
(1993) 03 SC CK 0031

In the Supreme Court Of India

Case No : Civil Appeal No. 858 of 1993 (Arising out of S.L.P. No. 20140 of 1991)

K. Rajan

APPELLANT

Vs

State of T.N. and Another

RESPONDENT

Date of Decision : 03-03-1993

Acts Referred:

Administrative Tribunals Act, 1985 — Section 29

Citation : (1994) 68 FLR 1008 : (1993) 2 LLJ 737 : (1993) 1 SCALE 764 :
(1994) 1 SCC 119 Supp : (1993) 2 SLJ 737 : (1993) 2 UPLBEC 904

Hon'ble Judges : K. Jayachandra Reddy, J; G. N. Ray, J

Bench : Division Bench

Advocate : Abhijit P. Medh and P.R. Seetharaman, for the Appellant;

Final Decision : Dismissed

Judgement

1. Leave granted.

2. Pursuant to the notice given on the Special Leave Petition, the learned Counsel for the respondent-State of Tamil Nadu and another have appeared and have also filed counter; affidavit. At the hearing, the learned Counsels for the parties have also made submissions. The appeal is directed against the decision of the Tamil Nadu Administrative Tribunal on September 17, 1991 disposing of the Writ Petition No. 5717 of 1988 received from the High Court of Tamil Nadu u/s 29 of the Administrative Tribunals Act and renumbered as T.A. No. 11 of 1988.

3. The appellant, Sri K. Rajan, joined the Commercial Taxes Department as a Joint Commercial Tax Officer in the year 1966. He was promoted as Commercial Tax Officer in 1972. It is the case of the appellant that right from 1972 he was denied further promotions although his juniors were given promotion. The appellant has also contended that in the selection test for appointment to the post of Joint Commercial Tax Officer he topped the list and he has a good academic career but his promotion was unjustly denied as he incurred the displeasure of the higher authorities. In 1976, he moved the Writ Petition No.

4599 of 1978 in the High Court of Madras praying for a writ of mandamus directing the respondents to promote him to the post of Deputy Commissioner. The learned Single Judge, however, dismissed the Writ Petition and the appellant thereafter preferred an appeal before the Division Bench being Writ Appeal No. 315 of 1982. Such appeal was allowed by the Division Bench of the Madras High Court on July 17, 1986 and the Division Bench directed the respondents to give the appellant retrospective promotion from 1976 with all attendant monetary benefit and to give further promotion to the appellant if such promotion had been due to him. In view of such direction of the High Court, the Administration passed necessary orders of promotion with retrospective effect from 1976 promoting the appellant as Assistant Commissioner and thereafter as Deputy Commissioner with effect from December 3, 1986 without prejudice to the rights and contentions of the State Government to take appropriate course of action on the basis of the decision to be rendered by this Court in the SLP moved against the decision of the Division Bench of the Madras High Court. It appears that this Court passed an ex parte stay in favour of the department in the Special Leave Petition. Such SLP was disposed of on March 12, 1987 by directing that the State Government should consider the question of promotion of the said Shri Rajan 1 to such promotional post to which he would be eligible and that the promotion would take effect prospectively. It was further indicated in the judgment of this Court that in modification of the judgment of the High Court the promotion would take effect from the date on which the necessary orders would be passed. This Court also gave liberty to the appellant. Sri Rajan, to make representation to the State Government in the matter of inter se seniority when he would be given promotion.

4. The appellant thereafter moved another Writ Petition in the Madras High Court being Writ Petition No. 5717 of 1988 inter alia contending that despite the decision of the Division Bench of the Madras High Court since modified by this Court in the SLP as stated hereinbefore the respondents failed and neglected to give effect to the said decisions rendered in his favour by denying him due promotions and appropriate seniority. Such Writ Petition, however, was transferred to the Tamil Nadu Administrative Tribunal and the said Writ Petition was renumbered as T.A. No. 11 of 1988. The appellant's main contention before the Administrative Tribunal was that since the post of Commercial Tax Officer was upgraded as Assistant Commissioner of Commercial Taxes, he automatically became Assistant Commissioner of Commercial Taxes. Thereafter, if any promotion was due to him, such promotion was to be given to the post of Deputy Commissioner which is a promotional post from the post of Assistant Commissioner of Commercial Taxes. The appellant contended that despite his brilliant performances and securing the first position in the merit list at the time of entering the service as Joint Commercial Tax Officer, he had been denied his promotion and had been compelled to work in the department as Commercial Tax Officer although a large number of officers who were juniors to the appellant, had been promoted as Assistant Commissioner of Commercial Taxes and

thereafter many of them had also been promoted as Deputy Commissioner of Commercial Taxes. The appellant contended that some departmental proceedings were mala fide initiated against him and such proceedings were deliberately kept pending against him so as to deny him his due promotion. The respondents, however, contended that the appellant, Sri Rajan, had been labouring under a misconception and had been erroneously contending that the post of Commercial Tax Officer has been re-designated as Assistant Commissioner of Commercial Taxes and as such he had also been re-designated as Assistant Commissioner of Commercial Taxes. Hence, if any promotion is to be given to the said appellant, he is to be promoted to the post of Deputy Commissioner. The respondents contended that the posts of Commercial Tax Officers were not re-designated as Assistant Commissioner of Commercial Taxes. Out of 47 posts of Commercial Tax Officers only 37 posts were upgraded to the post of Assistant Commissioner of Commercial Taxes. Such post of Assistant Commissioner of Commercial Taxes is a higher post with higher pay scale attached to it. The cases of the eligible Commercial Tax Officers were considered and on such consideration they were promoted to the said 37 upgraded posts. Since there were number of allegations against the appellant Sri Rajan, and enquiries had been pending against him, he was not considered fit for promotion to the said upgraded post. It was contended by the respondents that pursuant to the direction of this Court in disposing of the said Special Leave Petition, the case of the appellant was taken into consideration and he was given promotion to the post of Assistant Commissioner of Commercial Taxes. In the aforesaid circumstances, there was no occasion to give him a further promotion of Deputy Commissioner automatically and the question of promotion to the higher post of Deputy Commissioner would be considered as and when the promotion would be due to the appellant.

5. The Administrative Tribunal, Tamil Nadu accepted the said contention of the respondents and dismissed the said T.A. No. 11 of 1988 vide judgment passed on September 17, 1991. The Tribunal held that the appellant was not justified in contending that the post of Commercial Tax Officer held by him had been upgraded as the Assistant I. Commissioner of Commercial Taxes and because of such upgradation he automatically became Assistant Commissioner of Commercial Taxes and consequently eligible for promotion to higher post. As aforesaid, this appeal is directed against such decision of the Administrative Tribunal.

6. Mr. S.K. Patri, learned Counsel for the appellant, has submitted that the directions 2i of the Division Bench of the Madras High Court were not set aside but this Court in disposing of the SLP has only modified the decision of the Division Bench of the Madras High Court to the extent that promotion of the appellant was not to be given with retrospective effect from 1976, but such promotion was to be given prospectively with effect from the date when the order will be passed. This Court has not held that the appellant 2. was not entitled to get the promotion to the post of Deputy Commissioner and it has also not been indicated by this Court that he was only entitled to get promotion to the

post of Assistant Commissioner of Commercial Taxes from a prospective date. The learned Counsel has contended that the decision of this Court in disposing of the SLP is sought to be wrongly construed by the department in order to deny the legitimate promotion due to the appellant. He has submitted that the Division Bench of the High Court of Madras clearly held that in order to deny legitimate promotion due to the appellant, the question of promotion of the appellant had been kept pending for years and the High Court also held that there was no bar in giving promotion to the appellant despite the pendency of such departmental enquiry. Such finding of the High Court not having been specifically reversed by this Court, it must be held that the said finding has been upheld by this Court. Therefore, the appellant was entitled to be treated as Assistant Commissioner of Commercial Taxes in view of the upgradation of Commercial Tax Officer. The appellant is, therefore, entitled to get further promotion as Deputy Commissioner of Commercial Taxes, more so, when a number of juniors to the appellant had been given such promotion. Mr. Patri has contended that even assuming that all the 47 posts of Commercial Tax Officers were not upgraded to the posts of Assistant Commissioner of Commercial Taxes, in the facts and circumstances of the case, the denial of promotion to the appellant to the upgraded post of Commercial taxes on the footing of pendency of enquiry proceedings was unjust and mala fide as held by the High Court and the respondents are, therefore, under an obligation to give the appellant the promotion to the Assistant Commissioner of Commercial Taxes when his juniors were promoted in order to do justice to the appellant. He has submitted that the learned Tribunal has misconceived the facts and circumstances of the case and the decision rendered by the learned Tribunal has resulted in a gross miscarriage of justice to the appellant.

7. The learned Counsel for the respondents has, however, submitted that the appellant had been labouring under a misconception that the post of Commercial Tax Officer had been upgraded to the post of Assistant Commissioner of Commercial Taxes and in view of such upgradation he automatically became Assistant Commissioner of Commercial Taxes. Such assertion is factually incorrect. Only 37 posts of Commercial Tax Officers were upgraded to the superior post of Assistant Commissioner of Commercial Taxes drawing higher scale of pay. The post of Assistant Commissioner of Commercial Taxes is superior post to the post of Commercial Tax Officer and the said post is the promotional post for the Commercial Tax Officer. He has also contended that the appellant can not claim promotion to a higher post as a matter of right simply because he was senior in the grade or had done better in the selection test for being recruited in the grade.

8. When 37 posts of Commercial Tax Officers were upgraded the case of eligible Officers were considered by the department but as there were complaints against the appellant and enquiries on such complaints were pending, he was not considered fit for promotion to the upgraded post. Learned counsel for the respondent has submitted that the departmental proceedings has since been

concluded and minor punishment has been awarded to the appellant. The question of promotion has been considered and the appellant had been given promotion to the next higher grade, namely to the post of Assistant Commissioner of Commercial Taxes. He has submitted that the decision of the Division Bench of the High Court has not been approved by this Court in the Special Leave Petition. It was only directed I by this Court that the appellant should be given promotion with effect from prospective date. Such direction of this Court has been complied with. The appellant is not entitled to any further promotion as claimed by him. He has submitted that the learned Tribunal has correctly appreciated the facts of the case and has dismissed the case of the appellant on cogent reasons. Hence, no interference is called for by this Court against the impugned decision of the learned Tribunal.

9. After giving our anxious consideration to the facts and circumstances of the case it appears to us that the contention of the appellant that he became Assistant Commissioner of Commercial Taxes in view of the upgradation of the post is not correct. All the posts of Commercial Tax Officers had not been upgraded but only 37 posts of Commercial Tax Officers were upgraded and promotions to the upgraded posts of Assistant Commissioner of Commercial Taxes were given to eligible officers on considering their service records. It appears that as there were various complaints against the appellant and enquiries had been pending against him, the concerned authority did not consider him fit to be promoted to the upgraded posts. There is force in the contention in the learned Counsel for the respondent that the appellant cannot claim promotion as a matter of right. It is true the appellant has a good academic records and he also secured the first position in the selection test for entering the service of the joint Commercial Tax Officer but such fact by itself does not entitle the appellant to claim departmental promotion as a matter of course because such promotion is to be given in consideration of merit and performance. It is unfortunate that the departmental proceedings against the appellant had been kept pending for long. Such proceedings have since been concluded and the appellant has been given minor punishment in such departmental proceedings. The case of the appellant has been considered for the promotion to the next higher post and he has been given promotion as Assistant Commissioner of Commercial Taxes which is the higher post. The department has contended that the question of further promotion of the appellant to the next higher post namely the post of Deputy Commissioner will be considered. In the aforesaid facts the direction of this Court has been complied with. As the appellant was not found eligible to be promoted to the upgraded post of Assistant Commissioner of Commercial Taxes the question of giving promotion to next higher grade to the petitioner as a matter of course did not arise. No interference is therefore called for against the decision of the Tribunal and the appeal therefore fails and is dismissed without any order as to costs.

10. We may however observe that the appellant has suffered substantial prejudice because the departmental proceeding had been kept pending for long

as a result of which he was not considered fit for promotion to the post of Assistant Commissioner. In the facts of the case, it appears to us that it is only desirable that the concerned authorities should consider the case of the appellant for further promotion to the posts of Deputy Commissioner as early as practicable with such sympathy as the appellant may deserve.