
(2003) 02 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 442 of 2000

B. Yesudas, E. 32041, SHG

APPELLANT

Vs

A.P.S.R.T.C. and Others

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Citation : (2003) 6 ALD 65 : (2003) 3 ALT 500

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : S.M. Subhan, for the Appellant; P. Venkateswarlu, S.C., for the Respondent

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—This Writ Petition was filed for issue of a writ of Mandamus declaring the action of the second respondent in promoting the juniors to the Petitioner vide proceedings bearing No. SB/255(10)/99-V and SO/VJA dated 28-12-1999 as illegal, unjust, arbitrary and contrary to the seniority list dated 23-4-1996 and consequently for a direction to the Respondents to promote the Petitioner with effect from 28-12-1999 to the post of Security Assistant Sub-Inspector with consequential benefits.

2. It is stated that the petitioner was appointed as Security Guard in the Andhra Pradesh State Road Transport Corporation (for short "the Corporation") with effect from 28-11-1974 and he was promoted to the post of Security Head Guard with effect from 22-2-1986 and he has put in unblemished record of about 25 years of service in the Corporation. It is also stated that his name was shown at Serial No. 31 in the seniority list of Security Head Guards as on 23-4-1996 and till date there is no change in the said seniority list and that while so, vide impugned proceedings Respondents 3 and 4 were promoted who stood in the seniority list below the Petitioner. It is also stated that Respondent 4 was originally promoted even earlier to the present impugned proceedings but, however, he was reverted when the said promotion was assailed; that

Respondents 3 and 4 stood at Serial Nos. 34 and 35 respectively and the Petitioner at Serial No. 31 in the seniority list and that subsequently when two vacancies of Security Assistant Sub-Inspector came to be considered for filling by promotion, the Respondent-authorities considered the case of the Petitioner along with Respondents 3 and 4 and some others but they promoted Respondents 3 and 4 who were juniors to the Petitioner. The learned counsel also contended that the minimum period of service as Security Head Guard for promotion to the post of Security Assistant Sub-Inspectors is 3 years but the Respondent-authorities took into account 5 years service and promoted Respondents 3 and 4 eliminating the Petitioner. The learned counsel for the Petitioner contends that when the minimum period required under the rules is 3 years, there is no justification in considering 5 years of service for promotion. The learned counsel for the Petitioner also contends that there are no rules or regulations under which the Respondents have to take into account the record of 5 years of service for considering the case of the candidates for promotion to the post of Security Assistant Sub-Inspector, and, therefore, prays for setting aside the impugned order and also for a consequential direction to the Respondents to promote the Petitioner to the post of Security Assistant Sub-Inspector from the date on which Respondents 3 and 4 were promoted i.e. 28-12-1999.

3. The Law officer of the Corporation disputing and denying the allegations made by the Petitioner filed a counter on behalf of the Respondents. It is not disputed that the Petitioner was appointed a Security Guard and was promoted as Security Head Guard on 22-2-1986. It is stated that the seniority list in the cadre of Security Head Guards as on 23-4-1996 was published on 23-9-1996. In the said seniority list, the petitioner was shown at Serial No. 31 while Respondents 3 and 4 were shown at Serial Nos. 34 and 35 respectively. However, it is stated that in order to fill up the vacancies of two posts of Security Assistant Sub-Inspector a Selection Committee was constituted. The Selection Committee went into the merits of the respective candidates by verifying the records and considered 10 candidates who are under the zone of consideration and in the process Respondents 3 and 4 were promoted vide the impugned order. In the counter it is stated that those two employees were not made parties to the Writ Petition and, therefore, the Writ Petitioner is not entitled to the relief. But, however, subsequently those two promotees were also impleaded as Respondents 3 and 4. With reference to the Petitioner, it is stated in the counter that he was imposed punishment of postponing annual increment for 6 months from 23-12-1994 and again from 30-7-1996. But, however, on appeal the second order of postponing annual increment for 6 months was modified into the order of postponing the same only for three months. On 15-11-1996 the petitioner was given a warning. In the counter it is also stated that the Selection Committee found that Respondents 3 and 4 were having clean records and were suitable for promotion and accordingly the Selection Committee promoted them. The learned Standing Counsel reiterates the contention and seeks dismissal of the Writ Petition.

4. Heard both sides and considered the material on record.

5. With reference to the above stated facts, actually there is no dispute and, therefore, there is no need to mention the facts again. It is also admitted that the Petitioner is senior to Respondents 3 and 4 who were promoted under the impugned order. The contention of the Petitioner is that as he is senior to Respondents 3 and 4 he should have been promoted. But the stand of the Corporation is that 5 years record is looked into and on such verification of the records though the petitioner is senior, since some punishment was imposed on him during the period of 5 years, he was denied promotion while Respondents 3 and 4 who were having clean record, were promoted. But the contention of the Petitioner is that the minimum period in the post of Senior (sic. security) Head Guard for promotion to the post of Security Assistant Sub-Inspector is only 3 years and, therefore, only past three years service immediately before the date of consideration has to be looked into and not 5 years as was done by the Corporation. The learned counsel for the petitioner also contends that as the minimum period required is only 3 years the relevant period of 3 years is to be considered. The Standing Counsel for the Corporation contends that the Corporation considered the records for 5 years and selected Respondents 3 and 4 on merits but admits that there are no regulations or circulars giving any guide lines to consider the past record of 5 years. In the absence of any such guidelines, there is no justification for the Respondents to look into the records for a period of 5 years especially when the required period is only 3 years in the lower cadre i.e. Security Head Guard. If the records are verified for a period of 3 years immediately preceding the date of consideration for promotion the petitioner, who is also having a clean record, is entitled for promotion. In fact, at the time of hearing it is represented that the Petitioner was also promoted in the month of January 2003. But, however, the grievance of the Petitioner is that he is entitled to promotion from the date on which Respondents 3 and 4 who were juniors to him were promoted. Further, even according to the Petitioner, in the absence of any regulation, rules or circulars basing on which the Selection Committee can look into for a period of 5 years, they have to confine the verification of records only for a period of 3 years as the minimum experience required in the lower post is only 3 years. In fact, it is not disputed that if the records for the period of 3 years are considered for promotion, the Petitioner is certainly entitled for promotion even from the date on which Respondents 3 and 4 were promoted. In the above circumstances, the Respondents are directed to grant the benefit of promotion to the petitioner from the date on which Respondents 3 and 4 were promoted even by reverting one of them if necessary. The petitioner is also entitled to the benefit of seniority in the promotion cadre above Respondents 3 and 4 and also to other benefits to which he is entitled under law.

6. The Writ Petition is accordingly allowed to the extent indicated above. No costs.