

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.21190 OF 2018

Date: 14.08.2018

Between:

K.Rajaiah, s/o. Shankaraiah, Aged about 32 years,
Occu: Senior Assistant, Office of the District
Collector, Mancheria.

.....Petitioner

and

The District Collector, Office of the District Collector,
Adilabad district, T.S., and others.

.....Respondents



The Court made the following:

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ORDER:

Petitioner is working as Senior Assistant and aspiring for promotion as Naib Tahsildar. According to petitioner, he is fully qualified and senior most Senior Assistant, eligible for such promotion. His claim for promotion was rejected by the order dated 28.04.2018, impugned in this writ petition. While so, on 08.06.2018, several others were promoted as Naib Tahsildars. Aggrieved by denial of promotion, this writ petition is filed.

2. Heard learned senior counsel Sri P.Suresh Reddy, appearing for Sri M.P.Kashyap counsel on record for petitioner, Sri V.Ravi Kiran Rao, learned standing counsel for ACB and learned Assistant Government Pleader for respondents 1 to 4.

3. According to learned senior counsel for petitioner, crime was registered by the Anti Corruption Bureau (ACB) on 16.11.2015 against the petitioner but there is no progress in the investigation by the ACB and, therefore, respondents could not have denied promotion to petitioner while promoting his juniors. He pointed out that G.O.Ms.No.257, General Administration (Ser.C) Department, dated 10.06.1999 has no application. According to paragraph-6 of the G.O.Ms.No.257, dated 10.6.1999, promotion can be deferred only if charge against an employee is one of moral turpitude, misappropriation, embezzlement and grave dereliction of duty. The word 'charge' used in paragraph-6 of G.O.Ms.No.257, implies that formal charge-sheet is filed by the ACB after completion of investigation and, therefore, until and unless charge-sheet is filed, petitioner cannot be denied promotion. He would submit that by

the time the order rejecting his request was made, by the time promotions were made, and even by now no charge-sheet is filed by the ACB and, therefore, his promotion cannot be denied. According to learned senior counsel, merely because final report is submitted to the Government by the ACB is no ground to deny promotion. He would submit that even as per the proceedings placed before the Court by learned Assistant Government Pleader, Government only authorized the Commissioner and the District Collector, as the case may be, to accord sanction for prosecution vide Memo No.2018/Vig.III(1)/2016, dated 19.07.2018 and, therefore, so far even sanction is also not accorded.

4. According to learned senior counsel, by the time petitioner was recommended for promotion and when others were promoted no disciplinary action was initiated nor crime was registered against petitioner. By now, no charge-sheet is filed in the criminal case and, therefore, petitioner cannot be denied promotion. According to learned counsel, same issue was considered by Supreme Court in **Union of India and others v. Anil Kumar Sarkar**¹.

5. According to learned standing counsel for ACB, on completion of investigation, final report was prepared and on 20.10.2017, ACB submitted the final report to the Government and sought for sanction for prosecution of various employees involved on the allegation of corruption including petitioner and are awaiting sanction for prosecution and soon after such sanction is accorded, further steps will be taken by the ACB.

¹ (2013) 4 SCC 161

6. According to learned Assistant Government Pleader, on 19.07.2018, Government passed orders directing the Commissioner and the District Collector, respectively, to pass orders to accord sanction for prosecution as per the final report. According to learned Assistant Government Pleader, the orders of Government dated 19.07.2018 would clearly signify that Government has accepted the final report and in principle accorded sanction for prosecution. However, as the Commissioner and the District Collector, as the case may be, are the authorities competent to accord sanction for prosecution against various categories of employees involved in the case in accordance with Section 19(1)(c) of the Prevention of Corruption Act, 1988 (for short, 'Act, 1988'), Government directed the competent authority to accord sanction for prosecution. According to the learned Assistant Government Pleader, as per the paragraphs-5 & 6 of G.O.Ms.No.257, dated 10.6.1999, when petitioner is facing serious allegations of corruption and the ACB submitted its final report, *prima facie*, pointing out guilty of allegation of corruption, petitioner is not entitled for promotion. She would submit that as sanction for prosecution was sought on 20.10.2017, whereas others were promoted in June, 2018, petitioner cannot be granted promotion and denial of promotion by referring to G.O.Ms.No.257 is legal and valid and does not call for interference by this Court.

7. In the facts noted above, the point for consideration is whether petitioner is entitled to seek promotion ignoring the pending crime, more so when investigation is completed, ACB recommended to prosecute, Government agreed in principle to prosecute petitioner and directed competent authorities to take

appropriate action as per Section 19(1)(c) of the Act, 1988 and issue is pending at the stage of sanction for prosecution by competent authority.

8. In **A.Jalender Reddy vs. State of Telangana**², 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 writ petition considered in the said judgment, the disciplinary action/criminal proceedings were pending at various stages, such as, though charge memo was issued but delay in conclusion of disciplinary proceedings; crime was registered but investigation was not completed/but charge sheet was not filed; though final reports were submitted 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.

9. 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, 1996 (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.

² 2017 (4) ALD 538

10. 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 as to silent whether a person should be considered for promotion pending disciplinary action. Therefore, the policy notified by the Government has bearing on the claims.

11. 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.

12. 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.

13. On going through the G.O.Ms.No.257, dated 10.06.1999, it is seen that the Government noticed that guidelines issued in G.O.Ms.No.74 General Administration (Ser.C) Department, dated 24.02.1994 were not strictly adhered to and as matter of course *ad hoc* promotions were granted merely because the disciplinary proceedings were not concluded even after two years, without examining the other parameters. Therefore, the Government withdrew G.O.Ms.No.74, dated 24.02.1994 and notified comprehensive guidelines for consideration of claims for promotion pending disciplinary proceedings/criminal proceedings/investigation.

14. It is clearly discernible from paragraph-5 of G.O.Ms.No.257, dated 10.06.1999, though employee was considered for promotion by the Departmental Promotion Committee, but his promotion was deferred and even after two years from the date of such consideration disciplinary proceedings are not concluded, such employee is entitled for consideration for *ad hoc* promotion if his 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. However, in paragraph-6, Government stipulated that even for considering for grant of *ad hoc* promotion, an assessment must be made with reference to the charge levelled against the employee and whether it is in public interest to grant such promotion.

15. Reading of paragraphs 5 & 6 of G.O.Ms.No.257, would make it clear that if an employee is facing investigation/trial/enquiry on charge(s) of moral turpitude, misappropriation, embezzlement and

grave dereliction of duty, such a person not to be considered even to grant *ad hoc* promotion even if disciplinary proceedings are not concluded within two years.

16. 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. In the case on hand, according to the averments made in 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.

17. 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**. Learned senior counsel sought to contend that G.O.Ms.No.257 is not applicable to petitioner as it refers to word 'charge' to deny promotion and in criminal proceedings 'charge sheet' must be filed to deny petitioner's claim for promotion where as in the case on hand charge sheet is not filed. As noticed by this Court in **A.Jalender Reddy**, policy of the Government as reflected in G.O.Ms.No.257, dated 10.06.1999 is comprehensive and covers all claims for promotion where employees are involved in criminal/

disciplinary proceedings and issue is pending at the stage of charge sheet or investigation or trial. Thus, said contention is stated to be rejected.

18. In the writ petition, petitioner is challenging the decision to reject representation to grant promotion without reference to crime registered by ACB and sought further prayer to direct respondents to grant promotion as Tahsildar by considering his representation, without reference to pending criminal proceedings. He is not seeking direction to consider him in accordance with G.O.Ms.No.257, dated 10.06.1999.

19. 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/investigation into crime, more so on the allegation of corruption.

20. In **Jalender Reddy**, 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.

21. 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 others³), Delhi Development Authority v. H.C.Khurana⁴; Union of India v. Kewal Kumar⁵; Union of India and another v. R.S.Sharma⁶; and Union of India v. Tejinder Singh⁷***, 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

³ (1991)4 SCC 109

⁴ (1993) 3 SCC 196

⁵ (1993) 3 SCC 204

⁶ (2000) 4 SCC 394

⁷ (1991) 4 SCC 129

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 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 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.

60. 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.”

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.”

22. Learned senior counsel placed heavy reliance on the decision of Supreme Court in **Anil Kumar Sarkar**. From the facts recorded by the Supreme Court in **Anil Kumar Sarkar**, it is seen that DPC

meeting was held on 26.02.2002 and 27.02.2002 to consider eligible group-‘C’ Officers of the Accounts Department for promotion to group-‘A’ Junior Scale of Indian Railways Accounts Services. **Anil Kumar Sarkar** was also considered, and his name was placed in the extended select panel. On 21.04.2003 his batch-mates were promoted. For the instances of 1994-95 four memorandum of charges were issued, two on 13.08.2003, one on 01.09.2003 and another on 05.11.2003. Based on similar charges, in the year 2004, CBI lodged seven FIRs against Mr Anil Kumar Sarkar under Sections 120-B & 420 of Indian Penal Code, 1860 and Section 13(1)(d) read with Section 13(2) of the Act, 1988 and charge-sheets were filed. Respondent was not promoted. Original Application filed before Central Administrative Tribunal was dismissed. On challenge before Gowhati High Court, High Court allowed writ petition. Aggrieved thereby, Union of India preferred Civil Appeal.

23. Supreme Court considered the scope of Office Memorandum dated 14.09.1992 issued by Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India and decision of the Supreme Court in **K.V.Jankiraman**.

24. By considering paragraphs-2 and 7 of the Office Memorandum dated 14.09.1992 and decision of the Supreme Court in **K.V.Jankiraman**, Supreme Court held that ratio laid down in **K.V.Jankiraman** was fully applicable and upheld the decision of the High Court. Supreme Court observed that

disciplinary proceedings commence only when charge-sheet was issued.

25. From the facts noted above, it is seen that for the allegation of the year 1994-95, four separate charge sheets were formulated on or after 13.08.2003 and in the year 2004 crimes were registered. Thus, when DPC considered him for promotion and when his batch-mates were promoted, no disciplinary proceedings or criminal proceedings were set in motion.

26. As noticed by this court under **Category-II** in **A.Jalender Reddy** the decisions of Supreme Court in **K.V.Janakiraman** and **R.S.Sharma** are by benches comprising three learned judges wherein it is held that in a given fact situation merely because no charge sheet is filed/charge memo is issued is not a ground to hold that employee is entitled for promotion and each case must be considered on its merits.

27. In the case on hand, petitioner was placed under suspension on 06.04.2016 and he was under suspension when his juniors were promoted on 01.08.2017. His suspension was revoked on 16.10.2017. After revocation of suspension he made fresh representation on 14.12.2017. By then, ACB completed its investigation and submitted final report to the Government, on 20.10.2017 and sought permission of the Government to sanction prosecution against the petitioner under Prevention of Corruption Act, 1988. The Government in principle has agreed to prosecute the petitioner. However, as Section 19(1)(c) of the Act, 1988 vests power in the District Collector to accord sanction, it has advised the District Collector to take appropriate decision. Merely because

no consequential order is made by the District Collector so far no ground to claim promotion. Thus, even before rejection was communicated to him the issue was no more nebulous. It cannot be said that petitioner is not blameworthy to grant elevation of status. The case on hand attracts the Category-II of the cases considered by this Court in **A.Jalender Reddy**. In the facts of this case, the decision in **Anil Kumar Sarkar** do not come to the aid of the petitioner.

28. Learned senior counsel for petitioner sought to contend that in the batch of writ petitions considered in **A.Jalender Reddy**, relief was granted to persons similarly situated to petitioner in W.P.No.3188 of 2017 and therefore petitioner herein is also entitled to the same relief.

29. From paragraph-85 of the decision in **A.Jalender Reddy**, individual cases were discussed. As can be seen from paragraph-100, having noticed that crime was registered on the allegation of demand and acceptance of bribe, no charge-sheet was filed nor permission for prosecution was sought, this Court held that claim for promotion could not be deferred. As noticed herein above, in the instant case, permission for prosecution was already sought and in principle permission was granted. Thus, case on hand is not similar to the facts in W.P.No.3188 of 2017.

30. Since, crime is pending at the stage of passing of consequential order by the District Collector to accord sanction for prosecution of petitioner under the Prevention of Corruption Act, 1988, I do not see any illegality in rejecting the request of the petitioner for promotion. Having regard to the facts of the case,

legal position and policy of the Government prayer sought in the writ petition cannot be granted. Writ Petition fails and is accordingly dismissed. However, it is made clear that there is no expression of opinion on report of ACB and orders of Government dated 19.07.2018, as same is not put in issue. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 14.08.2018
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