
(2013) 09 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27145 of 2013

G.A. Rama Rao

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2013) 6 ALD 647 : (2014) 1 ALT 439 : (2013) 297 ELT 481

Hon'ble Judges : S.V. Bhatt, J;L. Narasimha Reddy, J

Bench : Division Bench

Advocate : Pavan Kumar, for the Appellant; Solicitor General, for the Respondent

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J.—The petitioner is working as Assistant Commissioner of Customs and Central Excise at Hyderabad. The relevant service rules provide for financial upgradation (for short "upgradation"), in lieu of promotion, depending on the facts and circumstances. The petitioner was extended two upgradations and he became due for the third upgradation in 2011. The eligibility of an Assistant Commissioner to be extended the benefit of upgradation is assessed by the Departmental Promotion Committee (DPC) by undertaking an exercise, akin to the one for promotion. The DPC which met on 21.12.2011 found the petitioner eligible for being extended the benefit of third upgradation. Before an order extending the benefit of upgradation came to be passed by the appointing authority, a charge memo was issued to the petitioner on 27.12.2011 framing certain charges referable to his functioning in the year 2002 at Sadasivapet. Taking the same into account, the respondents did not extend the benefit of upgradation.

2. The petitioner filed O.A. No. 1457 of 2012 before the Hyderabad Bench of the Central Administrative Tribunal feeling aggrieved by the action of the respondents. He pleaded that once the DPC has cleared his case, there was no basis for the respondents to withhold the benefit of upgradation.

3. The respondents filed a counter opposing the O.A. They pleaded that though the D.P.C. found the petitioner to be eligible for extension of the benefit of upgradation, by the time the orders implementing the same came to be issued, charges were framed against him. They have pressed into service certain circulars issued by the Department of Personnel and Training (DOP&T). Through its order, dated 02.08.2013, the Tribunal dismissed the O.A. Hence this writ petition.

4. Sri Pavan Kumar, learned counsel for the petitioner submits that the eligibility or otherwise of an employee for promotion or other benefits is to be assessed as on the date on which the DPC meets and any development that takes place subsequent thereto, if at all, would be considered only at the next stage. He submits that mere issuance of charge sheet that too at a later point of time does not at all provide any justification for the respondents to withhold the benefit, which the petitioner is otherwise entitled to. He places reliance upon the judgment of the Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc.,

5. Learned Assistant Solicitor General appearing for the respondents, on the other hand, submits that the assessment by the DPC is only recommendatory in nature and it is ultimately for the appointing authority to take a final decision on the matter relating to promotion or extension of the benefit. He contends that the recommendation of the DPC by itself does not confer any right. It is also his case that the fact situation in the present case is akin to the one for which sealed cover procedure can be adopted.

6. On account of the length of service rendered by the petitioner, he became eligible to be considered for extension of the third upgradation. The appointing authority has also forwarded the case of the petitioner to the DPC and the latter in turn found him to be eligible. The subsequent issuance of charge sheet against the petitioner was treated as the basis to deny him the benefit of upgradation.

7. The case on hand presents a typical situation, which one rarely comes across. Had the charge sheet been issued a week earlier than the date on which it emanated, the DPC would have been under obligation to consider the case of the petitioner and put its assessment in a sealed cover. In case the disciplinary proceedings concluded and it emerged that the charges were held not proved, an occasion would have arisen for opening of the sealed cover. If the assessment of the DPC was that the petitioner was eligible, he would not have been entitled for being extended all the benefits with retrospective effect. If on the other hand, the assessment was that he is not eligible, the matter would have been closed at that stage. The subject matter of the judgment in Janakiraman's case (1 supra) was totally different from the one of the present case.

8. The petitioner is technically correct, when he pleads that the process of sealed cover cannot be applied to his case, since as on the date of the consideration by DPC, no charge sheet was issued to him. However, the assessment by DPC is not the final word in the matter pertaining to promotion or extension of the benefit of

financial upgradation, as the case may be.

9. It is a different matter that the discretion of the appointing authority is somewhat circumscribed to the extent of either accepting or not accepting the recommendation of the DPC but not meddling with it otherwise. As long as the appointing authority has the power not to accept the recommendation of the DPC, may be by furnishing the reasons, which may include those, that were not in existence by the time the DPC met, the petitioner cannot be said to have derived or acquired any right, on the sole basis that DPC cleared his case. We are of the view that since the case is almost at twilight stage, viz., between the clearance by DPC and the issuance of consequential orders by the appointing authority, no harm would be done either to the petitioner or to the respondents, if the sealed cover procedure is adopted in this case also.

10. Therefore, the writ petition is disposed of, directing that the assessment of the petitioner by the DPC shall be treated as valid, but kept in a suspended animation, till the disciplinary proceedings against the petitioner are concluded. In case, the charges against the petitioner are held not proved, he shall be entitled to be extended the benefit of third upgradation from the date on which his immediate junior was extended it, on the basis of the assessment made by the DPC on 21.12.2011. If on the other hand, any punishment is imposed, the result would depend upon the nature of action which the disciplinary authority takes. The miscellaneous petition filed in this writ petition shall also stand disposed of. There shall be no order as to costs.