

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 28349 of 2018

Date : 29 .8.2018

Between:

K Satyanarayana Reddy S/o K Sita Reddy

Aged about 54 years

working as Deputy Executive engineer

Zaheerabad Municipality

Sanga Reddy District

R/o Plot No 13 G1 MLA Colony

Road 12 Banjara Hills Hyderabad

....Petitioner

And

The State of Telangana

rep by its Principal Secretary to Government

Municipal Administration and Urban Development Department Secretariat T S

Hyderabad and another

....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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ORAL ORDER:

Petitioner is presently working as Deputy Executive Engineer in Zaheerabad municipality and aspiring for promotion as Executive Engineer. According to petitioner, in the seniority list of Deputy Executive Engineers, his name figures at serial No. 48 and he is within zone of consideration for promotion. Petitioner earlier worked as Deputy Executive Engineer, quality control division – II in Greater Hyderabad Municipal Corporation. Alleging that petitioner committed misconduct in performance of his duties and responsibilities while working in GHMC, disciplinary proceedings are initiated, wherein three articles of charges are drawn and vide G.O.Rt. No. 372 dated 30-06-2017, charges are communicated. According to petitioner on 14-9-2017, he submitted his explanation denying the charges. On 30-4-2018 he submitted further explanation. This writ petition is filed alleging that for an incident relating to the year 2015 charge memo is drawn on 30-06-2017 and on the said ground he was not considered for promotion and that there is inordinate and unexplained delay in initiation and conclusion of disciplinary proceedings contrary to the policy of the Government reflected in G.O.Ms.No. 679 dated 1-11-2008.

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

3. According to learned counsel petitioner as Deputy Executive Engineer working in quality control division his roles and responsibilities are as prescribed in the quality control manual. It is the responsibility of concerned AE/AEE/DEE/EE in charge of the work to inform the actual progress of work and important milestones. Based on the information furnished, the work was inspected by the petitioner, quality check was conducted and accordingly

reported result of such checking, he has pointed out what is required to be done wherever he has noticed deficiencies. He would therefore submit that there was no lax in performance of his duties and responsibilities as sought to be alleged. He would further submit that what is alleged now relates to the period when he was working in GHMC in the year 2015. There is no justification to initiate disciplinary proceedings after 2 years. The proceedings are now initiated only to harass and humiliate the petitioner and to deny him promotion. He would further submit that even though charge memo was drawn on 30-06-2017 there is no further progress in enquiry even after one year. This action of respondents is contrary to the policy decision to complete enquiry within 3 months if charges are minor and 6 months if the misconduct alleged is major misconduct. Thus, there is no justification to keep the disciplinary proceedings pending for more than one year only at the stage of drawing up charges and on that ground also the proceedings are liable to be set-aside.

4. According to learned Assistant Government Pleader, Vigilance and Enforcement Department enquired into the issue of irregularities in laying of stormwater drain in Patancheru and Ramachandrapuram areas within GHMC limits and submitted its report dated 20-03-2017 and based on the said report, the disciplinary proceedings are initiated. She would therefore submit that there is no delay in initiation of disciplinary proceedings. She would further submit that disciplinary proceedings are initiated against 6 officers including petitioner and many of them yet to submit their explanation and therefore the enquiry has not commenced. Even the petitioner submitted his explanation only on 30-04-2018. She would submit that if sufficient time is granted the proceedings will be concluded by fixing timeframe. She would further submit that there is no possibility of taking up promotions immediately in view of the interim orders of this court in IA No. 1 of 2018 in WP No. 10837 of 2018. By the said order this court directed not to effect promotions to the post of Executive Engineer without finalising the seniority list of AEE and DEE.

5. It appears that Vigilance and Enforcement Department enquired into the allegations of illegalities committed in laying of stormwater drain. On enquiry Vigilance and Enforcement Department, submitted its report dated 20-03-2017 pointing out several illegalities by various officers. From the reading of statement of imputations forming part of Annexure-II appended to G.O.Rt No. 372 dated 30-06-2017 would indicate that the vigilance pointed out lapses against petitioner also in undertaking quality check. Thus, it cannot be said, per se, that disciplinary action is not validly initiated against petitioner. The correctness of the allegations can be looked into by the Disciplinary Authority on considering the explanation submitted by the petitioner or during the course of enquiry, if domestic enquiry is ordered. The court cannot go into the correctness of the allegations levelled even before further steps are taken, and disciplinary action is concluded.

6. There is no merit in the contention of learned counsel for petitioner that there is inordinate delay in initiation of disciplinary proceedings. Though the issue of conducting quality check relate to the year 2015 but the Vigilance department enquired into the allegations and submitted its report on 20-03-2017. Based on the said report Articles of Charges were drawn on 30-06-2017. Till the Vigilance department pointed out the alleged illegalities there was no occasion for the disciplinary authority to initiate disciplinary action against petitioner. Thus, it cannot be said that there was delay in initiation of disciplinary proceedings as sought to be contended and, on that ground, disciplinary action is not vitiated.

7. From the submissions made by learned AGP and the written instructions furnished to her by the Engineer-in-Chief, Public Health, it appears disciplinary proceedings are initiated against six officers on the allegations on work relating to laying of stormwater drain. It appears even by now all officers have not submitted their explanation. Though the disciplinary authority ought not to have waited for this long and ought to have taken

further steps if no explanation was offered and by strictly complying with requirements of TSCS(CCA) Rules, 1991 but on that ground disciplinary action cannot be held as vitiated.

8. 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 **Government of Andhra Pradesh and others Vs. V.Appala Swamy**¹. On analyzing the facts and contentions in this case, the contention of learned counsel for petitioner that charges are not valid, that there is inordinate delay in initiation and in conclusion of disciplinary proceedings is rejected.

9. In **A. Jalander 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. The court also considered on scope of interference on the ground of delay in initiation and conclusion of disciplinary 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 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.

10. 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

¹ (2007) 14 SCC 49

² 2017(4) ALD 538

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.

11. 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 on whether a person should be considered for promotion pending disciplinary action. Therefore, the policy notified by the Government has bearing on the claim.

12. 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.

13. Revised orders were issued in G.O.Ms.No.257 of 1999. According to G.O.Ms.No.257, Officer 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 his case was considered for the first time.

14. 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). 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.

15. 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.

16. 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**³]. 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.

17. One other grievance agitated by petitioner is that on account of pending disciplinary proceedings he is not considered for promotion. Admittedly charges are drawn, and disciplinary action is pending. Employee is not entitled to claim promotion without reference to pending disciplinary proceedings more so when discipline proceedings were initiated on 30-06-

³ (2004) 9 SCC 286

2017 and petitioner is coming up for consideration for promotion for the 1st time.

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

“64. **State of Punjab and others v. Chaman Lal Goyal**⁴; **P.V.Mahadevan v M.D., T.N.Housing Board**⁵; **State of A.P., v. N.Radhakishan**⁶; and **Government of Andhra Pradesh and others v.V.Appala Swamy**; 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

⁴ (1995) 2 SCC 570

⁵ (2005) 6 SCC 636

⁶ (1998) 4 SCC 154

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, 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.**”*

19. in the case on hand, it cannot be said that there is inordinate delay in initiation and conclusion of disciplinary proceedings warranting adopting the course delineated by the Apex Court in the decisions noted by this court in **Jalender Reddy**, referred to above.

20. Admittedly, charge memo was issued on 30.06.2017; petitioner filed his explanations- on 14-09-2017 and 30-04-2018. Having regard to the facts of this case the discipline action against petitioner cannot be nullified at this stage. However, as charges were drawn on 30-06-2017 and there is no further progress in the enquiry, taking note of the fact that 6 officers are involved in the disciplinary action and that some of them yet to submit their explanation, by applying ‘balancing test or balancing process’, the respondents are directed to conclude the disciplinary proceedings as expeditiously as possible, preferably within a period of four (04) months from the date of receipt of copy of this order by strictly complying with procedural formalities as required by rule 20 of Rules, 1991 and by fixing time schedule. Petitioner shall cooperate in completing the enquiry. It is always open to disciplinary authority to hold ex-parte proceedings if delinquent employee does not cooperate. Failing to complete the disciplinary proceedings within the time fixed not attributed to

the petitioner or co-delinquent employees, without reference to the pending disciplinary proceedings employee may be considered for promotion.

21. Writ petition is accordingly disposed of. Pending miscellaneous petitions shall stand closed.

P NAVEEN RAO,J

DATE: 29-08-2018
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