

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO**

WRIT PETITION NO.12447 OF 2017

O R D E R

(Per Hon'ble Sri Justice Sanjay Kumar)

The Union of India and its officials, the respondents in O.A.No.021/01016/2015 filed this writ petition aggrieved by the order dated 08.07.2016 passed therein by the Central Administrative Tribunal, Hyderabad Bench (*hereinafter*, 'the Tribunal'), allowing the said O.A. Thereby, the Tribunal set aside the Office Memorandum dated 24.04.2015 issued by the Under Secretary to the Government, Department of Telecommunications (DoT), Ministry of Communications & IT, Government of India, and held the first respondent herein, the applicant in the O.A., eligible for grant of Non-Functional Upgradation (NFUG) in the Higher Administrative Grade (HAG) of Indian Telecom Service (ITS) Group 'A' with effect from 09.09.2014 and directed the authorities to grant him the said relief from that date, within a time frame.

By order dated 22.11.2017, this Court granted interim stay of the order passed by the Tribunal taking note of the absence of the first respondent/applicant, who was appearing as a party-in-person, though he was pursuing contempt proceedings before the Tribunal.

Heard the learned Assistant Solicitor General for India for the petitioners and the first respondent/applicant, appearing as a party-in-person.

The first respondent/applicant, while working as a General Manager in the Bharat Sanchar Nigam Limited (BSNL) at Nanded, was given the additional charge of the post of General Manager, BSNL, Latur. In the context of discharge of this additional function,

he was subjected to disciplinary proceedings which culminated in imposition of the penalty of reduction to a lower stage in the time scale of pay by two stages for a period of three years without cumulative effect and without adverse effect upon his pension. This order was passed by the DoT in 2011. The currency of his punishment admittedly came to an end on 09.09.2014.

By letters dated 26.12.2014, 16.01.2015 and 30.01.2015, the first respondent/applicant sought grant of NFUG in HAG on par with his batch-mates. However, by Office Memorandum dated 24.04.2015, the DoT informed the first respondent/applicant that his case was considered by the Departmental Screening Committee (DSC) at its meeting held on 27.08.2014 and he was found unfit for grant of NFUG in HAG of ITS Group 'A' with effect from 10.07.2014, in view of the penalty imposed on him, and that the recommendations of the DSC had been approved by the Minister of Communications & IT on behalf of the President of India and as such, the first respondent/applicant could not be granted NFUG in HAG of ITS Group 'A' with effect from 09.09.2014, i.e., upon expiry of the penalty imposed on him.

It appears that the DSC again met on 08.12.2015 and considered the representations made by the first respondent/applicant seeking grant of NFUG in HAG of ITS Group 'A'. However, he was again found unfit, though his case was held to be clear in so far as the vigilance angle was concerned. Significantly, the assessment made by the DSC for the years 2008-09 to 2013-14 reflects that his grading was 'very good' for 2008-09, 'outstanding' for 2009-10, 'very good' for 2010-11, 'outstanding' for 2011-12, 'not available' for 2012-13 and 'outstanding' for 2013-14. His vigilance

status was indicated as clear but his overall grading was: 'Unfit'. The remarks column indicated that no duty was assigned to him during 2012-13 and that was the reason why there was no ACR available for the said year. This Court is informed that the first respondent/applicant was finally granted NFUG in HAG of ITS Group 'A' only with effect from 01.04.2016, under order dated 18.04.2017 passed by the DoT, Ministry of Communications, Government of India.

The case of the petitioners, as reflected by the affidavit filed in support of the writ petition, is that once the DSC, which was constituted for that specific purpose, found the first respondent/applicant unfit for grant of NFUG in HAG of ITS Group 'A' after considering the entire record, it was not for the Tribunal to sit in appeal over the same. According to the petitioners, the least that is expected from an employee is to have an unblemished record for seeking promotion and as grant of NFUG in HAG of ITS Group 'A' is equivalent to a promotion, the first respondent/applicant could not claim it as a matter of right. The learned Assistant Solicitor for India vociferously reiterated these contentions.

Per contra, the first respondent/applicant, appearing as a party-in-person, would assert that once the currency of the punishment came to an end, it was not open to the authorities to continue to penalize him by denying him the grant of NFUG in HAG of ITS Group 'A'. He would point out that the Tribunal meticulously examined the record and only upon finding that the DSC had failed to note any valid or tenable reason for rejecting his case in its meeting held on 08.12.2015, the Tribunal granted him relief.

Perusal of the order under challenge reflects that the Tribunal found that the rejection of the case of the first respondent/applicant

by the DSC in its meeting held on 27.08.2014, for grant of NFUG in HAG of ITS Group 'A' with effect from 10.07.2014, was irreproachable as the penalty imposed upon him was still current. However, as regards the subsequent meeting of the DSC on 08.12.2015, the Tribunal called for the relevant record and examined the same. At that stage, representations dated 16/30.01.2015 of the first respondent/applicant were under consideration, whereby he reiterated his plea for grant of NFUG in HAG of ITS Group 'A' after expiry of the penalty imposed upon him. The Tribunal thereupon found that the DSC had assessed the character rolls of 81 officers and found 62 to be fit, 10 to be unfit, 7 cases were to be placed in a sealed cover while two cases were deferred. The name of the first respondent/applicant figured at Serial No.10 in the said proceedings of the DSC and, as already noted *supra*, his grading was either 'very good' or 'outstanding' for all the years in question, except 2012-13, for which year there was no ACR available as no duty had been assigned to him during that period. The Tribunal found that the DSC found him to be clear from the vigilance angle and his integrity was also not in doubt as such remarks were made in relation to others but not against him. It was on this basis that the Tribunal was persuaded to grant relief.

It is not in dispute that the penalty imposed upon the first respondent/applicant came to an end on 09.09.2014. Further, the penalty imposed upon him was without cumulative effect and without adverse impact on his pension. After expiry of this penalty, the question of the authorities holding that he did not have an unblemished record for consideration to be promoted would not arise. It may be noted that in para 7(i) of its Office Memorandum dated

24.04.2014, the Government of India stated that while there is no illegality in denying promotion during the currency of the penalty, denying promotion in such cases after the period of penalty is over would be violative of Article 20 of the Constitution. Therefore, as on 08.12.2015, when the DSC considered his case for grant of NFUG in HAG of ITS Group 'A', the expired minor penalty could not have been taken into consideration. The remarks otherwise recorded by the DSC on the said day were all in favour of the first respondent/applicant, but its final conclusion, surprisingly, was: 'Unfit'.

It is no doubt true that Courts would not sit in appeal over deliberations of Selection Committees but at the same time, that would not mean that such Committees are at liberty to act arbitrarily, capriciously or without application of mind. Any decision of a duly constituted Selection Committee must be transparent, aboveboard and adequately reasoned. When all the remarks noted by the DSC on 08.12.2015 were in favour of the first respondent/applicant, the final conclusion to the contrary necessarily had to be explained. However, no such reasons are found as to why the DSC, despite finding the first respondent/applicant to be eligible in all other respects, held him to be unfit. Such a conclusion, bereft of logic and reasoning, necessarily has to be categorized as an arbitrary and illegal decision.

We see no grounds to disagree with the well-reasoned order of the Tribunal holding to this effect. In consequence, the relief granted to the first respondent/applicant by the Tribunal also does not brook any interference.

The writ petition is therefore devoid of merit and is accordingly dismissed. Interim order dated 22.11.2017 shall stand vacated. As the time stipulated in the order under challenge has expired long

since, the petitioners shall give effect to the said order of the Tribunal within six weeks from the date of receipt of a copy of this order. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

29th MARCH, 2018

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