

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

**W.P. No. 13211 of 2013**

**ORDER:**

Heard learned counsel for the petitioner and learned standing counsel for the respondents.

2. The petitioner filed this writ petition to issue a writ of Mandamus declaring the action of the respondents in issuing the impugned proceedings dated 05.03.2013 bearing Lr. No. 171/Personal 1/ 1B of 2009 in rejecting the representation of the petitioner dated 26.12.2012 by not promoting the petitioner to the post of Deputy Director of the Respondent Organization, as illegal, contrary to law, judicial precedents and constitutional rights and consequently, grant relief of re-fixing the seniority of the petitioner from the seniority list of the year 2007 in the Grade-II Manager over and above the candidatures of respondents 2 to 5 by granting all the consequential benefits including the post of the Deputy Directorship in the 1<sup>st</sup> respondent organization.

**3. The case of the petitioner, in brief, is as follows:**

a) The petitioner was appointed to the post of Processing Supervisor at Kartal in the year 1993, at that point of time,

the appointment was direct with immediate regularization for which there was no training period, however, the probation period was available to be subjected on every appointment.

b) In the year 1995, the petitioner was transferred as Processing Supervisor on 29.12.1995 to Gajwel, and while working at Gajwel, the petitioner was subjected to a case of liability for spoilage of milk amounting to 4,700 litres and the respondent has fixed the liability to a tune of Rs. 29,756/-, which was not a proper calculation, the liability so fixed was challenged by the petitioner to the enquiry, which was conducted only in the year 2005.

c) On several persuasion and the appeals of the petitioner fixing the said liability the amounts were reduced to an amount of Rs. 11,081/-, and the amounts so fixed as a liability on the petitioner was recovered.

d) On the ground of spoilage, the respondents have conducted regular enquiry and have imposed the punishment of stoppage of one annual grade increment, vide proceedings dated 07.06.2007. Since the punishment was only stoppage of one annual grade increment, the promotional avenues as well as the maintenance of the seniority right from the date of

appointment in the cadre of Processing Supervisor had not been disturbed nor altered. Based upon the seniority the petitioner was promoted to the post of Grade-II Manager on 14.04.2001. However, thereafter, detrimental to the interest of the petitioner, the seniority was altered without any notice to the petitioner.

e) Again in the year 2010 the petitioner was finally promoted to the post of Grade-I Manager and the next promotional post is only Deputy Director in the respondent organization. The promotional post to the cadre of the Deputy Director is only from the feeder category i.e. the post of grade -I Manager.

f) The petitioner who was appointed in the year 1993 and the seniority has to be maintained right from the beginning i.e. in the cadre of Processing Supervisor. Since there were no impediments either in the service records nor any proceedings of the respondents to alter the seniority list of the petitioner in all the consequential cadres and the respondent ought to have given the consequential promotional post of the Deputy Director. As can be seen from the records, the petitioner has been campaigning the cause to

agitate the promotional list right from 2007 and the latest being on 11.10.2011 and earlier one being on 24.04.2010, explaining anguish and pain concerning the alteration of seniority list.

g) The seniority list of grade I was published on 1st April, 2010 despite several representations by the petitioner, the respondents have not altered the seniority list. Thereby, the petitioner has been placed below the unofficial respondents. The 1<sup>st</sup> respondent has not assigned any specific reason to place the petitioner below the unofficial respondent for which reason the petitioner now suffered a loss in terms of posting of deputy directorship.

h) The petitioner when he was promoted to Grade-I Manager on 22.04.2010, the respondents themselves has given promotion expressing that his promotion is subject to pending the appeal questioning the seniority list. However, the respondent recently recommended for the promotion for the unofficial respondents to the post of the Deputy Director on dated 19-3-2012.

i) Consequent to the promotions affected by Respondent No.1, the other unofficial respondents seems to have taken

charge for the post of the Deputy Directorship, since there is no punishment imposed by the management on the petitioner, the respondent cannot deprive the post of deputy directorship by subduing the candidature of the petitioner by putting him below the candidature of unofficial respondents from the feeder category of grade-I especially when the representation of the petitioner was kept pending without any justification.

j) Subsequently, W.P. No.18148 of 2012 was filed before this court, wherein this Court on 10<sup>th</sup> December, 2012 has directed to consider the representation of the petitioner dated 26.03.2012 as per the rules and regulations, the respondents without considering the service conditions and rules which were prevalent for the employees of A.P.D.D.C. dated 25.11.1986 have passed the impugned proceedings and as such the same is challenged on the following as the rights of the petitioner for livelihood an employment is curtailed without any justification and as such challenged on the following grounds

k) Hence, this writ petition.

**4. The petitioner filed the present writ petition on the following grounds:**

- a) The action of the respondent in placing the petitioner below the candidature of the unofficial respondent in grade-II Manager Seniority list and consequently, depriving the promotional avenue of the Deputy Directorship in the 1<sup>st</sup> Respondent organization is illegal, arbitrary, and contrary to fundamental rights.
- b) When there is no specific punishment orders, in imposing the alteration of seniority list in the Grade I Manager the respondent No.1 now cannot deny the post of Deputy Directorship by rejecting the representation of the petitioner dated 05.03.2013
- c) The respondent's action of promoting the unofficial respondents overlooking the claim of the petitioner's to the post of Deputy Directorship in reference to the representation dated 11.10.2010 and the proceedings bearing dated 26.03.2012 with regard to placement of Seniority Grade-II Manager is totally unjustified and unreasonable as such the prospective promotions, if any, made are illegal. Moreover, the impugned order passed by respondent No.1 dated

05.03.2013 is without any proper reasoning since the stand taken by the respondent is unreasonable, malafide and violative of principles of natural justice.

d) There is a discrimination when the case of the petitioner is taken up in view of the fact that similarly placed persons who are subjected to disciplinary proceedings and who are undergoing various penalties under the disciplinary proceedings are given promotion to the post of Deputy Directorship in the respondent organization as such the petitioner has been deprived of the legitimate right to the accrued post.

e) Now the respondents under the impugned proceedings have declined to consider the case of the promotion of the petitioner to a higher post on the ground that the petitioner was undergoing punishment for stoppage of annual grade increment and therefore, he is not entitled to promotion in view of the provisions contained in G.O.Ms.No. 342 dt. 04.08.1997 and in this regard the respondents have deliberately suppressed the C.C.A. regulations applicable to the employees, wherein the service Regulation under Rule

27(1) and its explanation does not contemplate stoppage of annual grade increment of any nature as a penalty.

f) Therefore, G.O.Ms.No. 342 is not applicable to the employee of APDDC for a situation under Rule 27 of APDDC FL (CDAR) Rules as such rejecting the claim of the petitioner under the said G.O.Ms.342 of 1997 is only unjustified. Further the petitioner submits the acts of the respondent No.1 in misinterpreting the said GO and not applying the relevant rule under 27 of service rules of APDDC FL (CAR) Rules is wholly unjustified and illegal.

g) As against the case of pilferage against the petitioner and for non-consideration of the promotional avenues to the petitioner to various posts in appeal in the said regard is pending adjudication for imposing the said penalty of stoppage of one annual grade increment and when the appeal is pending there is no provision contemplating under the rules to deny an employee from getting promotion. As such the respondent ought not to have declined to consider the representation of the petitioner dated 26.03.2012 in which the petitioner claimed the relief. It is also stated that while enclosing the orders of this Court in W.P. No. 18148 of 2012

dated 10.12.2012 a specific representation was also enclosed highlighting the rule position, the respondent despite being brought to the notice of rule position, declined to grant relief and prayed to allow the writ petition.

**5. The counter affidavit filed on behalf of the 1<sup>st</sup> respondent is as follows:**

- a) There is no dispute with regard to the appointment of the petitioner to the post of Processing Supervisor in the year 1993 and involved in a case of spoilage and that liability was fixed on the petitioner besides punishment of stoppage of one annual increment as the charges were proved in the Departmental Enquiry.
- b) As per G.O.Ms.No.342, dated 04.08.1997, the penalty awarded to an employee shall debar his promotion appointment by transfer to higher post during the period of subsistence of penalty which shall be indicated in the order subject to a minimum period of one year. Therefore, DPC has not recommended the case of the petitioner.
- c) The case of the petitioner was recommended by DPC for promotion subject to final orders issued in disciplinary cases pending against him. The personal committee/Board in its

meeting held on 27.06.2009 and 22.07.2009 has resolved and approved the recommendations of the DPC and the resolved that the charges framed against the petitioner were withdrawn with a warning to be careful in future vide proceedings dated 05.12.2009 and 04.01.2012. Therefore, the petitioner was considered for promotion as Manager Grade I notionally i.e. from 11.09.2009 placing his seniority over and above P.Chandrasekhar and M.Srinivas, who were juniors to the petitioner and promoted during 09/2009. Accordingly, the seniority list of Grade I Managers fixing the seniority of the petitioner in Grade I cadre among the existing Grade I Managers as on date i.e. over and above P.Chandrasekhar, Grade I manager, presently working as Grade I Manager was communicated to the individual.

d) The petitioner was promoted during the year 2010 as Grade I Manager and the next promotion post is Deputy Director and the feeder category is the post of Grade I Manager. The seniority of the individual right from the cadre of processing supervisors has been maintained as per rules and there is no alternation of the seniority of the petitioner. At the time of promotion to H.Kavitha, P.Mohan Murali and

T.Srinivas Reddy to the post of the petitioner has been facing charges/departmental enquiry as on January, 2007 and his case was not recommended by the Departmental Promotional Committee. As the petitioner was given punishment of stoppage of one annual grade increment on 27.06.2007 in disciplinary case, he was not eligible for promotion for a period of one year as per rules and that his promotion was given subsequently w.e.f. 11.09.2009 notionally on 31.03.2010 after the completion of the said period of one year as per his eligibility.

e) As and when the vacancy arises, the petitioner will be promoted to the post of the Deputy Director as per his eligibility. In view of the above, the writ petition is liable to be dismissed.

**6. Main contentions putforth by learned counsel for the petitioner are as under:**

a) The petitioner is governed by the service regulations of the federation, which is promulgated by the federation/by the board till today, the same is not abrogated as such the State Service CCCA Rules are not applicable to the federation.

b) The penalty/punishment imposed by the respondent was a minor penalty under Rule 27(1)(b), therefore, the petitioner cannot be prevented from getting promoted to a higher post during the pendency/continuous of punishment period, in view of the escalation contemplated under Rule 27.

c) Under those standing orders i.e. the A.P. Diary Development Cooperative Federation Limited, Conduct, Discipline and Appeal Rules 1983 there is no such enabling provision encompassed on the disciplinary authority to restrict promotion in the said circumstances.

d) A bare perusal of the punishment order does not indicate specifically that the petitioner is not eligible to the said promotion post and therefore, the G.O.Ms.No.342, dated 04.08.1997 cannot be applied to the petitioner.

e) The order impugned is without proper reasons.

f) The order impugned is passed without application of mind.

g) The respondents have deliberately suppressed the CCA regulations applicable to the employees wherein the service regulation under Rule 27(1) and its explanation does not

contemplate stoppage of annual grade increment of any nature as a penalty.

h) Petitioner is subjected to discrimination in view of the fact that similarly placed person like the petitioner who are subjected to disciplinary proceedings and who are under going various penalties under the said disciplinary proceedings are given promotion to the post of Deputy Directorship in the respondent organisation, as such the petitioner has been deprived of the legitimate right to the accrued post.

i) There is no provision contemplated in CDA Rules to adopt the CCA Rules of State Government.

j) Multiple punishments are impermissible in law i.e. in terms of amount recovery, prevention of promotion, displacement of seniority.

k) Therefore, the writ petition is deserved to be allowed as prayed for.

**7. The main contentions put-forth by the learned counsel for the respondents are as follows:**

a) Learned counsel for the respondent placed reliance on paras 7, 8 and 9 of the counter affidavit filed by the 1<sup>st</sup> respondent and contends that in the disciplinary case the

petitioner was given punishment of stoppage of one annual grade increment on 27.06.2007 and as such he was not eligible for promotion for a period of one year as per the rules and his promotion was given subsequently w.e.f. 11.09.2009 notionally on 31.03.2010 after completion of the said period of one year as per his eligibility.

b) The petitioners case could not be considered for promotion since charges were pending against the petitioner as on the said date.

c) There is no illegality in the order impugned and the writ petition has to be dismissed.

8. **Perused the record.**

9. Paras 7 and 9 of the counter filed by the 1<sup>st</sup> respondent read as under:

*"7. I submit that in reply to para 6 of the affidavit it is submitted that the petitioner was awarded punishment for stoppage of one increment without cumulative effect besides recovery of the actual loss of Rs.11,081/-. Vide H.O.Procs No.6464/AdmnIV/DC-4/2006, dated 27.06.2007. It is submitted that as per the GO the punishment period of one year has completed by 26.06.2008 and even as on this date certain charges were pending against the petitioner. It is further submitted that the Department Promotional Committee which met on 27.06.2009 has recommended the case of the petitioner, subject to final order in the disciplinary*

*case. His case could not be considered for promotional since other charges are still pending against him as on this date. However, the charges pending against him were withdrawn vide proceedings dated 15.12.2009 and 04.01.2009.*

*9. It is submitted that it is true that he was promoted during the year 2010 as Gr I Manager and the next promotion post is Deputy Director and the feeder category is the post of Gr I Manager. The seniority of the individual right from the cadre of processing supervisors has been maintained as per rules and there is no alternation of the seniority of the petitioner. It is submitted that at the time of promotion to Smt H.Kavitha, Sri P.Mohan Murali and Sri T.Srinivas Reddy to the post of Manager Gr.I the petitioner has been facing charges/departamental enquiry as on Jan.2007 and his case was not recommended by the Departmental Promotional Committee at that time. In the disciplinary case the petitioner was given the punishment of stoppage of one annual grade increment on 27.06.2007 and as such he was not eligible for promotion for a period of one year as per the rules and his promotion was given subsequently w.e.f. 11.09.009 notionally on 31.03.2010 after completion of the said period of one year as per his eligibility. In view of the position he is junior in the lower cadre of Manager Gr.II who got promotions earlier to him as Manager Gr.I stood above the petitioner in the Grade I Cadre."*

10. A bare perusal of the order impugned dated 05.03.2013 clearly indicates that the two reasons for not considering the case of the petitioner for promotion to the post of Deputy

Director are firstly that charges are pending against the petitioner as on 27.06.2009 when the departmental committee met and secondly that as per G.O.Ms.No.342, dated 04.08.1997, the petitioner is not eligible for promotion for a period of one year during the subsistence period of punishment of one annual grade increment.

11. A bare perusal of proceedings No.6464 (A)/Admin.IV/DC-4/2005, dated 27.06.2007 clearly indicates that the petitioner is awarded the punishment of stoppage of one annual grade increment without cumulative effect besides recovery of Rs.11081/- towards the actual loss sustained by the federation in six monthly instalments from his salary.

12. **CONCLUSION:**

13. The order of punishment imposed against the petitioner vide proceedings No.6464/(a)/Admin.IV /DC-4/2005, dated 27.06.2007, however, does not comply with the requirement as mentioned in Clause 3, Sub-clause iv(b) of G.O.Ms.No.342, dated 04.08.1997. The said relevant instructions are extracted hereunder:

PENALTY	EFFECT
(iv) <b>WITHHOLDING OF INCREMENTS OF PAY</b>  (b) <b>WITHOUT UMULATIVE EFFECT</b>	This penalty awarded to the Government Employee shall debar him/her for promotion/appointment by transfer to a higher post during the period of subsistence of penalty which shall be indicated in the order subject to a minimum period of one year, both for selection and non selection posts.

14. A bare perusal of the seniority list of Grade I Managers (Degree Holders) as on 01.04.2010 clearly indicates the petitioner's name at S.No.8 and the tentative seniority list of Grade II Managers (Degree holders) for the year 2007 also reflects the petitioner's name at S.No.8 and the names of Smt H.Kavitha, Sri P.Mohan Murali and T.Srinivas Reddy are in fact, below the name of the petitioner, and as borne on record, the said persons are juniors to the petitioner herein.

**15. Having regard to the facts and circumstances of the case, the question that arises for consideration is whether respondents could have deferred the promotion of the petitioner. In fact, as borne on record, the Department Promotion Committee which met on**

**27.06.2009 has recommended the case of the petitioner, subject to final order in the Disciplinary case as stated by the 1<sup>st</sup> respondent at para 7 of the counter affidavit filed by him and extracted above.**

16. This Court opines that the 1<sup>st</sup> respondent is not justified in passing the order impugned dated 05.03.2013 vide letter No.171/PER.I/B1/2009. The Apex Court in its judgment dated 27.04.2007 in Appeal (Civil) 3691 of 2005 in **Union of India and others v Sangram Keshari Nayak<sup>1</sup>** observed as under:

*'Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefor. Indisputably, the DPC recommended the case of the respondent for promotion. On the day on which, it is accepted at the bar, the DPC held its meeting, no vigilance enquiry was pending. No decision was also taken by the employer that a departmental proceeding should be initiated against him.'*

*'Terms and conditions of an employee working under the Central Government are governed by the rules framed*

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<sup>1</sup> (2007) 6 SCC 704

*under the proviso appended to Article 309 of the Constitution of India or under a statute. The right to be promoted to a next higher post can, thus, be curtailed only by reason of valid rules. Such a rule again, however, cannot be construed in a manner so as to curtail the right of promotion more than what was contemplated by law.'*

17. This Court opines that G.O.Ms.No.342, dated 04.08.1997 cannot be said to have been applied to the petitioner in view of the simple fact that the order of punishment imposed against the petitioner vide proceedings No.6464/(a)/Admin.IV/DC-4/2005, dated 27.06.2007, does not comply with the requirement as mentioned in Clause 3, Sub-clause iv(b) of G.O.Ms.No.342, dated 04.08.1997 and the said order does not specify that the petitioner is not eligible to the promotional post which is in fact, mandatory as per Clause 3, Sub-clause iv(b) of G.O.Ms.No.342, dated 04.08.1997.

18. This Court opines that as per the regulations in force governing the employees of Milk product, Lalapet, Hyderabad, the penalty/punishment imposed by the 1<sup>st</sup> respondent was minor penalty under Rule 27(1)(b),

therefore, the petitioner cannot be prevented from getting promoted to a higher post during the pendency/continuance of punishment pleaded in view of the explanation contemplated under Rule 27 which is as follows:

*"Explanation:*

***The following shall not amount to a penalty within the meaning of this rule:***

***(i) withholding of increment of an employee on account of his work being found unsatisfactory or not being of the required standard, or for failure to pass a prescribed test or examination.***

*(ii) Stoppage of an employee at the efficiency bar in a time scale, on the ground of his unfitness to cross the bar;*

*(iii) non-promotion, whether in an officiating capacity or otherwise of an employee, to a higher post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case.*

*(iv) reversion to a lower grade or post, of an employee officiating in a higher grade or post, on the ground that he is considered, after trial, to be unsuitable for such higher grade or post or on administrative grounds unconnected with his conduct;*

*(v) reversion to his previous grade or post of an employee appointed on probation to another grade or post, during or at the end of the period of probation, in accordance with the terms of his appointment;*

*(vi) Termination of service:*

*(a) of an employee appointed on probation during or at the end of the period of probation, in accordance with the terms of his appointment;*

*(b) of an employee appointed in a temporary capacity otherwise than under a contract or agreement, on the expiration of the period for which he was appointed, or earlier in accordance with the terms of his appointment;*

*(c) or an employee appointed under a contract or agreement, in accordance with the terms of such contract or agreement; and*

*(d) of any employee on reduction of establishment.*

19. A bare perusal of para 5 of counter affidavit filed by Respondent No.1 extracted below clearly indicates that the Petitioner is governed under the *Conduct, Discipline and Appeals Rules* of the Respondent Federation and it is even admitted so by the Respondent herein at para 5 and when admittedly the Service Rules/Regulations of the Federation contemplates that stoppage of annual grade increment does not amount to penalty, the Petitioner herein cannot be deprived of his legitimate right to promotion.

**Para 5 :**

*"It is submitted that as per the rules on the subject and as per the procedure in the Respondent Federation there is no provision for promotion to the higher cadre when charges are pending against any employee. Further it is submitted that the Petitioner is in the Grade-I cadre and is governed under the Conduct, Discipline and Appeals Rules of the Respondent*

*Federation. It is submitted that the Respondent is a Co-operative body registered under Co-operative Societies Act. As such the CCA Rules are not applicable to the Petitioner as stated by him. Hence, denied."*

**20. The Andhra Pradesh Dairy Development Co-operative Federation Limited Conduct, Discipline and Appeal Rules 1983 clearly indicate that there is no provision in the said Rules to restrict promotion in the circumstances of stoppage of Annual Grade Increment, nor there is any stipulation in the said rules indicating that there is no provision for promotion to the higher cadre when charges are pending against any employee.**

**21. Under these circumstances when the Respondent Authority itself fails to trace its own power as per its own Rules and Regulations in passing the order impugned in the present Writ Petition the same cannot be sustained. Taking in to consideration, the principle laid down by the Apex Court in Union of India and others v Sangram Keshari Nayak (2007) 6 SCC 704 that Right to be considered for promotion is a fundamental Right, the Writ Petition is therefore allowed duly**

**setting aside the impugned proceedings dt.05.03.2013 bearing Letter No.171/Per.1/B1/2009. The Respondent is directed to refix the seniority of the Petitioner from the Seniority list of Gr-II Managers (Degree Holders) 2007 by granting all the consequential benefits in the Respondent No.1 organization legally due to the Petitioner as per law within a period of 3 weeks from the date of receipt of the copy of the order. However, there shall be no order as to costs.**

Miscellaneous petitions, if any, pending shall stand dismissed.

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**SUREPALLI NANDA, J**

Date: 26.09.2022  
Note: L.R.copy to marked  
b/o kvrm