

1
7

No.11030/47/80-AIS.II
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
Department of Personnel and Administrative Reforms
(Karmik Aur Prashasnik Sudhar Vibhag)

New Delhi, the 17 April, 1984

To

The Chief Secretary to the Government of
All States.

Subject:- Forwarding of copy of High Court Judgement.

Sir,

I am directed to forward herewith a copy of the judgement of the Hon'ble High Court of Judicature, Andhra Pradesh in the writ petition No.6345/80, Shri S.Venkataramaiah, Vs. Union of India and others, regarding promotion of officers during pendency of enquiry into charges against them. This is for the information of the State Governments.

Yours faithfully,

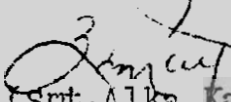

(Smt. Alka Kala)

Deputy Secretary to the Government of India

No.11030/47/80-AIS(II)

New Delhi, the 17 April, 1984

Copy along with a copy of the enclosures forwarded to MHA (UTS Section), Min. of Home Affairs (IPS) Section, Deptt. of Agriculture (IFS Section).


(Smt. Alka Kala)

Deputy Secretary to the Government of India

IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH: AT HYDERABAD
(Special original Jurisdiction)

MONDAY THE TWENTY SIXTH DAY OF DECEMBER
ONE THOUSAND NINE HUNDRED AND EIGHTY THREE.

:PRESENT:

THE HON'BLE MR. JUSTICE P.A. CHOWDHARY

WRIT PETITION NO.6345/80.

S.Venkataramaiah, Petitioner
AND

1. The Union of India, rep. by its Secretary
Department of Personnel and A.R. North Block,
New Delhi.
 2. The State of A.P.rep. by its Chief Secretary
Secretariat Buildings, Hyderabad.
- Respondents.

Petition under art.226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein, the High Court will be pleased to issue a writ, or order declaring the action of the respondents in not considering the case of the petitioner for selection grade and super time scale along with his juniors as illegal, arbitrary and unconstitutional and direct the respondents to promote the petitioner to selection grade and super time scale to A.P.I.A.S. cadre from the dates on which his juniors were promoted with all past benefits of salary etc.

FOR THE PETITIONER: Mr.P.Babulu Reddy, Advocate

FOR THE RESPONDENT:NO 1: Mr.K.Jagannadha Rao, Standing
Counsel for Central Govt.

FOR THE RESPONDENT NO.2:The Advocate General and
Govt. Pleader on S.W.

The Court made the following:-

ORDER:-

The petitioner is an I.A.S. Officer and his year of allotment is 1963. While working in the junior time-scale as Sub-Collector, Chandragiri, Chittoor district, he had assigned by sale Government waste land to an extent of Ac.60-27 cents near Karkambadi Village for a nominal sum in favour of Sri Raghavendra Rao, a lecturer in Sri Venkateswara Arts College, Tirupathi, and had also, during the same period, classified persons of the status of Tahsildar, Deputy Registrar, Revenue Inspectors and businessmen as poor so as to make them eligible for assignment of land.

These facts have come to light subsequent to 10th June, 1967 by when the petitioner came to senior time-scale. That led to the institution of departmental inquiry. Now, the petitioner claims that he was due to be promoted to selection Grade in the year 1977 and to super time-scale in the year 1980. As he had been withheld those promotions, he has filed this writ petition.

It may be mentioned that the writ petition has been filed in December, 1980 and is based upon the theory that pendency of inquiry into charges against a Government servant would not be sufficient to deprive him of his promotion. This writ petition is opposed by the State Government as well as by the Central Government.

In the counter filed by the State Government, it is stated that the lapses committed by the Officer had come to light some time long after he was permitted to come to the senior time-scale in the year 1967 and that inquiry was started against the Officer in the year 1973. The learned Advocate General also argued that admission to the senior time-scale was based not so much upon adjudication of the relative merit, but on the satisfaction of the Govt. regarding the length of service of the Officer and his experience, whereas promotion to selection grade and promotion to super time-scale were purely matters of relative merit. The argument of the respondents is that in G.D.Rt.No.5528 dated 10.12.1981, the petitioner had been found to be guilty of abusing his official position while working as Sub Collector, in classifying persons of the status of Tahsildar, Deputy Registrar, Revenue Inspectors and businessmen as poor so as to make them eligible for assignment of land. For that lapse, the Government had imposed a penalty of withholding of increment in the senior time-scale for one year without cumulative effect. The petitioner had preferred a statutory appeal under the Discipline Rules to the Central Government and it is now pending disposal by the Central Government. It is, therefore, argued that the withholding of promotion to selection grade to the petitioner is wholly justified in terms of Rule 3 (2A) of the Indian Administrative Service (Pay) Rules, 1954. That rule reads thus :

"Appointment to the selection Grade and to posts carrying pay above the time scale of pay in the Indian Administrative Service shall be made by selection on merit with due regard to seniority".

It cannot be denied that a person, who had been found to have misused and abused his position as a Sub-Collector in the year 1967-68 could rightly be found unsuitable under the above Rule 3(2A) to be promoted the Selection Grade and to the super time-scale.

Considering the pivotal position which the Indian Administrative Service holds in the hierarchy of our public administration, I cannot say that the State Government erred in withholding the promotion to the petitioner who carries a penalty of stoppage of increment in the senior time-scale for a year. But the argument of the learned Counsel for the petitioner is that when his juniors were promoted to the selection grade in the year 1977., and when his turn came for consideration for admission to the super time-scale in the year 1980, there were only charges pending against him and that there were no findings recorded against him. On the basis of several judgments of this court, it was argued that withholding of promotion on the basis of pendency of charges is illegal and unwarranted. I am not unaware of those judgments. Ramachandra Rao, in B. George v. I.G. OF POLICE 1973 (2) S.L.R. 131 and Lakshmaiah J. in K. SOMAIAH V. ZONAL MANAGER 1979 (1) S.L.R. 50 have adopted this view, i.e., withholding of promotion on the ground of pendency of departmental proceedings can not be justified. I have myself taken that view in A.P. NAIDU V. GENERAL MANAGER, S.C. RAILWAY 1982 Labour & Industrial Cases, 1920. But, I must say that in a subsequent decision to which I cannot give a ready reference, I have reconsidered this matter and held that this principle is too rigid and would not help to promote substantial justice between the requirements of pure public administration and the rights of the employees. I am now of the opinion that the degree of gravity of charges pending against an officer is certainly a factor which ought to be taken into account by those responsible to order promotions of Government employees to selection posts. Selection is based upon the assessment of relative merits. I utterly fail to see any incongruity in the Selection Committee preferring to promote an officer who does not carry even the burden of a serious charge, ignoring a person who is facing an inquiry into such a serious charge. It is common experience that administration would be thoroughly demoralised and the morale of the public administration would be seriously affected if any officer carrying serious charges is promoted ignoring those charges. The logical argument that pendency of charges does not mean awarding of any punishment and recording of any adverse remarks and to deny promotion at that stage would be a premature action, does not appeal to me. A person has no right to be promoted; he has merely a right to be considered. And, in the matter of selection post, if his case is rejected after consideration, the only question that can arise is whether the material for rejection is relevant or not. I am unable to hold that such a material can be regarded as wholly irrelevant; particularly this is so because of the rule that admission to a selection post must be based upon comparative merit. It may legitimately be asked, what should happen if in the departmental inquiry the officer whose promotion was overlooked was ultimately found to be innocent and blameless? The answer to such

a question is that the administration in the first instance and the courts finally should order the Officer to be put in his due place with retrospective effect and with retrospective benefits. That is to say, what is later found to have been wrongly withheld must be given to him. If the officers charged even with serious lapse are promoted, it would not be conducive for the maintenance of high standard of public administration. If there is any false or frivolous charge connected for the purpose of merely withholding promotion, the arm of the court, as Mr. Jagannadha Rao said, would be long enough to correct. I am, therefore, of the opinion that, considering this matter on first principles, the State Government was not guilty of committing any illegality in refusing to admit the petitioner to selection grade on the ground that serious charges were pending against, the petitioner. But, unfortunately, the contrary view has been taken by several learned judges of this court; and I, sitting singly, cannot but bow to their wisdom. I, therefore, purpose not to decide this point finally.

But the above cases are no authority for the proposition that when the matter comes up finally to be decided by the courts the subsequent facts cannot and should not be taken note of. It is well known that in writ proceedings under Art. 226 of the constitution, as in civil matters, subsequent events can be taken note of by the courts. See GURUSWAMY V. STATE OF MYSORE AIR 1954 SC 592, other wise full justice cannot be done. Now, in this case, the petitioner has been charged with the above-mentioned two charges, and has been found guilty of the second charges, and was awarded punishment in G.O.Rt.No.5528 dated 10.12.81. On that basis, none can deny that withholding of promotion of the petitioner is wrong. But the argument of the learned counsel for the petitioner, Sri Babulu Reddy, is that, in the year 1977 when his promotion was withheld, there was no finding that he had misused his office. I think this argument contains an inherent fallacy. The petitioner was guilty of misdemeanour not by reason of G.O.Rt.No.5528; he was guilty of committing a misdeed in the year 1967-68, when he was working as Sub Collector. Therefore, after 1967-68, those facts must be taken account of provided they are available and known to the administration. As they are known today, their effect and their impact on the promotion of the petitioner to a selection post cannot be ignored. Considering the matter from that angle, the petitioners complaint that he ought to have been promoted to the selection grade in the 1967 cannot be upheld, because admission to selection Grade is based upon merits and the petitioner was admittedly found to be lacking in that relative merit by reason of what he had done during his tenure as a Sub Collector at Chandragiri. What was said about admittance to the selection Grade would equally apply to super time-scale and, in fact, without an Officer first coming to the Selection Grade, he can never hope to come to the super time-scale. In addition to this, the petitioner was

also guilty of another warning administered to him in the year 1981. He was sent to the International Institute of Administration, Paris, at the cost of the Government, but he came back to India on a false pretext. For that lapse, he was warned on 10th September, 1981. The petitioner carrying the burden of these acts of misdemeanour cannot legitimately hope to go into the selection Grade.

But it is argued by Sri Babulu Reddi that whatever sins his client had committed as a Sub Collector should not haunt him to his grave and should be taken to have been washed away on 10th July, 1967 when he was admitted to senior time scale. Rule 6 A (2) of the Indian Administrative Service (Recruitment) Rules, 1954 governs the matter of admitting an I.A.S. Officer to senior time-scale of pay. It merely stipulates that, having regard to the length of service and experience of the Officer, the State Government should be satisfied that he is suitable for appointment to a post in the senior time-scale, of pay. Strictly speaking, this Rule, and more particularly when it is contrasted with Rule 3(2A) of the Indian Administrative Service (Pay) Rules, 1954, does not leave much option with the State Government to admit or not to admit an officer to a senior time-scale experience. In other words, the Recruitment Rules do not make admittance to the senior time-scale a matter of pure selection. The Official conduct of the petitioner, therefore, was not considered and could not be considered in the year 1967. In fact, by then, it did not even come to the knowledge of the State Government. It came to the knowledge of the State Government only after 1967 and it could be considered legally only when the petitioner asserted his claim to go into the selection Grade. I am, therefore, of the opinion that the argument that the petitioners past should not be counter now after so many years cannot be accepted.

There are other facts and circumstances relating to the pendency of charges against the petitioner, but I am deliberately not making any mention to them as I find that this writ petition should fail for the reasons and the circumstances which I have mentioned above. I accordingly dismiss this writ petition. There will be no order as to costs. Advocate's fee Rs.500/-.

Sd/-T.G.KRISHNAMA CHARY
ASST. REGISTRAR

/True copy/

Sd/-
ASST. REGISTRAR.

10

1. The Secretary, Deptt. of Personnel and A.R. North Block, New Delhi.
2. The Chief Secretary, Secretariat Buildings, Hyderabad, A. P.
3. 2 ccs. to the Govt. Pleader for S.W. (on usual terms)
4. spare copy.
5. five LR copies.