

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.21306 OF 2018

Date: 31.07.2018

Between:

Ragala Nageshwar Rao s/o. late R. Gandaiah,
Aged about 57 years, working as APO/Planning
Officer (Incharge), HMDA Head Office, Tarnaka,
Secunderabad, r/o.1-23-27, Brundavan Nagar
Colony, Venkatapuram, Alwal, Secunderabad.

.....Petitioner

And

The State of Telangana, rep.by its Principal
Secretary, MA & UD Department, Secretariat,
Hyderabad and another.

.....Respondents



The Court made the following:

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ORDER:

Heard learned counsel for petitioner, learned standing counsel for Hyderabad Metropolitan Development Authority (HMDA) and learned standing counsel for ACB.

2. From the averments made in the affidavit filed in support of writ petition the following facts emerge. Petitioner was promoted as Assistant Planning Officer on 2.7.2008. On 23.10.2009 he was placed as in charge of the post of Planning Officer and continues to hold charge of the said post till date. Petitioner claims that he is the senior most Assistant Planning Officer, eligible and suitable for promotion as Planning Officer. According to petitioner the advisory committee of HMDA in the meeting held on 18.2.2015 recommended his name for consideration for promotion as Planning Officer and forwarded the recommendation to the Government vide letter dated 22.2.2015. He is not granted promotion, whereas, his juniors were promoted on 23.2.2018. According to petitioner, he is ignored for promotion because ACB registered crime vide FIR No.2 of 2015 dated 23.2.2015 in the PS-ACB City Range-2, Hyderabad. Several representations made by petitioner to grant promotion are not acted upon.

3. According to learned counsel for petitioner on the false allegation of possessing assets disproportionate to known sources of income, crime was registered. There is no further progress in the crime registered against petitioner. So far, ACB has not finalised its investigation. According to learned counsel merely because crime is registered is no ground to deny promotion and to promote

juniors to the petitioner. An employee can be denied promotion only if charge sheet is filed in the criminal case whereas so far even final report is not filed and therefore promotion could not be denied. He would further submit that as on the date of consideration of petitioner for promotion no crime was registered and merely because subsequently crime is registered promotion cannot be denied.

4. According to learned standing counsel for HMDA Government is the appointing authority for the post of Planning Officer. The advisory committee in its meeting held on 18.2.2015 considered the petitioner for promotion and submitted its recommendation to the government vide letter dated 25.2.2015. However, in view of registration of crime and arrest and detention of petitioner vide order dated 7.3.2015 he was placed under suspension retrospectively with effect from 25.2.2015. On review of suspension, Government passed orders on 30.4.2016 revoking the suspension. In the counter affidavit of HMDA the promotion granted to juniors on 23.2.2018 is not denied. The deponent also submitted that case of Sri T. Satyanarayana Murthy was deferred in view of pending disciplinary proceedings. He filed WP No. 38396 of 2017 and High Court directed to consider him for promotion. He was promoted by Government.

5. According to learned standing counsel for ACB, on 6.1.18, ACB submitted final report recommending to Government to sanction prosecution of petitioner for the offences under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 and matter is pending with the government at this stage.

6. From the respective submissions, it is seen that few days before registering of crime the advisory committee resolved to recommend petitioner for promotion. After crime was registered by ACB, petitioner was placed under suspension on 07-03-2015 and suspension was revoked on 30-04-2016. On 06-01-2018 ACB submitted final report and sought sanction of Government to prosecute petitioner and decision of Government to sanction prosecution is pending. It appears, no further steps were taken by Government based on the recommendations of advisory committee whereas juniors to petitioner were promoted on 23-02-2018.

7. In the facts noted above, the point for consideration is whether petitioner is entitled to seek promotion ignoring the pending crime, when issue is pending at the stage of sanction for prosecution.

8. In **A.Jalander Reddy vs. State of Telangana**¹, this Court considered the claims of several petitioners in batch of writ petitions for promotion without reference to disciplinary proceedings/criminal proceedings. In the batch of cases, the disciplinary action/criminal proceedings are pending at various stages, such as, though charge memo was issued but delay in conclusion of disciplinary proceedings; crime is registered but investigation is not completed / but charge sheet is not filed; though final reports are filed by investigating agency but sanction for prosecution was not accorded; decision to take disciplinary action was taken instead of sanction for prosecution but no charge memo served.

¹ 2017(4) ALD 538

9. Having regard to the various aspects of denial of promotion agitated in the batch of writ petitions, this Court reviewed the precedent decisions of Supreme Court dealing with the claims for promotion qua disciplinary/ criminal proceedings; considered the scope of Rules 5 & 6 of Telangana State and Subordinate Service Rules, 1966 (Rules) and the policy of the Government as notified vide G.O.Ms.No.424 General Administration (Services.C) Department dated 25.5.1976 and G.O.Ms.No.257 General Administration (Ser.C) Department, dated 10.6.1999.

10. As observed by this Court in **Jalender Reddy**, Rules 5 and 6 of the Rules deal with promotions and preparation of panels for promotion. These rules are silent whether a person should be considered for promotion pending disciplinary action. Therefore, the policy notified by the Government has bearing on the claims.

11. As per G.O.Ms.No.424, three categories of Officers to be considered for promotion pending enquiry/trial/investigation. The three categories are as under:

(i) an officer with a clean record, the nature of charges/ allegations against whom relate to minor lapses having no bearing on his integrity or efficiency, which, even if held proved, would not stand in the way of his being promoted;

(ii) an officer whose record is such that he would not be promoted, irrespective of the allegations/charges under enquiry, trial or investigation; and

(iii) an officer whose record is such that he would have been promoted had he not been facing enquiry, trial or investigation, in respect of charges which, if held proved, would be sufficient to supersede him.

12. Revised orders were issued in G.O.Ms.No.257 of 1999. According to G.O.Ms.No.257, Officers categorized as under item (iii) of G.O.Ms.No.424 only should be considered for *ad hoc* promotion after completion of two years from the date of Departmental Promotion Committee or Screening Committee meeting in which their cases were considered for the first time and differed.

13. In other words, Officer falling into category (iii) can be considered for promotion on *ad hoc* basis only if he came up for consideration for promotion first time two years prior to such consideration before the DPC and disciplinary/criminal proceedings are not concluded. Further, such consideration is also subject to satisfaction of the competent authority that public interest is not affected if he is granted promotion. The claim of petitioner falls into category (iii). As noted above, from the averments of the affidavit filed in support of writ petition, petitioner came up for consideration for promotion on 18.2.2015 for the first time.

14. In the writ petition, petitioner sought declaration that action of respondents in not considering the case of the petitioner for promotion to the post of Planning Officer though DPC has recommended, merely on the ground that crime is registered by ACB at a later point of time is arbitrary, illegal, discriminatory and offends Articles 14 & 16 of the Constitution of India and sought further prayer to direct respondents to promote petitioner as Planning Officer as per recommendation of DPC/Advisory Committee without reference to ACB case.

15. As noted by this Court in **Jalender Reddy**, though it is permissible to defer promotion even when charge sheet is not filed in criminal proceedings, having regard to paragraphs 5 and 6 of G.O.Ms.No.257 dated 10.6.1999 and since two years lapsed from the date of consideration of petitioner for promotion, petitioner's claim for promotion is required to be considered as per G.O.Ms.No.257 dated 10.6.1999.

16. Writ Petition is accordingly disposed of directing respondents to consider the claim of petitioner for promotion in accordance with paragraphs 5 and 6 of G.O.Ms.No.257 General Administration (Ser.C) Department, dated 10.6.1999, if by now sanction for prosecution is not granted. If promotion is granted, such promotion shall be on adhoc basis. However, if petitioner succeeds in establishing his innocence in the criminal proceedings pending against him, he is entitled to claim all service benefits basing on the recommendation of HMDA for his promotion from the date of promotion of his juniors. No costs. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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