

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO.22521 OF 2018

Date: 09.07.2018

Between:

Md Yakub Pasha, S/o Md Sarvar, aged about 41 years,
Occ: Senior Assistant O/o Revenue Divisional Office,
Kalluru Revenue Division, Khammam District

.... Petitioner

and

The State of Telangana, rep. by its Principal Secretary,
Revenue Department, Secretariat, Hyderabad and others

.... Respondents



The Court made the following:

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ORDER:

Heard learned counsel for petitioner and learned Assistant Government Pleader for respondents.

2. Petitioner is presently working as Senior Assistant. He is aspiring for promotion as Deputy Tahsildar. In this Writ Petition, petitioner seeks promotion without reference to pending criminal case.

3. According to learned counsel for petitioner, petitioner is qualified, eligible and suitable for promotion. However, he is not likely to be considered for promotion as C.C.No.54 of 2015 is pending on the file of Court of Additional SPE and ACB cases-cum-V additional Chief Judge, City Civil Court, Hyderabad. According to learned counsel, petitioner is falsely implicated in the criminal case. Though he is innocent he is unable to establish his innocence as trial has not commenced and that he is not responsible for the delay in conclusion of trial in the said case. He would therefore submit that pending criminal case cannot come in the way of his entitlement for promotion.

4. *Per contra*, according to learned Assistant Government Pleader, as petitioner is accused in pending criminal case, as per the policy of Government, he cannot be considered for promotion. He would submit that the law is well settled on this aspect.

5. It is not in dispute that petitioner is accused in pending criminal case and allegation against petitioner is one of corruption. It is also appropriate to notice that petitioner was in custody for

more than 48 hours and petitioner was placed under suspension by order dated 23.03. 2013. However, on review of suspension petitioner was reinstated and is working as Senior Assistant.

6. Promotion to the post of Deputy Tahsildar is not regular line of promotion to Senior Assistant. The post of Deputy Tahsildar is governed by the 'Telangana State Revenue Subordinate Service Rules'. These rules provide a channel for promotion to persons working in ministerial establishment. A ministerial employee can move from ministerial service to revenue subordinate service. It is movement from one service to another service and to a superior post. Such elevation of status is called appointment by transfer. Petitioner claims to be eligible to be considered for such promotion. As fairly submitted by learned counsel for petitioner, petitioner was not overlooked earlier on the ground of pending criminal case and comes up for consideration for the first time.

7. One of the important parameters of public service is if an employee is facing disciplinary action/trial on his/her misdemeanor or misconduct-criminal/civil, he/she should not be granted promotion. It is not in public interest to grant promotion to an employee when on allegation, enquiry/ trial/investigation is pending against him. Thus, though employee is entitled to be considered for promotion, on such consideration even if he is found fit, his promotion can be differed on the ground that disciplinary proceedings/criminal proceedings are pending. On this proposition, no distinction can be made between selection posts and non-selection posts. An employee has right for consideration for promotion but has no right to ask promotion as

a matter of course [**K.Samantaray Vs National Insurance Company Limited- (2004) 9 SCC 286**]. In **Delhi Development Authority vs. H.C.Khurana**¹, Supreme Court set out scope of consideration of competing claims. Supreme Court observed as under:

“8.Where a decision has been taken to initiate the disciplinary proceedings against a government servant, his promotion, even if he is found otherwise suitable, would be incongruous, because **a government servant under such a cloud should not be promoted till he is cleared of the allegations against him**, into which an inquiry has to be made according to the decision taken. In such a situation, the correctness of the allegation being dependent on the final outcome of the disciplinary proceedings, it would not be fair to exclude him from consideration for promotion till conclusion of the disciplinary proceedings, even though it would be improper to promote him, if found otherwise suitable, unless exonerated. To reconcile these conflicting interests, of the government servant and public administration, **the only fair and just course is, to consider his case for promotion and to determine if he is otherwise suitable for promotion, and keep the result in abeyance in sealed cover to be implemented on conclusion of the disciplinary proceedings;** and in case he is exonerated therein, to promote him with all consequential benefits, if found otherwise suitable by the Selection Committee. On the other hand, giving him promotion after taking the decision to initiate disciplinary proceedings, would be incongruous and against public policy and principles of good administration.”

(emphasis supplied)

8.1. Telangana State and Subordinate Service Rules 1996 (for convenience referred to as ‘General Rules’) deal with general conditions of service of all Government employees. Rule 5 deals with procedure for promotion to selection posts and non-selection

¹ (1993) 3 SCC 196

posts. Rule 6 deals with preparation of panels. Rules 5 and 6 to the extent necessary read as under:

5. Selection Posts:-

(a) All first appointments as a State Service and all promotions/ appointments by transfer in that service shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal, by the appointing authority as specified in sub-rule (a) of Rule 6 from the panel of candidates. Such panel shall be prepared as laid down in Rule 6 by the appointing authority or any other authority empowered in this behalf.

(b) **Non-selection posts:-** No non-gazetted post should be treated as selection post. Promotion and appointment by transfer to higher posts other than those mentioned in sub-rule (a) shall be made in accordance with seniority-cum-fitness, unless:

- (i) such promotion or appointment by transfer of a member has been withheld as a penalty; or
- (ii) a member is given special promotion for conspicuous merit and ability.

6. Method of preparation of panels:

(a) to (h) xxxxxxxx

(i) Non-selection posts:-

For non-selection posts referred to in sub-rule (b) of Rule 5 the appointing authority shall prepare a list of eligible employees every year i.e., from 1st September of the year to 31st August of the succeeding year after considering the record sheet and the qualifications prescribed for the said post in the relevant Special Rules for promotion to next higher category of non-section post.”

8.2. According to sub-rule (a) of Rule 5, all first appointments to a State service and all promotions/appointments by transfer in that service should be made on grounds of merit and ability,

seniority being considered only where merit and ability are approximately equal from the panel of candidates provided. According to Rule 5(b), non-gazetted posts are not treated as selection posts. In case of non-section post, sub-rule (b) contemplates that it should be made in accordance with the seniority cum fitness.

8.3. Rule 6 deals with method of preparation of panels. The salient features of this provision are: panel of approved candidates as envisaged in Rule 5 (a) should be prepared by appointing authority/authority empowered, in consultation with, the Departmental Promotion Committee / the Screening Committee, in respect of the posts within the purview of Telangana State Public Service Commission; the appointment should be made from the panels so drawn; the 1st September of the year shall be reckoned as qualifying date to determine the eligibility and such panel would lapse on 31st December of the succeeding year or when the next panel is prepared, whichever is earlier; for computation of vacancies, 1st September of the year to the 31st August of the succeeding year should be reckoned as the period; the zone of consideration is confined to 1:3.

8.4. According to Rule 6(i) for non-selection posts, competent authority should prepare list of eligible employees every year i.e., from 1st September of the year to the 31st August of the succeeding year, after considering the record sheet and qualifications prescribed.

9. It is significant to note that even to non-selection post, promotion based on seniority position of an employee is not

automatic. It is subject to assessment of fitness, on consideration of record sheet and on assessing whether employee is possessing requisite qualifications. Assessment of fitness/consideration of record sheet, necessarily mean consideration of conduct of employee. The only issue for consideration is whether consideration for promotion to non-selection posts pending disciplinary proceedings/criminal proceedings attract similar scrutiny as applicable to selection post. However, it is appropriate to note at this stage that in assessing the suitability even to selection posts, the pendency of disciplinary proceedings/criminal proceedings is not the basis. Employee's suitability is assessed independently, but when employee is found suitable DPC/ Screening Committee would recommend deferring promotion pending disciplinary proceedings/criminal proceedings.

10. Senior can be ignored for promotion for variety of reasons. If senior is under currency of punishment, he can be superseded. Further, Rule 5(b) also carves out two exceptions. First one deals with a situation when employee is facing punishment of withholding of his promotion; if so, he cannot even be considered. Second deals with grant of accelerated promotion. If employee has conspicuous merit, he can be promoted ignoring his seniors. When disciplinary proceedings/criminal proceedings are pending, as per seniority, employee's suitability has to be assessed and if found fit and qualified, he may not get his promotion as per his turn, but he would earn promotion retrospectively once he is cleared in disciplinary proceedings/criminal proceedings. As against this, in the three contingencies mentioned above, he would not earn his promotion retrospectively / on par with his juniors.

11. It is appropriate to notice that Rules 5 and 6 of the Telangana State and Subordinate Service Rules, 1996 do not deal with the issue of consideration for promotion when disciplinary proceedings or criminal proceedings are pending, whether promotion is to selection post or non-selection post.

12. At this stage it is expedient to consider the policy of the State Government. In the combined State, prior to bifurcation, the Government formulated promotion policy on consideration of employees/officers facing the disciplinary proceedings and the same is in force in both States. The Telangana state is not adopting sealed cover procedure. After consideration of the case by the DPC or by the appointing authority, if the employee is found suitable/fit for promotion, the result of consideration is declared but his actual promotion is deferred till the proceedings pending against him are concluded. The administrative instructions/orders notified vide G.O.Ms.Nos.424 General Administration (Ser.C) Department, dated 25.05.1976 and G.O.Ms.No.257 General Administration (Ser.C) Department, dated 10.06.1999 reflect the policy of the Government on consideration for promotion when disciplinary proceedings/criminal proceedings are pending. As seen from the two Government orders, policy of the Government is clear and unambiguous; that the Government does not grant promotion, whether it is selection post or non-selection post if the allegations leveled against the employee/officer are grave and that such officer/employee is facing enquiry/trial/investigation.

13. On an interactive analysis of provisions in Rules 5 and 6 of General Rules, Government Policy as reflected in G.O.Ms.No.424

and G.O.Ms.No.257 and law on the subject, I am of the view that pending criminal case where employee is accused acts as a bar for granting promotion even to non-selection posts.

14. In the case on hand, petitioner is accused in criminal case and the criminal case is pending. The charge is one of corruption. Thus, the prayer to direct the respondents to grant promotion without reference to pending criminal case cannot be granted. The charge leveled against the petitioner is he indulged in illegal gratification and is accused in pending criminal case. Charge sheet is filed, and trial to be conducted. Though petitioner contends that he is not responsible for the delay in completion of trial, it is to be noted that continuation of criminal proceedings is not the subject matter in this writ petition. To maintain sanctity in public service, no person who is facing such serious allegation can be rewarded with promotion. It is not in public interest. The policy of the Government is clear and unambiguous and in terms thereof petitioner is not entitled for promotion even on *ad hoc* basis when criminal case is pending. It cannot be said that employee is remediless. If he comes clean on the charge of illegal gratification, he can claim all benefits from retrospective date. For the aforestated reasons, this writ petition deserves to be dismissed. It is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 09.07.2018
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