

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.4036 of 2019

ORDER: (Per the Hon'ble the Chief Justice Sri Thottathil B.Radhakrishnan)

We have heard the learned counsel for the establishment, who filed this Writ Petition challenging the order of the Central Administrative Tribunal issued in Original Application No.1154 of 2012 in terms of the provisions of the Administrative Tribunals Act.

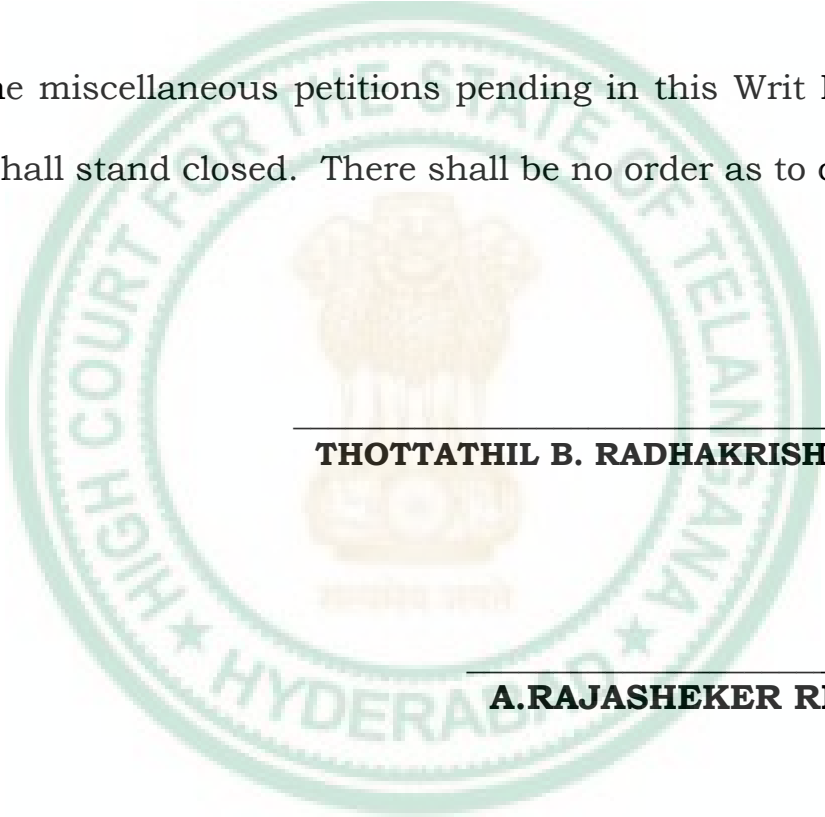
2. The respondent was promoted as Deputy Director with effect from 06.10.1997. He was in the seniority list of Deputy Directors. The issue that arose before the Tribunal was as to whether he was unjustly excluded from the zone of consideration of the Departmental Promotion Committee (DPC) for promotion to the category of Joint Director. The Tribunal held that, though he has suffered a punishment of reversion, such reversion was not coupled with deprivation of seniority being continued. To this effect, as is discernible from paragraph 6 of the impugned order of the Tribunal, reliance was placed by the Tribunal on the Official Memorandum No.22011/4/2007-Estt.(D) of the Department of Personnel & Training (DOPT), dated 21.11.2016, which delineates the procedure to be followed by DPC with regards to promotion of an employee who is undergoing punishment. It states that, in assessing the suitability of the officer on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the

imposition of the penalty and decide whether in the light of general service record of the officer and the fact of imposition of penalty, the officer should be considered for promotion. The DPC, after due consideration, has authority to assess the officer as 'unfit' for promotion. Where the DPC considers that despite the penalty, the officer is suitable for promotion, the officer will be actually promoted only after the currency of the penalty is over. This is the effect of the Government decision. Reverting to paragraph 7 of the order of the Tribunal, it can be seen that it was noticed that the penalty order was only for reduction to a lower time scale or post of Assistant Director for a period of two years and it did not specify as to restoration of seniority after the currency of the punishment as is required under CCS (CCA) Rules vide Ministry of Home Affairs Official Memorandum No.9/13/62-Estt. (D), dated 10.10.1962, and No.9/30/63-Estt.(D), dated 07.02.1964. The applicant was taken by the Tribunal as one who is deemed to have been restored to his original seniority in the cadre of Deputy Director. Whatever that be, the limited direction given by the Tribunal was only that the establishment will take up the matter with the UPSC for holding a review DPC as per clause 7(g) of the Official Memorandum No.22011/4/2007-Estt.(D) of the DOPT, dated 21.11.2016, and clause 7(i) of DOPT Official Memorandum No.22011/4/2007-Estt.(D), dated 28.04.2014, in the context of his juniors being promoted and to decide as per the eligibility and relevant rules on the subject.

3. The aforesaid being the effect of the decision of the Tribunal, we do not see that there is any illegality, error of jurisdiction or improper exercise of jurisdiction by the Tribunal, which results in manifest miscarriage of justice. We, therefore, do not find our way to interfere with the impugned decision in exercise of authority under Article 226 of the Constitution of India. The Writ Petition, therefore, fails.

4. In the result, the Writ Petition is dismissed.

The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.



THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

27.02.2019

vs