

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 21069 of 2018

Date : 9.7.2018

Between:

T S V N Thilleswar Rao S/o T Laxman Rao
49 years Assistant Director,
O/o Director of Municipal Administration,
A C Guards, Hyderabad

Petitioner

And

The State of Telangana
Rep by its Principal Secretary
M A & U D Department,
Secretariat, Hyderabad and another

Respondents

The Court made the following:



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ORAL ORDER:

Heard learned counsel for petitioner and learned Assistant Government Pleader for Services –III for respondents and with their consent the writ petition is taken up for hearing at the admission stage.

2. Petitioner is presently working as Assistant Director. Petitioner is seeking promotion as Municipal Commissioner Grade I without reference to pending crime. Alleging that he is not being considered for promotion on the ground that crime is pending, this writ petition is filed.

3. According to learned counsel for petitioner, petitioner is fully qualified and eligible for promotion. That petitioner was falsely implicated in Crime No. 8/RCT-HR/2015 dated 13.5.2017 under Sections 7 & 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988. There is no further progress after registration of crime. On the ground of pending investigation, petitioner is not considered for promotion and the same is illegal.

4. When the matter is taken up, learned Assistant Government Pleader produced copy of memo No. 6359/Vig.I (1)/2015 dated 4.7.2018 where-under on consideration of the request made by Anti Corruption Bureau, Government accorded sanction for prosecution.

5. In the facts noted above, whether petitioner is entitled to claim consideration for promotion without reference to pending crime?

6. In **A.Jalander Reddy Vs. State of Telangana**¹, this Court considered the claims of several petitioners in batch of writ petitions for promotion without reference to disciplinary proceedings/criminal proceedings. In the batch of cases, the disciplinary action/criminal proceedings are pending at various stages, such as, though charge memo

¹ 2017(4) ALD 538

was issued but delay in conclusion of disciplinary proceedings; crime is registered but investigation is not completed / but charge sheet is not filed; though final reports are filed by investigating agency but sanction for prosecution was not accorded; decision to take disciplinary action was taken instead of sanction for prosecution but no charge memo served.

7. Having regard to the various aspects of denial of promotion agitated in the batch of writ petitions, this Court reviewed the precedent decisions of Supreme Court dealing with the claims for promotion qua disciplinary/criminal proceedings; considered the scope of Rules 5 & 6 of Telangana State and Subordinate Service Rules, 1966 (Rules) and the policy of the Government as notified vide G.O.Ms.No.424 General Administration (Services.C) Department dated 25.5.1976 and G.O.Ms.No.257 General Administration (Ser.C) Department, dated 10.6.1999.

8. As observed by this Court in **Jalender Reddy**, Rules 5 and 6 of the Rules deal with promotions and preparation of panels for promotion. These rules are silent whether a person should be considered for promotion pending disciplinary action. Therefore, the policy notified by the Government has bearing on the claims.

9. As per G.O.Ms.No.424, three categories of Officers to be considered for promotion pending enquiry/trial/investigation. 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.

10. Revised orders were issued in G.O.Ms.No.257 of 1999. According to G.O.Ms.No.257, Officers categorized as under item (iii) of G.O.Ms.No.424 only should be considered for *ad hoc* promotion after completion of two years from the date of Departmental Promotion Committee or Screening Committee meeting in which their cases were considered for the first time and differed.

11. In other words, Officer falling into category (iii) can be considered for promotion on *ad hoc* basis only if he came up for consideration for promotion first time two years prior to such consideration before the DPC and disciplinary/criminal proceedings are not concluded. Further, such consideration is also subject to satisfaction of the competent authority that public interest is not affected if he is granted promotion. The claim of petitioner falls into category (iii) of G O Ms No. 424 dated 25.5.1976. As noted above, from the averments of the affidavit filed in support of writ petition, petitioner is coming up for consideration for promotion for the first time. Therefore, the exemption carved out in G.O.Ms.No.257 is also not attracted to the case of petitioner.

12. As noted by this Court in **Jalender Reddy**, the policy of the Government is clear and unambiguous; that the Government does not grant promotion even on *ad hoc* basis when the allegations levelled against the employee/officer are grave and that such employee/officer is facing enquiry/trial/investigation.

13. 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/investigation into criminal misconduct/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/investigation/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 in view of pending disciplinary proceedings/criminal proceedings.

14. On review of precedent decisions, this Court noticed that issues considered in the precedent decisions can be classified into three categories. In the first category of cases, issue considered by the Supreme Court was when entitlement of an employee 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 and 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. The present case falls into second category.

15. Dealing with second category of cases, rule position and the policy of the Government, this court observed as under:

“CATEGORY II:

55. Decisions in ***Civil Appeal Nos.51-55 of 1990 (as part of Union of India and others v. K.V.Janakiraman and others²), Delhi Development Authority v. H.C.Khurana³; Union of India v. Kewal Kumar⁴; Union of India and another v.***

² (1991)4 SCC 109

³ (1993) 3 SCC 196

⁴ (1993) 3 SCC 204

R.S.Sharma⁵; and Union of India v. Tejinder Singh⁶, fall into this category. In these decisions, a departure is made from the above broad principle. It is necessary and expedient to consider these decisions in little more detail, at the cost of repetition.

56. In **K.V.Janakiraman's** case (supra), appeals were preferred against the decision of Full Bench of Central Administrative Tribunal and the decision of Central Administrative Tribunal Benches. All appeals were clubbed and considered. There were three common questions involved in the batch of cases before the Supreme Court. One of the questions considered was, ***“What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee”.***

57. In **K.V.Janakiraman's** case (supra), after considering the decision of Full Bench of Central Administrative Tribunal on various clauses of O.M. on sealed cover procedure, Supreme Court considered orders passed by Benches of Central Administrative Tribunal in individual cases. It is appropriate to note the observations made by the Supreme Court in ***Civil Appeal Nos.51-55 of 1990.***

58. The facts of these appeals noted as in paragraphs 36 and 37 of the judgment would reveal that disciplinary proceedings as well as criminal prosecutions were launched against each of the employees for lodging false Leave Travel Concession claims and for using forged documents to support them. The employees were placed under suspension on 15.07.1983. They admitted guilt and pleaded revocation of their suspension. The amount of Rs 1600/- was deposited in October, 1983. On depositing the amount, suspension was revoked in November, 1983. A lenient view was taken and criminal prosecutions were dropped on 14.01.1985, but without prejudice to the departmental proceedings. Formal charge sheet was issued on 24.12.1987. While so, the Departmental Promotion Committee met in July, 1986. The DPC resorted to sealed cover procedure against these employees.

59. On challenge, Tribunal directed promotions to be given to the employees on the basis of the recommendations of the DPC

⁵ (2000) 4 SCC 394

⁶ (1991) 4 SCC 129

in July, 1986. Supreme Court found fault with the said direction. Supreme Court held that such mechanical view of the earlier decision of the Full Bench was erroneous.

16. Supreme Court observed as under:

“39. In view of the aforesaid peculiar facts of the present case, the DPC which met in July 1986 was justified in resorting to the sealed cover procedure, notwithstanding the fact that the charge-sheet in the departmental proceedings was issued in August/December, 1987. The Tribunal was, therefore, not justified in mechanically applying the decision of the Full Bench to the facts of the present case and also in directing all benefits to be given to the employees including payment of arrears of salary. We are of the view that even if the results in the sealed cover entitle the employees to promotion from the date their immediate juniors were promoted and they are, therefore, so promoted and given notional benefits of seniority etc., the employees in no case should be given any arrears of salary. The denial of the benefit of salary will, of course, be in addition to the penalty, if any, imposed on the employees at the end of the disciplinary proceedings. We, therefore, allow these appeals as above with no order as to costs.”

(emphasis supplied)

61. At this stage, it is also appropriate to note the observations of the Supreme Court in **Union of India v. Tejinder Singh** [(1991) 4 SCC 129]. This appeal was preferred against the interim directions issued by the Central Administrative Tribunal. The Tribunal directed the Union of India to consider and promote the respondent irrespective of whether departmental enquiry was contemplated or pending. Supreme Court observed that this direction virtually amounted to pre-judging the whole issue before the Tribunal.

62. Supreme Court observed as under:

“4. we would like to record that the Tribunal had no jurisdiction whatever while dealing with a petition to quash the contemplated departmental enquiry against the respondent, to make an interim order of this nature. We are also not satisfied as to the correctness of the view expressed by the Tribunal that a contemplated departmental inquiry or pendency of a departmental proceeding cannot be a ground

for withholding consideration for promotion or the promotion itself. We are not aware of any rule or principle to warrant such a view. As at present advised, we do not subscribe to the view expressed by the Tribunal.”

(emphasis supplied)

63. In **H.C.Khurana’s** case (supra), Supreme Court held that adopting sealed cover procedure is valid if decision to frame charges was taken and charges were framed earlier to meeting of DPC and it is not necessary that the charge sheet should be actually served. In **Kewal Kumar**, Supreme Court held that on recording of the FIR by the CBI, if a decision is taken by disciplinary authority to initiate disciplinary action is sufficient and no formal charge sheet is required to keep the result of employee claim for promotion in a sealed cover. In **R.S.Sharma**, Supreme Court observed that before employee could be actually promoted sanction for prosecution was granted and thus though sealed cover procedure was not attracted when it was observed but no promotion can be granted on account of subsequent development. The view of the Supreme Court in **K.V.Janakiraman**, echoed in **H.C.Khurana**, **Kewal Kumar**, **R.S.Sharma** and **Tejinder Singh**, would show that in the facts of a given case it is permissible to differ promotion even when no formal charge sheet is drawn / served in departmental proceedings or charge sheet is filed in a criminal case. It is also relevant to note that the decisions in **K.V.Janakiraman** and **R.S.Sharma** were by benches composing of three learned judges.”

16. After discussing the precedent decisions, rule position and policy of the government, the court also considered individual cases. In W.P.Nos.1045 and 2451 of 2017, considered in the above batch of cases, ACB recommended to prosecute, but the Government did not agree to sanction to prosecute but decided to take disciplinary action. However, no formal charge memo was drawn. In view of the same the court upheld the decision to differ the promotion.

17. In the case on hand issue is no more nebulous. The ACB conducted detailed investigation, submitted its final report to

Government recommending prosecuting the petitioner on the allegation of corruption and Government accorded sanction to prosecute petitioner. It is only question of time for ACB to file charge sheet. Thus, it cannot be said that petitioner is not blameworthy to grant elevation of status. The view taken by the supreme court in cases noted under **CATEGORY II** in **A.Jalander Reddy** would make crystal clear that if ACB completed investigation, recommended to the Government to prosecute and Government accorded sanction to prosecute, even if charge sheet is not filed in the criminal case, employee is not entitled to claim consideration for promotion without reference to crime registered against petitioner.

18. In the writ petition, petitioner sought declaration that not considering him for promotion without reference to crime registered by ACB amounts to offending Articles 14 & 16 of the Constitution of India and sought prayer to direct respondents to consider him for promotion as Municipal Commissioner Grade I without reference to pending crime. As noted above, petitioner has a right for consideration for promotion but has no vested right to seek promotion as a matter of course. His claim is subject to entitlement, fitness and eligibility. Since, crime is pending he is not entitled to claim consideration for promotion without reference to pending crime as Government accorded sanction for prosecution.

19. For the afore stated reasons, Writ Petition fails and is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

DATE: 09-07-2018

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