that stage.

5. Petitioner in W.P.No.8768 of 2018 was served with charge memo dated 10.01.2018 alleging that he has not collected second vehicle tax from the individual owning more than one vehicle to a tune of Rs.57,537/-, thereby causing loss to the Government revenue for the period from 07.07.2014 to 24.01.2015. Petitioner submitted his explanation denying the allegation. Matter is standing at that stage.

6. In the counter-affidavit filed in W.P.No.8768 of 2018, deposed by the District Transport Officer & Secretary, Regional Transport Authority, Mahabubnagar, it is averred that team of Central Server, Office of Transport Commissioner submitted report on 27.05.2017 stating that certain Officials have not collected difference of life tax from the individual owning more than one vehicle. Based on the said report, 10 employees were placed under suspension. The team of Central Server submitted another report on 29.05.2017. Based on the said report, show-cause notices were issued to 82 employees including the petitioner. The matter was reported to the Government. Taking serious note, Government directed to initiate disciplinary action against erring officials. Accordingly, charges were framed against 77 employees including petitioner. It was deposed that there are four vacancies of Administrative Officers in Zone-VI and that in seniority list dated 01.09.2016, petitioner stands at Sl.No.14. However, it is asserted that in view of pending disciplinary proceedings, as per the policy of the Government, as notified vide G.O.Ms.No.257 General Administration (Ser.C) Department, dated 10.06.1999, petitioner cannot be considered for promotion.

7. The short issue for consideration is whether pending disciplinary proceedings, petitioners are entitled to be considered for promotion.

8. In the long line of precedent decisions, the Hon'ble Supreme Court broadly dealt with three different contingencies and for convenience they can be put into three categories. In the first category of cases, Supreme Court considered the issue when entitlement of an employee for promotion can be deferred. In the second category of cases, Supreme Court was considering the situation when entitlement of an employee for promotion can be deferred even though a formal charge sheet was not issued. In the third category of cases, Supreme Court dealt with situations where though charge sheet was issued there was inordinate delay in initiation/conclusion of disciplinary proceeding and the course that should be adopted by the courts whenever such issue arises for consideration. Cases on hand fall into first category.

9. The claim of employees for promotion pending disciplinary proceedings/contemplated disciplinary proceedings/pending investigation into the crimes/pending criminal cases falling into above three categories was considered elaborately in W.P.No.43182 of 2016 and batch in the judgment dated 17.04.2017. The relevant paragraphs read as under:

"10. CATEGORY I:

10.1.1. In the decisions of Supreme Court in **C.O.Arumugum and others v. State of Tamilnadu and others [1991 Supp (2) SCC 199]; New Bank of India v. N.P.Sehgar and another [(1991) 2 SCC 220]**, in the main

judgment in **Union of India and others v. K.V.Janakiraman and others** [(1991) 4 SCC 109]; **Union of India and others v. Dr.Sudha Salhan (Smt)** [(1998) 3 SCC 394]; **Coal India Limited and others v. Saroj Kumar Mishra** [(2007) 9 SCC 625], **Union of India and others v. Sangram Keshari Nayak** [(2007) 6 SCC 704]; and **Union of India and others v. Anil Kumar Sarkar** [(2013) 4 SCC 161], Supreme Court held that disciplinary proceedings are stated to be pending only when charge memo/ charge sheet is drawn / issued and only then, ordinarily, an employee can be ignored for promotion/employer can adopt sealed cover procedure.

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12.3. According to G.O.Ms.No.424, dated 25.5.1976, Officers falling into third category should be deferred for promotion pending departmental enquiry/trial/ investigation. Most of the litigation is generated in cases falling into third category.

12.4. On further review of this policy and subsequent orders of the Government, Government notified its fresh policy vide G.O.Ms.No.257 dated 10.06.1999.

12.9. As seen from the two Government orders, policy of the Government is clear and unambiguous; that the Government does not intend to grant promotion even on *ad hoc* basis if the allegations leveled against the employee/officer are grave and that such officer/employee is facing enquiry/trial/investigation.

13. In the several decisions referred to above, Supreme Court was interpreting the policy document of the employers on the scope of consideration for promotion when disciplinary/criminal proceedings are pending (ordinarily employers adopt the 'sealed cover procedure'; in States of Andhra Pradesh and Telengana- result of the DPC recommendation is announced but adopt policy of deferment). The precedent decisions unequivocally hold that disciplinary proceedings or criminal proceedings are stated to be pending only when charge sheet is issued /

filed and then only promotion can be differed and pending investigation is not a ground to deny promotion when due.

14. It is settled principle of law that an employee has right for consideration for promotion, but has no right to ask promotion as a matter of course [**K Samantaray Vs National Insurance Company Limited - (2004) 9 SCC 286**]. One of the important parameters of public service is if an employee is facing disciplinary action/trial on his/her misdemeanor or misconduct-criminal/civil, he/she should not be granted promotion. It is not in public interest to grant promotion to an employee when on serious allegation enquiry / trial is pending against him. Thus, employee is entitled to be considered for promotion and in such consideration even if he is found fit, his promotion can be differed on the ground that disciplinary proceedings/ criminal proceedings are pending.”

10. In the cases on hand, disciplinary proceedings were already set in motion, charge memos were issued on 10.01.2018. The substance of the allegation is due to actions of petitioners, the State is subjected to huge financial loss. As the charge memos are not under challenge, no opinion is expressed on tenability of the allegation and only issue considered is whether pending disciplinary proceedings petitioners are entitled to be considered for promotion. Thus, as per the principles of law noted above and in view of policy of the Government, petitioners are not entitled for promotion pending disciplinary proceedings. Writ Petitions merit no consideration and accordingly, Writ Petitions are dismissed. Pending miscellaneous petitions shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

Date: 12.06.2018
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