

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.24536 OF 2018

Date: 20.08.2018

Between:

G.Janardhan Reddy, S/o Late G.Sanga Reddy,
Aged about 50 years, working as Prohibition
and Excise Superintendent, Shamshabad.

....Petitioner

and

The State of Telangana, rep.by its Principal
Secretary to Government, Revenue Commercial
Tax and Excise Department, Secretariat,
Hyderabad and another.

....Respondents



The Court made the following:

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ORAL ORDER:

Petitioner is presently working as Prohibition and Excise Superintendent, having promoted as such on 01.05.2013. In the integrated seniority list drawn on 19.02.2018 his name is reflected at serial No.24 and his assigned date of regularization in the cadre of Superintendent is shown as 21.08.2011. He now seeks promotion as Assistant Commissioner. According to petitioner on the allegation that he failed to obtain prior permission from the competent authority while securing movable and immovable properties and failed to submit annual property returns for the years 1998 to 2001 and 2004 to 2008, disciplinary proceedings were initiated vide G.O.Rt.No.500 Revenue (Vigilance.V) Department, dated 3.5.2014. According to petitioner, there is no progress in the enquiry. In the affidavit filed in support of the writ petition, it is also averred that Anti-Corruption Bureau registered Crime No.14/ACB-CIU/Hyd/2010 under Sections 13 (2) read with 13(i)(e) of Prevention of Corruption Act, 1988 (for short, 'Act, 1988'). Charge sheet is filed. The Principal Special Judge for SPE and ACB Cases, Hyderabad taken cognizance in C.C.No.15 of 2014 and the same is pending. In this writ petition, petitioner alleges that he is not considered for promotion due to pendency of criminal and disciplinary proceedings though he is not responsible for delay in disposal of these proceedings.

2. Heard Sri D.Linga Rao, learned counsel for petitioner and learned Assistant Government Pleader.

3. According to learned counsel for petitioner, petitioner is no way responsible for delay in conclusion of the disciplinary proceedings and criminal proceedings, even though charge memo / charge sheets were drawn in the year 2014. He would therefore submit that he cannot be denied promotion by referring to pending disciplinary and criminal proceedings. He would submit that the incidents against which disciplinary proceedings and criminal proceedings are taken out against petitioner relate to the years 2008 and earlier and 2010 respectively. He would therefore submit that on such stale claims his entitlement for promotion cannot be denied.

4. Learned counsel for petitioner places reliance on orders in G.O.Ms.No.257 General Administration (Ser.C) Department, dated 10.6.1999 and directions issued by Division Bench of this Court in W.A.No.836 of 2018 dated 21.6.2018, and W.P.Nos.22864 and 22910 of 2018 dated 5.7.2018.

5. The issue for consideration is whether petitioner is entitled to claim promotion without reference to the charge memo & charge sheet in departmental and criminal proceedings?

6. In **A.Jalender 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 was issued but delay in conclusion of disciplinary proceedings; registration of crime but

¹ 2017(4) ALD 538

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 as to 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 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 Scrutiny Committee meeting in which their cases were considered for the first time.

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 ago by the Departmental Promotion Committee (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. 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.

12. 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.

13. 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. This case falls into third category.

14. Dealing with **third category**, this Court noted as under:

“64. **State of Punjab and others v. Chaman Lal Goyal**²; **P.V.Mahadevan v M.D., T.N.Housing Board**³; **State of A.P., v. N.Radhakishan**⁴; and **Government of Andhra Pradesh and others v. V.Appala Swamy**⁵; fall into this category. Other cases discussed above deal with delay in initiating and concluding the disciplinary proceeding only and do not deal with entitlement for promotion. In this category, principle deducible from the above precedent decisions is that in case of abnormal delay in initiation/conclusion of disciplinary proceedings and the delay is not satisfactorily explained by the employer, court is required to consider several relevant factors, apply ‘balancing test or balancing process’ and pass such appropriate order as court finds just and equitable in the circumstances of a case (**Chaman Lal Goyal**). In this category of cases wherever it was found that the delay in initiation/conclusion of disciplinary proceedings is unreasonably long, direction was issued to consider the employee for promotion without reference to and without taking into consideration the charges or the pendency of the enquiry.

65. As can be seen from the precedent decisions referred to above, it is desirable for the disciplinary authority to conclude the disciplinary proceedings within the fixed time frame. The orders of the Government in G.O.Ms.No.679 give guidance to the disciplinary authority to conclude the disciplinary proceedings within reasonable time. However, merely because disciplinary proceedings are not concluded within the time fixed, it does not automatically invalidate the disciplinary action and each case has to be seen in accordance with the parameters laid down by the Supreme Court in **V.Appala Swamy** (supra). However, even while upholding the disciplinary action,

² (1995) 2 SCC 570

³ (2005) 6 SCC 636

⁴ (1998) 4 SCC 154

⁵ (2007) 14 SCC 49

court may consider issuing direction to consider for promotion, depending on the facts of the case, nature of allegations leveled, reason for delay and the policy of the employer.

66. At this stage it is appropriate to note the observations of the Supreme Court in **Chaman Lal Goyal**. Supreme Court observed, *“At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. **This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different.**”* (emphasis supplied)

15. In the case on hand, according to learned counsel for petitioner charges levelled against petitioner in the charge memo dated 03.05.2014 relate to the year 2010 and earlier. So far enquiry officer is not appointed. There is delay in initiation and conclusion of disciplinary proceedings. Further, petitioner is accused in C.C.No.15 of 2014 pending in the Court of Principal Special Judge for SPE and ACB cases, Hyderabad. Petitioner contends that there is no progress in the trial. According to learned counsel the crime was registered in the year 2010 and ACB took 4 years to file charge-sheet and there is no further progress. Petitioner is not responsible for the delay in completing the trial. Learned counsel therefore contends that these proceedings should not come in the way of his consideration for promotion.

16. Whenever there is allegation of delay in initiation and/or conclusion of disciplinary proceedings, as held by the Supreme

Court in **State of Punjab and others v. Chaman Lal Goyal**⁶; **P.V.Mahadevan v. M.D., T.N.Housing Board**⁷; **State of Andhra Pradesh v. N.Radhakishan**⁸ and **Government of Andhra Pradesh and others v. V.Appala Swamy**⁹, Court is required to consider several relevant factors, apply 'balancing test or balancing process' and pass appropriate order as Court finds just and equitable in the circumstances of a case. In the cases of this nature, wherever it is found that the delay in initiation/conclusion of disciplinary proceedings is unreasonably long, direction may be issued to consider the employee for promotion without reference to those proceedings. However, it is not a matter of course to grant relief of consideration for promotion but each case must be seen on its merits. Further, in the above decisions Supreme Court was not dealing with delay in conclusion of criminal proceedings and consideration for promotion.

17. At this stage it is apposite to note the observations of Hon'ble Supreme Court in **C.O.Arumugam Vs State of Tamil Nadu**¹⁰. Paragraph-5 reads as under:

"5. As to the merits of the matter, it is necessary to state that every civil servants has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. *The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in*

⁶ (1995) 2 SCC 570

⁷ (2005) 6 SCC 636

⁸ (1998) 4 SCC 154

⁹ (2007) 14 SCC 49

¹⁰ 1991 Supp.(2) SCC 199

criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.” (emphasis supplied)

18. Merely because disciplinary proceedings are not concluded within the time fixed, it does not automatically invalidate the disciplinary action and each case has to be seen in accordance with parameters laid down by the Supreme Court in **V.Appala Swamy** (supra). In this case, though, learned counsel for petitioner sought to contend that charges are vague and there is inordinate delay in initiation and conclusion of disciplinary proceedings and criminal proceedings, neither the charge memo in the departmental proceedings nor charge-sheet in the criminal case is under challenge and relief sought is confined to consideration for promotion without reference to disciplinary and criminal proceedings. Therefore, Court cannot express any opinion at this stage nor call upon the respondents to explain the reasons for delay in initiation of disciplinary proceedings and vagueness of charges. Further, ACB is not impleaded as respondent. Reasons for delay in filing charge-sheet are not known. Reasons for delay in concluding the trial in C.C. are not known. Thus, no adverse inference can be drawn without hearing ACB.

19. As noticed from precedent decisions referred to in paragraph-16, they only dealt with situation where disciplinary proceedings are pending for long time. The policy of the Government on such consideration is reflected in G.O.Ms.No.257 dated 10.06.1999. Claim of petitioner falls into category-(iii) of

G.O.Ms.No.424/paragraph-5(B) (iii) of G.O.Ms.No.257. As per these clauses, if after initiation of disciplinary proceedings employee was considered for promotion by the Departmental Promotion Committee (DPC); recommended him for promotion but his promotion was differed; in the next two years, after such recommendation, there is no progress in the departmental enquiry, employee is entitled for consideration to grant ad-hoc promotion. However, even such consideration is confined to cases where the charges are not grave, not involving moral turpitude, embezzlement and grave dereliction of duty. In the case on hand, according to petitioner, he has come into the zone of consideration for promotion for the first time. Further, in addition to departmental proceedings petitioner is also an accused in pending criminal case. Therefore, the limited relaxation granted by the Government for consideration in their policy decision also do not come to the aid of petitioner. Further, it cannot be said that the allegations levelled against petitioner are not grave. Therefore, the exception carved out in G.O.Ms.No.257 is also not attracted to the case of petitioner.

20. Further, as noted above, petitioner is facing two separate proceedings, departmental and criminal. Substance of the charge leveled by ACB is possessing assets disproportionate to known sources of income. Allegations in the domestic enquiry are failing to take prior permission before acquiring movable and immovable properties and failing to file annual property returns. Thus, it cannot be said that allegations are not grave.

21. In W.P.Nos.2688 of 2017 & 3576 of 2017 considered in **A.Jalender Reddy** admittedly charge sheets are filed and trial has

to be conducted. Though petitioners contended that they were not responsible for the delay in completion of trial, this court noted that registration of crime and continuation of criminal proceedings was not the subject matter in those writ petitions. This court observed that, ***“to maintain sanctity in public service, no person who is facing such serious allegations can be rewarded with promotion. It is not in public interest. The policy of the Government is clear and unambiguous and in terms thereof petitioners are not entitled for promotion even on ad hoc basis when criminal cases are pending. It cannot be said that such employee is remediless. If he comes clean on the charge of illegal gratification, he can claim all benefits from retrospective date.”*** (Paragraph 101) (emphasis supplied).

22. Learned counsel for petitioner sought to contend that in view of judgment of Division Bench in W.A.No.836 of 2018 and W.P.Nos.22864 and 22910 of 2018, without reference to two years ceiling, petitioner is entitled to be considered for promotion in accordance with the G.O.Ms.No.257, dated 10.06.1999.

23. It is seen from the order in W.A.No.836 of 2018, after extracting the order of learned single Judge, the Division Bench noted the submissions made by the learned Government Pleader that G.O.Ms.No.257, dated 10.06.1999 is applicable to all types of cases including the case of the appellant. Recording the said submission, the order of learned single Judge was set aside and directions were issued to consider the case of appellant in terms of G.O.Ms.No.257, dated 10.06.1999. W.P.Nos.22864 and 22910 of

2018 were filed against the decision of A.P. Administrative Tribunal in dismissing the OAs holding that G.O.Ms.No.257 dated 10.6.1999 has no application as charge memos were not more than two years old. Referring to the G.O.Ms.No.257, dated 10.06.1999, the Division Bench held that two years restriction has no application and directions were issued to consider the case of petitioner for promotion in terms of G.O.Ms.No.257, dated 10.06.1999.

24. It is seen from the G.O.Ms.No.257, dated 10.06.1999 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 holding that 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.

25. As can be seen from paragraph-5 of G.O.Ms.No.257, dated 10.6.1999, if an 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 to grant *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.

26. However, in paragraph-6, Government stipulated that even for considering to grant *ad hoc* promotion, an assessment must be made with reference to the charge leveled against the employee and whether it is in public interest to grant such promotion. Reading of paragraph-6 of G.O.Ms.No.257, would make it clear that if an employee is facing 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. It appears, these clauses are not brought to the notice of Hon'ble Division Bench. Though, learned counsel for petitioner placed reliance on G.O.Ms.No.257, dated 10.06.1999 during his submissions, prayer in the writ petition is to direct the respondents to consider him for promotion without reference to pending disciplinary proceedings and criminal proceedings. He is not seeking direction to consider him in accordance with G.O.Ms.No.257, dated 10.06.1999. Be that as it may, 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 to the post of Assistant Commissioner of Prohibition and Excise for the first time. Therefore, as per paragraphs-5 and 6 of the G.O.Ms.No.257, he is not eligible to grant promotion even on *ad hoc* basis. Thus, in the facts of this case, two decisions relied upon by the learned counsel for petitioner do not come to his aid.

27. I, therefore, see no merit in the claim of petitioner to consider him for promotion without reference to pending disciplinary proceedings and criminal case. Writ petition is accordingly dismissed. Pending miscellaneous applications shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 20.08.2018
tvk/kkm



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