

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 10437 of 2018

Date : 02.07.2018

Between:

D Srinivas Reddy, S/o Narsimha Reddy,
Aged about 50 years, Occ: Prohibition and Excise
Inspector, District Task Force, Yadadri Bhuvanagiri
District.

....Petitioner

And

State of Telangana, rep by its Principal Secretary,
Revenue, Prohibition and Excise Department,
Telangana Secretariat Buildings, Hyderabad
and another

....Respondents



The Court made the following:

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ORAL ORDER:

Petitioner is presently working as prohibition and excise inspector. He is aspiring for promotion as assistant prohibition and excise superintendent.

2. Heard learned counsel for petitioner and learned Assistant Government Pleader for Excise.

3. According to learned counsel for petitioner on the allegation of irregularities in conducting auction for wine shops for the excise lease period 2010-2012, crime was registered, and raid was conducted by Anti Corruption Bureau (ACB). After conducting investigation, ACB filed charge-sheet. CC No. 48 of 2013 wherein petitioner is accused No. 2 is pending on the file of The First Additional Special Judge for SPE and ACB Cases -cum-V- Additional Chief Judge, City Civil Court, Hyderabad. According to learned counsel, for no fault of him petitioner is falsely implicated. Petitioner filed criminal MP No. 151 of 2014 to discharge him from the case and same is pending consideration by the criminal court. While so, all the persons above petitioner in the seniority list of inspectors were already promoted and petitioner is the next senior most eligible for promotion. According to learned counsel there are vacancies in the higher cadre and steps are being taken to effect promotions but, petitioner apprehends that he is not likely to be considered for promotion since criminal case is pending. According to Learned counsel criminal case may take long time and that he is

likely to be discharged and therefore he cannot be ignored for promotion only because criminal case is pending.

4. Learned Assistant Government Pleader would submit that as petitioner is accused in criminal case, he cannot be considered for promotion as per the policy of the Government.

5. It is settled principle of law needs no reiteration that if disciplinary proceedings / criminal proceedings are pending after charge sheet is drawn / filed employee is not entitled to claim promotion.

6. 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.

7. Andhra Pradesh State and Subordinate Service Rules 1996 (for convenience referred to as 'General Rules') deal with general conditions of service of all Government employees. Rule 5 deals with procedure for promotion to selection posts and non-selection posts. According to this Rule, non-gazetted posts are not treated as selection posts. According to sub-rule (a) of Rule 5, all

first appointments to a State service and all promotions/ appointments by transfer in that service should be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal from the panel of candidates provided. In case of non-selection post, sub-rule (b) contemplates that it should be made in accordance with the seniority cum fitness.

8. Rule 6 deals with method of preparation of panels. The salient features of this provision are, panel of approved candidates as envisaged in Rule 5 (a) should be prepared by appointing authority/ authority empowered, in consultation with, the Departmental Promotion Committee if such posts are outside the purview of the Andhra Pradesh Public Service Commission (now Telangana State Public Service Commission), and the Screening Committee, in respect of the posts within the purview of Telangana State Public Service Commission. The appointment should be made from the panels so drawn. Where no consultation is required from the Public Service Commission, panel should be prepared ordinarily during the month of September every year on the basis of estimate of vacancies. The 1st September of the year shall be reckoned as qualifying date to determine the eligibility and such panel would lapse on 31st December of the succeeding year or when the next panel is prepared, whichever is earlier. The zone of consideration is confined to 1:3. For computation of vacancies, 1st September of the year to the 31st August of the succeeding year should be reckoned as the period.

9. It is appropriate to notice that Rules 5 and 6 of the A.P. State and Subordinate Service Rules, 1996 do not deal with the issue of consideration for promotion when disciplinary proceedings or criminal proceedings are pending. The administrative instructions/orders notified vide G.O.Ms.Nos.424 General Administration (Services.C) Department, dated 25.05.1976 and G.O.Ms.No.257 General Administration (Ser.C) Department, dated 10.06.1999 reflect the policy of the Government on consideration for promotion when disciplinary proceedings/ criminal proceedings are pending.

10. For the purpose of consideration for promotion, Government classified the Officers, who are facing enquiry, trial or investigation, into three categories. The three categories are as under:

(i) an officer with a clean record, the nature of charges/ allegations against whom relate to minor lapses having no bearing on his integrity or efficiency, which, even if held proved, would not stand in the way of his being promoted;

(ii) an officer whose record is such that he would not be promoted, irrespective of the allegations/charges under enquiry, trial or investigation; and

(iii) an officer whose record is such that he would have been promoted had he not been facing enquiry, trial or investigation, in respect of charges which, if held proved, would be sufficient to supersede him.

11. 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. 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. To the extent relevant to this case, G.O.Ms.No.257 read as under:

“(5)The Officers categorized as under item (iii) of G.O.Ms.No.424, G.A.(Ser.C) Dept, dt: 25-5-1976 as mentioned above only should be considered for adhoc promotion after completion of two years from the date of the Departmental Promotion Committee or Screening Committee Meeting in which their cases were considered for the first time.”

13. 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.

14. From the plethora of precedent decisions of the Supreme Court it is manifest that an employee facing criminal charge cannot be granted promotion. Admittedly, petitioner is accused in pending criminal case under the Prevention of Corruption Act. Merely, because petitioner has filed petition to discharge him and said petition is pending consideration of the criminal court is no ground to seek to draw exception and claim promotion. Thus, claim of petitioner is not valid in accordance with settled principle of law and policy of the government.

15. The writ petition fails and is accordingly dismissed.
Pending miscellaneous petitions are closed.

P NAVEEN RAO,J

DATE: 02-07-2018
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