
(2008) 07 AP CK 0121

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13795 of 2008

Tanuku Subash Chandra Bose

APPELLANT

Vs

Non-Conventional Energy Development Corporation of A.P.
Ltd. and Others

RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Citation : (2008) 5 ALD 679

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : D. Prakash Reddy, for the Appellant; S.R. Ashok, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner challenges the order, dated 7.6.2008, issued by the 1st respondent, declaring the 4th respondent as senior to him in the post of Deputy General Manager (DGM).

2. The petitioner and the 4th respondent were appointed as Development Officers in the 1st respondent-organization, on regular basis, with effect from 2.6.1984 and 16.4.1984 respectively. Both of them were promoted to the category of Assistant Manager/District Manager vide orders, dated 31.5.1999. They earned promotion as Manager (T) on the same day i.e., 1.8.2003. The claim as to seniority between them was resolved by this Court in a writ appeal, declaring that the 4th respondent is senior to the petitioner.

Two posts of Deputy General Manager fell vacant in the 1st respondent-organization. The Board of Directors passed a resolution, dated 8.8.2005, according approval for promotion of the petitioner as well as the 4th respondent. A rider, however, was added to the effect that the promotion of the 4th respondent shall be subject to the outcome of the disciplinary case pending against him.

3. Consequential order of promotion came to be issued, in favour of the

petitioner on 10.8.2005, whereas, in case of the 4th respondent, it was delayed upto 28.8.2006. The latter made a representation to correct the anomaly. It was in this context, that a committee was constituted, and on the recommendation made by it, the impugned order came to be passed.

4. Sri D. Prakash Reddy, learned Senior Counsel for the petitioner submits that when the record is clear to the effect that the 4th respondent came to be promoted as DGM, more than one year, subsequent to the date of promotion of the petitioner, there was no justification in treating the 4th respondent as senior to the petitioner. He contends that the Board of Directors itself felt the necessity of passing a separate resolution, almost one year later, to clear the case of the 4th respondent, and viewed from any angle, the 4th respondent cannot be treated as senior to the petitioner.

Sri S.R. Ashok, learned Senior Counsel appearing for the 1st respondent, submits that the promotion to the post of Deputy General Manager was approved simultaneously for the petitioner as well as the 4th respondent, and the delay in issuing the consequential orders cannot tell upon the inter se seniority, which, in cases of this nature, is to be guided by the one in the feeder category.

5. The grievance of the petitioner is that though he was appointed to the post of DGM, earlier in point of time, the Corporation had declared him to be the junior to the 4th respondent, vide their proceedings dated 7.6.2008. The basis for the claim of the petitioner is that he was promoted as DGM on 10.8.2005, whereas, the 4th respondent was promoted to that post, one year thereafter, on 28.8.2006. Both the said proceedings were issued by the Vice-Chairman and Managing Director (VC&MD). If he were to have been the appointing authority for the post of DGM, the claim of the petitioner deserves to be accepted, straight away. The fact of the matter is that the Board of Directors of the Corporation is the appointing authority. On 8.8.2005, the Board passed a resolution at its 192nd meeting. It reads as under:

Resolved to accord approval to promote Sri T.S.C. Bose, Manager (Tech) to the post of Dy. General Manager (Tech) and also resolved to accord approval to promote Sri S. Yerram Reddy, Manager (Tech) to the post of Dy. General Manager (Tech) subject to outcome of the disciplinary case pending against him and authorize Vice-Chairman and Managing Director to take further action in this regard.

A plain reading of this resolution suggests that the cases of the petitioner and 4th respondent were approved for promotion. The only difference being that the promotion of the 4th respondent was to be subject to the outcome of the disciplinary proceedings pending against him. The VC&MD was instructed to take further necessary action, in this regard. His duty was almost ministerial in nature, viz; to issue orders of appointment, in accordance with the resolution.

6. Either on his own accord, or under the instructions of some one else, the then VC&MD did not implement the resolution properly. He issued orders of

appointment to the petitioner on 10.8.2005. After extracting the resolution of the Board, the VC&MD mentioned in his order as under:

In pursuance to the Board resolution, the following promotion is ordered:

Sri T.S.C. Bose, Manager (Tech) is promoted and posted as Dy. General (Tech) in the existing vacancy and in the pay scale of Rs. 9600-3000-9900-350-11650-450-13900-525-16525. The above promotion is purely temporary and the management has got every right to withdraw the promotion at any time without prior notice.

The above orders will come into force from the date of assuming charge by the individual in the promoted post.

His pay will be fixed as per the rules in vogue.

In case of the 4th respondent, he delayed the issuance of the order till 28.8.2006, by which time, the disciplinary proceedings initiated against the 4th respondent, culminated in an order of censure. In his order dated 28.8.2006, the VC&MD extracted the resolution dated 8.8.2005 and stated as under:

The promotion to Sri S. Yarram Reddy was not issued in view of pending disciplinary action against him. Subsequently, he was awarded CENSURE vide proceedings No. NEDCAP/Pers/Enq-SYR/2005 dated 25.1.2006. For another irregularity, disciplinary action was initiated vide proceedings NEDCAP/Pers/Disc/2006 dated 25.6.2006.

Against the punishment of censure, he appealed to the Board and the Board in their 197th Board Meeting held on 26.8.2006 resolved to promote him to the post of Deputy General Manager (T). In another disciplinary case the further action was dropped vide NEDCAP/Pers/Dis/DBR/2006, dated 26.8.2006.

In the resolution of the Board dated 8.8.2005 read with resolution dated 26.8.2006 and authorized Vice Chairman and Managing Director to promote him. Both the resolution are on the same subject and are to be read together.

It is evident that a patent illegality was committed, in the context of issuing orders of promotion to the 4th respondent. In view of the resolution of the appointing authority promoting him, subject to the outcome of the disciplinary proceedings, even a Lower Division Clerk would have issued the consequential order of promotion, by incorporating the stipulated condition. However, a senior IAS Officer, who functioned as VC&MD, has interpreted the resolution, to the effect that the promotion can be affected, only on conclusion of the disciplinary proceedings. It would be either a case of deliberate disobedience of the resolution of the Board, or a calculated effort, to ensure that the petitioner steals a march, over the 4th respondent.

7. An attempt was made to show that the promotion of the 4th respondent was cleared only at 197th meeting of the Board on 26.8.2006. The background of the said resolution is as under. The 4th respondent has made a representation,

pointing out his grievance of not being promoted, in spite of resolution of the Board, in its 196th meeting. The Board appointed a Sub-Committee, to examine the matter. The Sub-Committee submitted its report dated 26.8.2006, analyzing the relevant facts. Though the Sub-Committee expresses its sympathies for the 4th respondent, the fact remains that he was entitled for promotion, as a matter of right, on the basis of the resolution dated 8.8.2006. It was in this context, that the Board at its 197th meeting reiterated its earlier resolution at 192nd meeting.

8. After a period of one year from the date of the resolution of the Board, the order of promotion came to be issued to the 4th respondent, on 28.8.2006. However, the anomaly was not corrected. It was only on 7.6.2008, that the present VC&MD examined the issue in detail, and declared that the 4th respondent is senior to the petitioner. The letter dated 22.5.2008, does not have any bearing on the seniority. It is a reply to representation dated 5.8.2008, made by the petitioner, with a request to promote him to the post of General Manager. He was informed that his case would be considered, as and when the matter is taken up. Therefore, it is clear that if at all anything, the impugned proceedings, dated 7.6.2008, have only corrected the anomaly and injustice, caused to the 4th respondent, in relation to his promotion. When the appointing authority approved the promotion of the petitioner and 4th respondent, there did not exist any basis for the VC&MD, to delay the promotion of the latter, nor can the petitioner derive any right out of such a patent illegality.

9. There is another angle, in which the matter can be examined. It is not as if that the case of the 4th respondent was overlooked for promotion to the post of DGM. Even if it was deferred by the appointing authority itself, till the conclusion of disciplinary proceedings, he would be entitled to be promoted, with effect from the date on which his junior was promoted, if the result in the disciplinary proceedings did not lead to any hurdle. Censure, ordered against the 4th respondent, did not disable him from earning promotion. Therefore, on being cleared in the disciplinary proceedings, he was entitled to be promoted, with effect from the date, on which the petitioner was promoted, since the petitioner was junior to the 4th respondent in the feeder category.

10. A perusal of the material papers filed by the petitioner before this Court, particularly those relating to the disciplinary proceedings initiated against the 4th respondent, discloses that every possible effort was made to invent some ground, or the other, to push him down in the organization. The 4th respondent got his due, after the antagonism against him in the administration has ceased. The petitioner is not able to demonstrate that any valid right that accrued to him, has been defeated, through the impugned orders.

11. Therefore, the writ petition is dismissed. There shall be no order as to costs.