
(2002) 02 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 19469 of 1993 and 2642 of 1999

V.R. Gopala Rao

APPELLANT

Vs

Singareni Collieries Co. Ltd., Kothagudem, Khammam District
and Others

RESPONDENT

Date of Decision : 18-02-2002

Acts Referred:

Citation : (2002) 2 ALD 746

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : K. Vasudeva Reddy, for the Appellant; K. Srinivas Murthy and J. Venkateswar Reddy, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—The petitioner in both the writ petitions, is one and the same. He filed WP No. 19469 of 1993 seeking for a direction in the nature of writ of mandamus to declare the action of the official respondents in denying the promotion to the post of Senior Personnel Officer, in E3 Grade as illegal and to direct them to promote him as Senior Personnel Officer in E3 Grade with effect from 3-11-1993 treating him as senior to respondents 3 to 8 in the cadre of Senior Personnel Officer whereas he filed WP No. 2642 of 1999 seeking for a direction in the nature of writ of mandamus to declare the impugned proceedings issued by respondents 1 and 2 as to the imposition of punishment retrospectively with effect from 3-11-1995 notionally as illegal and arbitrary.

2. Since the questions of facts and law involved and the parties are one and the same in both the writ petitions, they are being disposed of by common order.

3. The backdrop of the facts of the case relevant for appreciation of the point involved in these writ petitions, is, that during the year 1961, the petitioner was appointed in the 1st respondent-company and subsequently, he was promoted as Welfare Officer in E1 Grade and also Personnel Officer in E-II with effect from

3-5-1988 and he is eligible for the next promotion as Senior Personnel Officer in EIII Grade. The Departmental Promotional Committee (DPC) which met on 14-10-1993 has recommended his name for promotion to the post of Senior Personnel Officer along with other eligible candidates. Contrary to this, he was not given promotion whereas all of his juniors were given promotion vide proceedings dated 3-11-1993. In spite of the direction issued by this Court on 22-12-1993 to consider his name for promotion in the next available vacancy, his name was not considered for promotion in the next available vacancy of Senior Personnel Officer whereas several of his juniors were promoted as Senior Personnel Officers in the year 1994, 1995 and 1996 also. While so, a charge-sheet dated 28-12-1993 was issued to him alleging certain irregularities. Without considering the merits of his explanation in proper manner, an enquiry was conducted and concluded holding him "negligent", as a result of which, the impugned proceedings were issued imposing a penalty of withholding of promotion to EIII Grade Senior Personnel Officer for a period of two years retrospectively, against which, he preferred an appeal contending that the penalty imposed is not only excessive but also the same cannot be imposed retrospectively. But, the appellate authority has passed the order dated 9-10-1997 justifying the imposition of punishment retrospectively. Subsequent to the issuance of impugned proceedings, dated 20-7-1996, he was promoted as Senior Personnel Officer prospectively as per the order dated 27-7-1996. But, as a matter of fact, he was entitled to be promoted as Senior Personnel Officer with effect from 3-11-1993 and that either as on 14-10-1993 or 3-11-1993, no charge-sheet or enquiry is pending against him. Therefore, the action of the respondents, is illegal and arbitrary.

4. The official respondents filed a common and while denying the various allegations, it is specifically contended that the writ petition is not maintainable. There is no violation of any statutory rule or statutory provision. The particulars as to the service details and the seniority of the petitioner as claimed by him, are not disputed. He was the senior most among the personnel officers considered by the DPC at its meeting held on 14-10-1993 for promotion to the post of Senior Personnel Officers (EIII). Though there were no adverse remarks in his performance appraisal report during the review period of 1990-91, 1991-92 and 1992-93, certain irregularities committed by him have been brought to the notice of the competent authority who has ordered to keep the recommendation of the DPC in a sealed cover as it was contemplated to proceed against him with disciplinary proceedings. Since one post was reserved for the petitioner, no injustice is done to him. The petitioner was charge-sheeted on the allegations of misappropriation of the amount to a tune of Rs. 1,19,019/-. This Court by its order dated 22-12-1993 in WP No. 19469 of 1993, directed the respondent to consider the case of the petitioner for promotion as and when the next vacancy is sought to be filled up. In this regard, one post is reserved for the petitioner. Now, the charge-sheet was issued to the petitioner in reference No. C28/2674, dated 28-12-1993 and in view of reserving one vacancy of Senior PO (EIII) for

the petitioner, no injustice has been caused to him.

5. The point that arises for consideration is whether the official respondents are justified in denying the petitioner's promotion to the post of Senior Personnel Officer in EIII Grade and whether the impugned proceedings in C28/1269, dated 20-7-1996 calls for any interference by this Court ?

6. Heard Mr. K. Vasudeva Reddy, the learned Counsel for the petitioner and Mr. K. Srinivasa Murthy, the learned Standing Counsel for the respondents-company.

7. It is contended by the learned Counsel for the petitioner that the petitioner was the senior most personnel officer eligible for promotion to the post of Senior Personnel Officer and the Departmental Promotional Committee (DPC) which met on 14-10-1993 recommended the name of the petitioner for promotion, by which time, there were no adverse entries in the service and also no charge-sheet or enquiry is pending against the petitioner, but the respondents-company without promoting the petitioner, adopted the sealed cover procedure, which is illegal and arbitrary. It is further contended that a charge-sheet was served on 28-12-1993 against the petitioner alleging misappropriation of funds to a tune of Rs. 1,19,019.78 and also negligence of duties and the Enquiry Officer having found not guilty for the grave charge of misappropriation, found guilty for the baseless charge of negligence and imposed penalty of withholding of promotion to EIII Grade as Senior Personnel Officer for a period of 2 years retrospectively with effect from 3-11-1993. It is further contended that on appeal against the impugned order, the appellate authority without application of mind and without considering the representation of the petitioner, concurred with the finding of the Enquiry Officer. It is further contended that under Conduct, Discipline and Appeal Rules, deprivation of promotion is not a mode of punishment and as such, the disciplinary authority cannot impose any punishment, which is not permitted under the rules and that the petitioner is going to retire within one year and the impugned order is liable to be set aside and the petitioner is entitled to promotion with effect from 3-11-1993.

8. In support of his contention that the sealed cover procedure cannot be resorted in contemplation of disciplinary proceedings, he relied on a decision of the apex Court reported in Union of India Vs. K.V. Jankiraman, etc. etc., , in which it is held thus :

"In this case, no charge-sheet was served on the respondent-employee when the DPC met to consider the respondent's promotion. Yet, the sealed cover procedure was adopted. The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date his immediate junior Shri M Raja Rao was promoted pursuant to the order dated 30-4-1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits. The Tribunal has further stated in the impugned order that its order would not mean that the disciplinary proceedings instituted against the respondent-employee

should not go on. We see no reason to interfere with this order. The appeal, therefore, stands dismissed. In the circumstances of the case, however, there will be no order as to costs."

9. He further relied on a decision of the apex Court, reported in *Union of India and Others Vs. Dr. (Smt) Sudha Salhan*, wherein it is held thus :

"The question, however, stands concluded by a three-Judge decision of this Court in *Union of India v. K.V. Jankiraman* in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to a higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to."

10. In an unreported judgment of Division Bench of this Court in WA No. 1472 of 1996, dated 28th March, 1997, it is held thus:

"If the respondent was not given promotion and if the result of his assessment was kept in the sealed cover, and if the respondent was completely exonerated in the disciplinary proceedings or Court proceedings, he should be given notional promotion from the date he would have been promoted but for the disciplinary proceedings or Court proceedings, with all consequential benefits."

11. On the other hand, it is contended by the learned Standing Counsel that since the sealed cover procedure was followed in respect of the petitioner in view of contemplation to proceed against him with the disciplinary proceedings and subsequently, charge-sheet was issued against the petitioner, reserving one vacancy of Senior PO (EIII), no prejudice would be caused to the petitioner.

12. As could be seen from the counter, the admitted facts are thus : the petitioner was the senior most Personnel Officer whose case was considered along with others by the DPC for promotion to the post of Sr. Personnel Officer in EIII Grade. He was the senior most among the personnel officers considered by the DPC at its meeting held on 14-10-1993 for promotion to the post of Senior Personnel Officers (EIII). There were no adverse remarks in his performance appraisal reports during the review period of 1990-91, 1991-92 and 1992-93. There were no cases or enquiries pending as on the date of consideration by the DPC at its meeting held on 14-10-1993 for promotion to the post of Senior

Personnel Officers (EIII). The charge-sheet was issued against the petitioner on 28-12-1993.

13. It is an undisputed fact that the petitioner was eligible for promotion from 3-11-1993 for the post of Sr. Personnel Officer (EIII) and the charge-sheet has been issued on 28-12-1993. At this juncture, it is not out of place to mention here that the service of charge-sheet is a prerequisite to the validity of departmental enquiry and if it is not established that the charge-sheet was served upon an employee then the subsequent proceedings in the course of departmental enquiry, are absolutely ineffective. Therefore, it can be inferred that as on the date of consideration by the DPC for promotion of the petitioner, no such disciplinary proceedings were pending.

14. In this view of the background, the sealed cover procedure has to be resorted to only after the charge-sheet was issued i.e., on 28-12-1993, but not on 14-10-1993 when the DPC considered the case of the petitioner in the meeting for promotion to the post of Senior Personnel Officers (EIII). As such, in the peculiar circumstances of the case, adopting the sealed cover procedure in anticipation of the disciplinary proceedings, is arbitrary. In this regard, the proposition laid down by the apex Court and the Division Bench of this Court in the decisions (supra) fully lend support to the case of the petitioner, that the sealed cover procedure cannot be adopted in anticipation of the disciplinary proceedings.

15. On the other hand, the petitioner challenges the impugned proceedings dated 20-7-1996 and 9-10-1997 issued by respondents 1 and 2 insofar as the imposition of punishment retrospectively with effect from 3-11-1993 and also the action of the respondents promoting him as Senior Personnel Officer with effect from 3-11-1995.

16. In this case, the petitioner was charge-sheeted on two counts viz., (1) misappropriation of amounts pertaining to deposit of LPG Cylinders, Regulators and sale proceeds of LPG Refills, Stoves to a tune of Rs. 1,19,019.78 and (2) negligence of duties by not cross checking the entries made in the liability register with entries. After the enquiry, the petitioner was found discharged from the first count of misappropriation, but he was found guilty under the second count concluding as misconduct. On a verification, the 2nd count in the charge-sheet is nothing but a continuation of the first count. When once the grave charge of misappropriation of an amount of Rs. one lakh and odd under first count, has not been proved, the finding as to the guilty on the second count, is baseless. In such a situation, the conclusion as to the misconduct arrived at during the course of enquiry, is nothing but a presumptive one, but it is not a determinative. On mere surmises and gestures, the conclusion as to the misconduct cannot be a safe mode to measure the punishment. It is an admitted case that there are no adverse remarks against the petitioner till 14-10-1993 when the DPC considered the case of the petitioner for promotion. In the circumstances, if the impugned order is allowed to set in motion, it takes away

the right of the petitioner resulting in violation of the principles of natural justice.

17. In the facts and circumstances of the case, and in the light of the above legal propositions, I am of the considered view that the action of the respondents-company in denying the petitioner's promotion to the post of Senior Personnel Officer in EIII Grade, is illegal and that the impugned proceedings dated 20-7-1996 issued by the 1st respondent and the proceedings dated 9-10-1997 issued by the 2nd respondent insofar as the imposition of punishment retrospectively with effect from 3-11-1993 and promoting the petitioner as Senior Personnel Officer with effect from 3-11-1995 notionally, is illegal and arbitrary.

18. In the result, both the above writ petitions are allowed. The impugned proceedings dated 20-7-1996 and 9-10-1997 issued by respondents 1 and 2 insofar as the imposition of punishment retrospectively with effect from 3-11-1993 and promoting the petitioner as Senior Personnel Officer with effect from 3-11-1995 notionally, are quashed. The respondents-company are directed to consider the recommendation of the Departmental Promotional Committee which met on 14-10-1993 and consider the promotion of the petitioner to the post of Senior Personnel Officer (EIII Grade) with effect from 3-11-1993, i.e., on the date when his juniors were promoted ignoring the case of the petitioner, being senior on the ground of contemplated disciplinary proceedings, with all consequential benefits.