
(2004) 12 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 21236 of 2001

Union of India (UOI) and Another

APPELLANT

Vs

V.B. Pujari

RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Citation : (2005) ILR (Kar) 872 : (2005) 1 KCCR 36 SN

Hon'ble Judges : V. Gopala Gowda, J;H. Billappa, J

Bench : Division Bench

Advocate : Ashok Haranahalli, for the Appellant; P.A. Kulkarni, AGA, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—The respondent herein was an Officer in ITS Group-B. By an order dated 9-6-2000, he and some others were promoted to Group- B on officiating basis and posted to Shimoga Telecom District. But, in view of pendency of a departmental enquiry, he was not relieved from Group-B post. By representation dated 20-6-2000 the respondent pointed-out that the enquiry proceedings had been commenced two and half years ago but his case for adhoc promotion should have been considered immediately after two years of commencement of such proceedings. By communication dated 29-6-2000 he was informed that in view of pendency of; disciplinary proceedings, he cannot be relived and thai the officiating promotion granted by order dated 9-6 2000 stood cancelled. The respondent assailed the same in O.A.No. 1019/2000 before the Central Administrative Tribunal. By the impugned order at Annexure-A dated 8-2-2001 allowed the application, quashed the order dated 29-6-2000 and directed that the respondent shall be treated as eligible for all benefits arising from the promotion order as Group-A Officer. In this Writ Petition the legality and validity of the same is questioned by the petitioners.

2. Learned counsel for the petitioners was heard. Despite of service of notice, respondent remained unrepresented. If this Court were to quash the impugned

order, it will affect the respondent and similarly placed other persons. From the impugned order, it is noticed that Sri P.A.Kulkarni appeared for the respondent before the Tribunal. Since he was present in the Court, he sought time to take instructions.. There after he made submissions justifying the impugned order, though he could not get information from respondent.

3. In our view, the Tribunal was not justified in allowing the application and quashing the order dated 29-6-2000. From promotion order Annexure-A1 dated 9-6-2000 it is seen that the promotion is temporary on officiating arrangement in public interest subject to the conditions enumerated therein. Condition No. 2 is relevant and the same is as under:-

"2. In case any Disciplinary/Vigilance case is pending against the officers now promoted, promotion of such officer"s should not be given effect to an full facts be reported to this office.

There is no dispute that disciplinary proceeding was pending against the respondent as on the date of promotion order. The same is clear from the representation at Annexure-A2 dated 20-6-2000 submitted by the respondent. As per condition No. 2 extracted above, the promotion order should not be given effect to. Therefore, the cancellation of promotion of respondent in Annexure-3 dated 29-6-2000 is correct and the Tribunal without considering the case on a proper perspective has quashed the same.

4. Mr.P.A.Kulkarni sought to justify the impugned order placing reliance upon paragraphs 17.8.1 and 17.8.2 of the instructions issued by the concerned Ministry for giving adhoc promotions, which are extracted in paragraph 6 of the impugned order. It is contended that since the disciplinary proceeding was initiated in the year 1997, after expiry of two years, the respondent was entitled to adhoc promotion and therefore the Tribunal has rightly considered this aspect and granted relief to the respondent. Hence, the learned counsel submits that this Court should not inference in the matter and prays for dismissal of the Writ Petition.

5. The contention of Mr.Kulkarni is untenable-and cannot be accepted. In the first place, the promotion is not regular promotion. It is only adhoc for local officiating arrangements Petitioner has not acquired any vested right by virtue of such promotion. Secondly, para 17.8.1 of the guidelines issued only mentions to consider the desirability of giving adhoc promotion keeping in view the aspects mentioned therein. There is no positive instruction or guideline to give adhoc promotion.

6. It is also to be noted that the Tribunal proceeded on a wrong assumption that the DPC considered the case of the respondent for promotion and kept it in a sealed cover. According to the petitioners, it is for the first time that he was promoted on officiating basis by the order dated 9-6-2000. Hence, the case of respondent did not fall under para 17.8.1 of the guidelines issued by the Ministry.

7. For the reasons stated above, the impugned order cannot be sustained and the same is liable to be quashed.
8. Accordingly, Writ Petition is allowed and the impugned order is quashed.