
(2021) 11 TEL CK 0052
In the Telangana High Court
Case No : Writ Appeal No. 209 Of 2020

N, Srinivasulu

APPELLANT

Vs

State Of Telangana And 2 Others

RESPONDENT

Date of Decision : 22-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16(1)
Prevention Of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2021) 11 TEL CK 0052

Hon'ble Judges : Satish Chandra Sharma, CJ;A. Rajasheker Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present writ appeal is arising out of order dated 26.02.2020 passed in W.P.No.4095 of 2020 by which the learned Single Judge has dismissed the writ petition of the present appellant for grant of promotion.

The undisputed facts of the case reveal that the appellant before this Court, who is serving on the post of Deputy Commissioner of Commercial Taxes, was served with a charge sheet for imposition of major penalty on 18.12.2017 and again a second charge sheet was served for imposition of major punishment on 09.01.2018. Not only this, a criminal case has also been registered against him for the offence under Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988 on 13.08.2013 and sanction has been granted by the competent authority on 16.12.2017. The issue of sanction is the subject matter of judicial scrutiny before this Court in W.P.No.28437 of 2019 and the same is still pending. The appellant was claiming promotion to the next higher post and submitted representation before the department. However, as he was not considered for promotion, he preferred W.P.No.12891 of 2018 and this Court by an order dated 08.03.2019 directed the respondents to consider the case of the petitioner for promotion to the post of Joint Commissioner in accordance with G.O.Ms.No.257 dated 10.06.1999. The petitioner again preferred a second writ

petition stating that his case has not been considered even in spite of there being a direction of this Court i.e., W.P.No.4095 of 2020 and it was brought to the notice of this Court by the learned Government Advocate that on 08.08.2019 the claim of the petitioner for promotion in terms of G.O.Ms.No.257 dated 10.06.1999 has been rejected. The order passed by the learned Single Judge is subject matter of challenge before this Court.

Learned counsel for the appellant/petitioner has vehemently argued before this Court that the petitioner is entitled to be considered for ad hoc promotion keeping in view G.O.Ms.No.257 dated 10.06.1999. The said G.O. is on record and the same provides for grant of ad hoc promotion to those officers, who are facing criminal cases, departmental enquiries specially when two years period has expired after initiation of departmental enquiry/criminal prosecution. Heavy reliance has been placed upon paragraph 5 of the aforesaid G.O. and the same is reproduced as under:

"5. Government also order that with immediate effect the following procedure and guidelines, be followed to consider the employees against whom disciplinary cases or criminal prosecution are pending or whose conduct is under investigation, for appointment by promotion or transfer, to next higher categories.

1. The details of employees in the zone of consideration for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committees or Screening Committees:-

(i) Officers under suspension;

(ii) Officers in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending;

(iii) Officers in respect of whom prosecution for a criminal charge is pending.

2. Officers who are facing enquiry, trial or investigation can be categorized into the following groups based on the nature of the allegations of charges pending against them or about to be instituted namely:-

(i) an officer with a clean record, the nature of charges or allegations against whom relate to minor lapses having no bearing on his integrity or efficiency, which even if held proved, would not stand-in the way of his being promoted;

(ii) an officer whose record is such that he would not be promoted, irrespective of the allegations or charges under enquiry, trial or investigation; and

(iii) An officer whose record is such that he would have been promoted had he not been facing enquiry, trial or investigation, in respect of charges which, if held proved, would be sufficient to supersede him.

3. The suitability of the officers for inclusion in the panel should be considered on an overall assessment based on the record which should include namely:-

(i) Adverse remarks recorded in the Annual Confidential reports, the penalties

awarded and the bad reputation of the officer as vouchsafed by the Head of the Department and the Secretary to Government of the Department concerned; The above cases should be considered as falling under category (ii) of item (B) above.

(ii) The officers who do not have any adverse entry in the Annual Confidential Report, and who have no penalties awarded against them in the entire duration of the post and not merely in the past five years and whose reputation is vouchsafed by the Head of the Department and Secretary to Government of the Department concerned should be considered as falling under category (iii) of item (B) above.

The officers categorized as under item (iii) of G.O.Ms.No.424, GA (Ser.C) Dept., dated 25.05.1976 as mentioned above only should be considered for adhoc promotion after completion of two years from the date of the departmental promotion committee or screening committee meeting in which their cases were considered for the first time."

The aforesaid G.O. refers to another G.O.Ms.No.424 which also provides for promotion on expiry of two years period.

Learned counsel for the writ petitioner has vehemently argued before this Court that in similar circumstances, a Division Bench of this Court where a charge sheet was pending in W.A.No.882 of 2018 decided on 06.08.2018 has directed consideration of the case of the charged official for promotion to the next higher post as two years period was over from the date of issuance of charge sheet. Reliance has also been placed upon an interim order passed in W.A.No.1151 of 2018 dated 29.08.2018. The contention of the learned counsel is that the case of the appellant/writ petitioner could not have been rejected in the manner and the method it has been done as charge sheets were issued in the years 2017 and 2018. This Court has carefully gone through the documents on record and has also heard learned counsel at length.

The undisputed facts make it very clear that the first charge sheet was issued on 18.12.2017 and the second charge sheet was issued on 09.01.2018. Both the charge sheets were issued for imposition of major punishment. Not only this, the charged official is also involved in a criminal case registered against him under the Prevention of Corruption Act and he wants promotion to the next higher post. The issue of officers, who are facing departmental enquiries, the law on the subject relating to promotion of officers facing departmental enquiry/criminal cases stand crystallized.

The Hon'ble Supreme Court in the case of C.O. Arumugam and others vs. State of Tamil Nadu and others 1991 Supp (2) SCC 199, in paragraph 5 has held as under:

"5. As to the merits of the matter, it is necessary to state that every civil servants has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution.

The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted."

The Hon'ble Supreme Court in the aforesaid case has held that an employee is having a right to be considered for promotion and the promotion of persons against whom charge has been framed in the disciplinary proceedings and charge sheet has been filed in the criminal case may be deferred till the proceedings are concluded.

The Hon'ble Supreme Court in the case of Union of India and others vs. K.V. Jankiraman and others (1991) 4 SCC 109 has again dealt with cases of employees facing departmental enquiry and criminal cases. Paragraphs 16 and 17 of the aforesaid judgment read as under:

"On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge- memo/charge sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalize the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2)

(3)

(4) the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before."

There' is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions."

The Apex Court in the aforesaid case has held that in case an employee is facing a criminal case or a departmental enquiry, the recommendations in respect of the employee are to be kept in sealed cover.

The Hon'ble Supreme Court in the case of State of Madhya Pradesh and another vs. Syed Naseem Zahir and others 1993 Supp (2) SCC 225 was dealing with a case of an employee facing departmental enquiry. Paragraphs 6 and 7 of the aforesaid judgment read as under:

"6. Syed was posted as Superintending Engineer, Mahandi Project Circle, Raipur where he was in charge of Ravishankar Sagar Project, Sondur Dam and the canals connected with the project. He was in charge of the total construction of the project. He continued in the said posting till August 3, 1986. In April 1986 and thereafter State Government received various complaints against Syed indicating that he made excess payments towards the construction of the project. The State Government received a preliminary report on the said complaints from the Chief Engineer in charge on January 30, 1987. The report disclosed that respondent Syed committed irregularities which resulted in a loss to the State Government to the tune of Rupees Eighty lakhs. After examining the report the State Government ordered on the file on September 30, 1987 that departmental proceedings be initiated against him. As mentioned earlier he was served with the charge-sheet on April 15, 1988. It is not disputed that the departmental enquiry has been completed and the charges against Syed have been proved. According to the State Government keeping in view the gravity of the charge and the heavy financial loss to the State Government it has been tentatively decided to impose major penalty upon him and for that purpose the proceedings have been referred to the Madhya Pradesh Public Service

Commission. It is admitted by respondent Syed in his counter affidavit before this Court that he has received the enquiry report on August 25, 1992.

7. It is no doubt correct that in view of Jankiraman's case the DPC was not justified in keeping the recommendation pertaining to Syed in a "sealed cover", but it is difficult to ignore glaring facts in a given case and act mechanically. Even in Jankiraman's case while dealing with Civil Appeals Nos.51-55 of 1990 this Court observed as under:-

"In view of the aforesaid peculiar facts of the present case, the DPC which met in July, 1986 was justified in resorting to the sealed cover procedure, notwithstanding the fact that the charge-sheet in the departmental proceedings was issued in August/December, 1987. The tribunal was, therefore, not justified in mechanically applying the decision of the Full Bench to the facts of the present case and also in directing all benefits to be given to the employees including payment of arrears of salary."

Keeping in view the facts of this case we are of the view that the "sealed cover" containing recommendations of the DPC in respect of respondent Syed be not opened till the departmental proceedings against him are concluded. As mentioned above the enquiry report has already been received by Syed and it is a matter of days before the disciplinary proceedings would come to an end. In case he is completely exonerated, the "sealed cover" shall be opened and if the recommendation is in his favour, he shall be nationally promoted with effect from the date when a person junior to him was promoted to the post of Chief Engineer. In that event, he shall be entitled to all consequential benefits including back wages. In case, respondent Syed Naseem Zahir is punished in the proceedings, then action would be taken in accordance with the guidelines as laid down by this Court in Jankiraman's case."

Again the view expressed by the Hon'ble Supreme Court in the case of Jankiraman (2 supra) was followed and was held that the recommendations in respect of such employee are required to be kept in sealed cover.

The Hon'ble Supreme Court in the case of Delhi Development Authority vs. H.C. Khurana (1993) 3 SCC 196 has dealt with the word 'issue' and has arrived at a conclusion that sealed cover has to be followed in case a charge sheet has been issued to the charged official. In the case of Union of India vs. Kewal Kumar (1993) 3 SCC 204 where a decision was taken to hold a departmental enquiry pursuant to registration of FIR, the Hon'ble Supreme Court has held that sealed cover procedure has to be followed and if the employee is exonerated in the criminal case and in the departmental enquiry, he is entitled for promotion. Again in State of M.P. vs. J.S. Bansal and another (1998) 3 SCC 714, the Hon'ble Supreme Court relying upon Jankiraman (2 supra) has reiterated that sealed cover procedure has to be followed in case of employee, who is facing departmental enquiry. A similar view has been taken by the Hon'ble Supreme Court in the case of Union of India and another vs. R.S. Sharma (2000) 4 SCC

394, Delhi Jal Board vs. Mahinder Singh (2000) 7 SCC 210, Union of India and others vs. Anil Kumar Sarkar (2013) 4 SCC 161, Harsh Kumar Sharma and IFS vs. State of Punjab and another (2017) 4 SCC 366.

Keeping in view the aforesaid judgments, the office memorandum, which is of the year 1976 vintage has got no meaning. The law has been crystallized by the Hon'ble Supreme Court and it is not a case of an officer, who is facing a singular departmental enquiry, but it is a case of an officer, who is facing two departmental enquiries that too wherein the charge sheet has been issued for imposition of major punishment. Not only this, he has involved in criminal case and he is facing criminal prosecution under the Prevention of Corruption Act. Granting permission to such an officer would amount to granting of premium to such officers and therefore, in the considered opinion of this Court, the State Government was well within its power to reject the claim of the appellant for ad hoc promotion also.

Resultantly, this Court does not find any reason to interfere with the order passed by the learned Single Judge. The writ appeal is accordingly dismissed. However, it is made clear that this Court has not expressed any opinion on merits so far as the departmental enquiry or the criminal case is concerned. The order passed by this Court is confined only in respect of promotion to the appellant to the next higher post pending criminal case and the departmental enquiry.

Miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.