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**(2014) 12 AP CK 0083**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Appeal No. 594 of 2013**

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|----------------------------------------------|------------|
| The Chairman & Board of Directors and Others | APPELLANT  |
| Vs                                           |            |
| S. Ramesh Kumar and Others                   | RESPONDENT |

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**Date of Decision :** 18-12-2014

**Acts Referred:**

**Citation :** (2015) 3 ALD 73 : (2015) 4 ALT 688

**Hon'ble Judges :** L.N. Reddy, J; Akula Venkata Sesha Sai, J

**Bench :** Division Bench

**Advocate :** K. Lakshmi Narasimha, Advocates for the Appellant; Habeebuddin for Ch. Jagannadha Rao, Advocates for the Respondent

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## Judgement

L.N. Reddy, J.—This writ appeal is filed by respondent Nos. 1 and 2 in W.P. No. 20398 of 1999. Respondent No. 1 herein filed the writ petition feeling aggrieved by the denial of promotion to him to the post of Scale-II (MM-II) in the appellants' organisation.

2. Respondent No. 1 was appointed to the post of Scale-I in the appellants' organisation on 22.02.1991 along with respondent Nos. 2 to 4 and some others., The next promotion from that post is to the one in Scale-II. The Board of Management of the appellants passed a resolution on 12.03.1997 prescribing the procedure to be followed in this behalf.

3. 14 posts in Scale-II have arisen. The procedure prescribed for that was the appraisal for 100 marks of the persons within the Zone of consideration is to be made. While 50 marks are allocated for seniority, 10 marks each are allotted for performance appraisal for three years immediately preceding the year of selection and 20 marks are allocated for interview.

4. All the respondents and others, in all 23 persons, were considered and they were all interviewed. However, on the ground that disciplinary proceedings are pending against 5 of them, including respondent No. 1, they were not considered for promotion though the appraisals in all respects were done. Feeling aggrieved

by the denial of promotion, respondent No. 1 filed the writ petition. One of the grounds urged by him was that the appellants did not inform him about the stipulation as to minimum of 60% in the appraisal for being considered for promotion.

5. The writ petition was opposed by the appellants by filing a counter-affidavit and an additional counter-affidavit. It was pleaded that the appraisal of performance was being followed for the past several years and the denial of promotion to respondent No. 1 was on account of two grounds; namely that the disciplinary proceedings were pending against him and that he secured only 59.5 marks, which is, below the minimum of 60%.

6. The learned Single Judge disposed of the writ petition directing the appellants to apply the stipulated procedure for promotion for the year 1999 and examine whether respondent No. 1 fulfills the criteria. The fact that respondent No. 1 has been promoted to Scale-II post subsequently was taken note of. It was directed that in case he is found to have fulfilled the criteria, he shall be deemed to have been promoted in that year and placed above respondent No. 2 to 4.

7. Heard Dr. K. Lakshmi Narasimha, learned counsel for the appellants and Sri Mohd. Habeebuddin, learned counsel, representing Sri Ch. Jagannadha Rao, learned counsel for the respondents.

8. Respondent No. 1, no doubt, felt aggrieved by the denial of promotion to him. However, the principal contention advanced by him that the stipulation as to minimum of 60% of marks was not informed to him, did not weigh totally with the learned Single Judge. Such a contingency would have arisen if only a Rule was framed during the course of selection and it was applied retrospectively. It is not in dispute that the same was in vogue since 1987 and respondent No. 1 cannot feign ignorance of it.

9. In the counter-affidavit filed by the appellants, it was clearly mentioned that one of the grounds for non-consideration of respondent No. 1 for promotion was pendency of the disciplinary proceedings against him. The same is the case with the candidates at Serial Nos. 1, 2, 6 and 10 in the list of the candidates arranged according to the seniority. Respondent No. 1 figured at Serial No. 16. There was no denial of that fact.

10. Assuming that non-consideration for promotion was on account of pendency of the disciplinary proceedings, the sealed cover procedure needs to be adopted. In fact, the appellants have considered the case of those candidates against whom the disciplinary proceedings were pending. In case the disciplinary proceedings end up without imposition of any punishment, the candidates deserve to be promoted, provided they secured the minimum marks and they figure at the appropriate place in the seniority list, in the feeder category.

11. It is brought to the notice of this Court that the punishment of reprimand was imposed against respondent No. 1. If the Rules disable a candidate, who is

imposed such a punishment from being promoted, the matter ends at that. It makes no difference whether he secured minimum marks or more than that.

12. The second ground is regarding the marks awarded to respondent No. 1. The record discloses that he was awarded 59.5 marks. The learned counsel for the appellants has placed before us, the proceedings of the selection. We find that the Interview Board comprised of five Members and none of them have awarded below 5 marks to anyone. The discrepancy ranged between 5 and 11 in certain cases, whereas in other cases, the discrepancy was less. It was only in case of respondent No. 1 that three marks were awarded by all of them. The only difference is that the third Member allotted 3.2 marks. Here again, we find that in none of the appraisals, the Members have awarded fraction marks to anyone. We are convinced that the Board was not fair and objective. One gains an impression that every effort was made to ensure that respondent No. 1 does not cross minimum level though he secured fairly good marks on other parameters. In the peculiar facts of the case, we hereby declare that respondent No. 1 secured minimum marks and he was eligible to be promoted if there is no other disqualification for him.

13. We, therefore, dispose of the writ appeal by directing that:

"(a) respondent No. 1 shall be deemed to have secured minimum qualifying marks for promotion to the post of JM-II for the year 1999;

(b) in case the punishment that was awarded to him does not disqualify from being promoted, he shall be deemed to have been promoted in the year 1999 and placed above respondent Nos. 2 to 5;

(c) for this purpose, it shall be open to respondent No. 1 to make a representation and the appellants shall dispose of the same in accordance with law, within a period of four (4) weeks from the date of its submission; and

(d) we restrict this exercise only to respondent No. 1 and the selection process as regards other candidates shall not be affected in any manner."

14. There shall be no order as to costs.

15. The miscellaneous petition filed in this writ appeal shall also stand disposed of.