

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 1673 of 2020

Date : 6.2.2020

Between:

K Sreenu S/o Venkata Ratnam Age 43 years
Working as Deputy Range Officer O/o the Forest Range
Officer Kothagudem Now on deputation to O/o the Forest
Range Officer Karepally Khammam Division Khammam
District

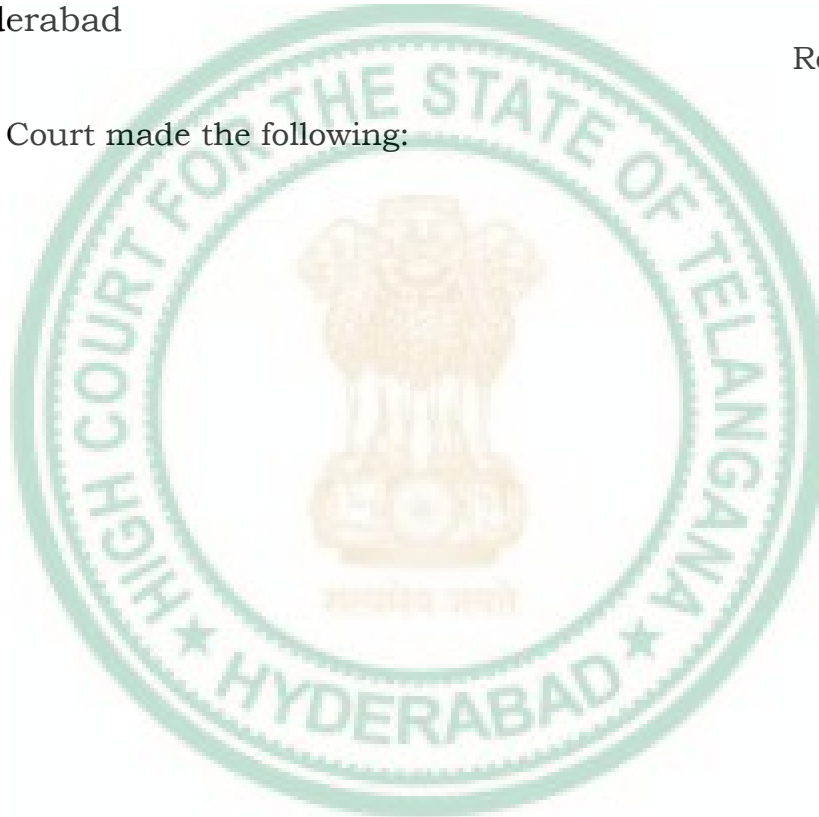
Petitioner

And

The State of Telangana and 2 others
Represented by its Special Chief Secretary Environment
Forests Science and Technology Department T S Secretariat
Hyderabad

Respondents

The Court made the following:



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ORAL ORDER:

Heard learned counsel for petitioner Sri P V Ramana and learned Government Pleader for Forest (Services).

2. Petitioner belongs to Scheduled Caste and is presently working as Deputy Range Officer and aspiring for promotion to the post of Forest Range Officer. According to petitioner, there are 16 vacancies of Forest Range Officers and proposals are called for preparation of panels and said posts are being filled up. In the list of eligible Deputy Range Officers, name of the petitioner is shown at serial no.40. Petitioner claims that as he belongs to Scheduled Caste category, in accordance with principle of reservation in promotions, he is entitled to secure promotion against reservation slot. However, petitioner apprehends that he is not likely to be considered for promotion on the ground that disciplinary proceedings are initiated against him.

3. According to petitioner, he was absent from duty on account of ill health for about 10 months and reported to duty on 3.5.2019. It appears, disciplinary authority drawn articles of charges on the allegation of unauthorized absence. However, so far charge memo is not served on him.

4.1 According to learned counsel for petitioner, in terms of Rule 6 of the Telangana State and Subordinate Service Rules, 1996, every year panels have to be drawn for promotion taking first September of the panel year as relevant date for eligibility. Though, Government policy as notified vide G.O.Ms No. 257 General Administration Department dated 10.6.1999 and G.O.Ms No. 66 General Administration Department dated 30.1.1991 envisage differing of promotion to employees facing disciplinary proceedings, the said Government policy decision is not

applicable to the petitioner, as no charge memo is served on him, even till date and at any rate as on 1.9.2099. He would further submit that Rule 42 of the Telangana State Civil Services (Classification, Control and Appeal) Rules, 1991, prescribe communication of the articles of charges. This, Rule is not complied in case of petitioner. Therefore, based on uncommunicated articles of charges, petitioner's entitlement for consideration for promotion can not be ignored and the same is ex-facie illegal.

4.2 Learned counsel for petitioner placed heavy reliance on Rule 42 of the Rules, 1991 to contend that only by modes mentioned in Rule 42 charge memo has to be served and unless the procedure mentioned in Rule 42 is observed strictly, it is deemed that there is no charge memo subsisting. In support of his contention as to service of charge memo, learned counsel placed reliance on decision of the Supreme Court in **Union of India and others Vs Dinanath Shantaram Karekar and others**¹.

5. The averments made in the affidavit filed in support of the writ petition and contentions of the learned counsel for petitioner would make it clear that articles of charges were already drawn but same were not served on the petitioner. He placed reliance on Rule 42 of Rules, 1991.

6. In **Dinanath Shantaram Karekar**, Supreme Court held as under:

“10. Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of “communication” cannot be invoked and “actual service” must be

¹ (1998) 7 SCC 569

proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated.

7. In the above judgment Supreme Court emphasized that only after charge memo is actually served in disciplinary proceedings, appropriate disciplinary action can be taken.

8. The case on hand does not deal with the disciplinary proceedings against the petitioner and the disciplinary proceedings are not challenged in this case. The issue is only with reference to consideration for promotion while articles of charges are already drawn but not communicated.

9. This issue need not detain further, having regard to the judgment rendered by this Court in **A.Jalender Reddy Vs State of Telangana and another**².

9.1. In **A.Jalender Reddy**, various aspects of consideration of the claim for promotion pending disciplinary/criminal proceedings were considered. One of the issues considered by this Court was with reference to setting in motion disciplinary proceedings but not drawing up the charge memo/ not communicating the charge memo. On this issue, this Court reviewed the judgments rendered by Supreme Court in **Delhi Development Authority v. H.C.Khurana**³; **Union of India v. Kewal Kumar**⁴; **Union of India Vs Jankiraman case**⁵; **Union of India and another v. R.S.Sharma**⁶.

² 2017 (4) ALD 538

³ (1993) 3 SCC 196

⁴ (1993) 3 SCC 204

⁵ (1991) 4 SCC 109

⁶ (2000) 4 SCC 394

9.2. The relevant paragraphs of the judgment read as under:

“12. In **Delhi Development Authority v. H.C.Khurana and Union of India v. Kewal Kumar** Supreme Court has taken a different view.

13. In **H.C.Khurana**(supra) charges were framed against the employee on 11.07.1990;DPC met on 28.11.1990; recommendation of the DPC was kept in a sealed cover. Delhi High Court held that since charge sheet was not served before the DPC meeting was held, the sealed cover procedure is not attracted. The said decision of the Delhi High Court was challenged before the Supreme Court. The contention urged by the Delhi Development Authority was decision to frame charges was taken much earlier to the meeting of the DPC, charges were framed, but could not be served before the DPC meeting was held and to adopt the sealed cover procedure, it is sufficient if decision to take disciplinary action was made prior to holding of DPC.

14. The question that fell for consideration before the Supreme Court was, “What is the stage, when it can be said, that a decision has been taken to initiate disciplinary proceedings” ? On behalf of employee, heavy reliance was placed on the decision of Supreme Court in **K.V.Jankiraman**.

15. On construction of OM dated 12.1.1988 and the decision in **Jankiraman**, Supreme Court observed as under:

“13. It will be seen that in *Jankiraman* [(1991) 4 SCC 109 : (1993) 23 ATC 322 : 1993 SCC (L&S) 387] also, emphasis is on the stage when ‘a decision has been taken to initiate the disciplinary proceedings’ and it was further said that ‘to deny the said benefit (of promotion), they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee’. The word ‘issued’ used in this context in *Jankiraman* [(1991) 4 SCC 109 : (1993) 23 ATC 322 : 1993 SCC (L&S) 387] it is urged by learned counsel for the respondent, means service on the employee. ***We are unable to read Jankiraman [(1991) 4 SCC 109 : (1993) 23 ATC 322 : 1993 SCC (L&S) 387] in this manner. The context in which the word ‘issued’ has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the charge-sheet leaving no doubt that the decision had been taken.*** The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision. Obviously, the contrary view cannot be taken.

(emphasis supplied)

16. In **Kewal Kumar** similar issue came up for consideration. DPC meeting was held on 23.11.1989 and DPC followed the sealed cover procedure on the ground that decision to initiate disciplinary proceedings was taken on 20.11.1989 on the basis of the FIR registered by the CBI on 30.09.1988. However, charge sheet was actually issued on 01.08.1990. The Central Administrative

Tribunal granted relief to the employee based on the earlier decision of the Supreme Court in **Jankiraman**.

17. Supreme Court held, ***“thus, the sealed cover procedure is attracted even when a decision has been taken to initiate disciplinary proceedings, ‘or decision to accord sanction for prosecution is taken’ or ‘criminal prosecution is launched’*** (paragraph 2). It is further observed that, ***“It is obvious that when the competent authority takes the decision to initiate a disciplinary proceeding or steps are taken for launching a criminal prosecution against the Government servant, he cannot be given promotion, unless exonerated, even if the Government servant is recommended for promotion by the DPC”*** (paragraph 3).

18. Supreme Court held as under:

“3. It is obvious that when the competent authority takes the decision to initiate a disciplinary proceeding or steps are taken for launching a criminal prosecution against the Government servant, he cannot be given the promotion, unless exonerated, even if the Government servant is recommended for promotion by the DPC, being found suitable otherwise. In a case like the present, where the First Information Report was registered by the Central Bureau of Investigation, and on that basis the decision had been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the respondent prior to the meeting of the DPC, the applicability of the sealed cover procedure cannot be doubted. The formulation of the charges required for implementing the decision of the competent authority to initiate the disciplinary proceedings, is satisfied in such a case by the recording of the First Information Report by the Central Bureau of Investigation which records the allegations against the respondent, and provides the basis for disciplinary proceedings. The requisite formulation of the charges, in such a case, is no longer nebulous, being crystallised in the FIR itself and, therefore, even if the charge-sheet was issued by its despatch to the respondent subsequent to the meeting of the DPC, this fact alone cannot benefit the respondent.

4. The question to examine in each case, is : Whether, the decision to initiate the disciplinary proceedings had been taken or steps for criminal prosecution initiated before the date on which the DPC made the selection? The decision would depend on the facts of the case, keeping in view the object sought to be achieved by adopting the sealed cover procedure. It would be incongruous to hold that, in a case like the present, where the CBI had recorded the FIR; sent the same to the superior authorities of the respondent for taking necessary action; and the competent authority had taken the decision, on the basis of the FIR, to initiate disciplinary proceedings against the respondent for imposition of major penalty, there can be any doubt that the sealed cover

procedure is attracted to avoid promoting the respondent, unless exonerated of those charges. These facts, which led to the adoption of the sealed cover procedure, are undoubtedly very material to adjudge the suitability of a person for promotion to a higher post. A decision to follow the sealed cover procedure in these circumstances cannot, therefore, be faulted.
(emphasis supplied)

19. In both the decisions, Supreme Court was considering the scope of the clause (iv) of OM, dated 12.1.1988, which is similar to clause (iii) of G.O.Ms.No.424 and G.O.Ms.No.257.”

10. It is clear from the law enunciated by the Supreme Court as considered in **A.Jalender Reddy** that it is not necessary that formally the charge sheet has to be served to apply policy notified vide G.O.Ms No. 257 dated 10.6.1999. It is sufficient, if a decision is taken to initiate disciplinary proceedings/ decision to accord sanction for prosecution is taken. In the case on hand, the averments in the writ affidavit would disclose a decision to initiate disciplinary proceedings was already taken and charges are drawn. Further, determination of eligibility as on 1st September of the panel year is with reference to other parameters and not on this aspect. Differing promotion is based on initiation of disciplinary proceedings as on the date of consideration for promotion and not relatable to 1st September of the panel year.

11. In view thereof, the claim of the petitioner that he should be considered for promotion without reference to alleged pending disciplinary proceedings on the ground that so far charge memo is not communicated to him is not valid. The claim is accordingly rejected.

12. In the result, the writ petition fails and accordingly dismissed. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:6-2-2020
TVK

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