

THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO*+W.P. No.22926 OF 2019**

% 06-01-2023

#M. Nagaraju

....petitioner

Vs.

\$ State of Telangana, rep. by its Principal Secretary to Government, Home
Department, Secretariat , TS. Hyderabad and others

.... Respondents

!Counsel for the petitioner : V. Ravichandran

Counsel for the Respondents : G.P for Services-I

<Gist :

>Head Note:

? Cases referred:

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

WP. No.22926 OF 2019

Between:

M. Nagaraju

....petitioner

Vs.

\$ State of Telangana, rep. by its Principal Secretary to Government, Home
Department, Secretariat, T.S. Hyderabad & others

... Respondents

ORDER PRONOUNCED ON: 06.01.2023

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

NAMAVARAPU RAJESHWAR RAO, J

HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO
WRIT PETITION No.22926 OF 2019

ORDER:

This Writ Petition is filed for the following relief:

“...to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus duly setting aside the impugned Memo No.18808/Ser.I/A2/2016 dated 24.06.2017 and the consequential rejection order in Rc.No.513/E3/2018 dt.22.02.2019 issued by the 1st and 2nd respondents respectively as being arbitrary, illegal and contrary to the provisions of Rule 6 of the T.S. State & Subordinate Service Rules, 1996 and to the decision of the Hon'ble Supreme Court of India reported in (2010) 4 SCC 290 and (2007) 9 SCC 743 and in violation of Articles 14 and 16 of the Constitution of India, and that the petitioner is entitled to have his case considered and be promoted as Reserve Inspector (AR) in the panel year of 2014-15 with benefits incidental thereto and consequently, direct the 1st and 2nd respondents to include petitioner's name over and above that of the 5th respondent in the final seniority list of Reserve Inspectors (AR) working in SAR CPL, Amberpet, Hyderabad, communicated vide Memorandum Rc.No.513/E3/2018

dt.22.02.2019 issued by the 2nd respondent and pass.....”

2. The petitioner contends that he was initially appointed on 15.07.2008 as Reserve Sub-Inspector of Police (AR) in Special Armed Reserve, Central Police Lines (hereinafter referred to as 'SAR CPL') in accordance with Rule. Though he is eligible for promotion as Reserve Inspector during the panel year 2014-15, he was promoted as Reserve Inspector on 25.10.2016. Respondent No.5 was also initially appointed as Reserve-Sub-Inspector of Police (AR) in SAR CPL in accordance with Rule 2 (a) of Special Rules for the A.P Special Armed Police with effect from 15.07.2008 and he was promoted as Reserve Inspector on 25.10.2016. During the panel year 2014-15, the 5th respondent was not eligible for promotion as he was under the currency of punishment.

2.1 The petitioner further contended that as per the provisions of Rule 6 of the T.S. State & Subordinate Service Rules, 1996 year-wise panels have to be prepared and cases of candidates eligible during the respective panel years have to be considered as per their eligibility and suitability. The Government of Telangana, General Administration (Services-D) Department

dt.03.03.2015 has accorded permission to make promotions / appointment by transfers involving promotions. Pursuant to the said permission, the 3rd respondent vide Memo dt.23.03.2015 had called for Recommended Rolls, Nominal Rolls, Review Sheet along with up-to-date Service Books for preparation of promotion panel of Reserve Sub Inspector (hereinafter referred to as "RSI") (AR) fit to act as Reserve Inspector (hereinafter referred to as "RI") (AR) for the panel year 2014-15 and the 4th respondent furnished the same to the 3rd respondent vide proceedings dated 24.04.2015. The petitioner submitted a representation to the 2nd respondent dated 08.06.2015 with a request to consider his promotion to the post of Reserve Inspector for the panel year 2014-15. But, he was promoted as Reserve Inspector in 2015-16. The petitioner submitted another representation to the 2nd respondent on 06.12.2016 stating that to consider his claim for notional promotion in 2014-15. The Government of Telangana vide impugned rejection memo No.18808/Ser-I/A2/2016 dated 24.06.2017 decided that the R.Is who were promoted in the year 2015-16 are not eligible for notional promotion from the year 2014-15.

2.2 The petitioner further contended that the 2nd respondent communicated the provisional seniority list of Reserve Inspectors (AR) vide memo dated 18.12.2018 and the names of the petitioner and respondent No.5 are shown at serial no. 5 and serial no.4 respectively. The petitioner submitted objections dated 16.02.2019 challenging the above said list and the 2nd respondent in its Memorandum vide Rc.No.513/E3/2018 dated 22.2.2019 disposed of the objections by placing reliance on the aforementioned Government Memo dt.24.06.2017. The 2nd respondent further communicated the final seniority list of Reserve Inspectors (AR) working in SAR CPL vide memorandum Rc. No. 513/E3/2018 dated 22.02.2019 once again shows the name of the petitioner below that of the 5th respondent. Aggrieved by the impugned memo No.18808/Ser.I/A2/2016 dated 24.06.2017 issued by the 1st respondent and rejection order in Rc. No.513/E3/2018 dated 22.02.2019 issued by the 2nd respondent; the petitioner filed the present Writ Petition.

3. Though the 5th respondent was duly served with the notice of this petition, no appearance has been made by him or on his behalf.

4. The 2nd respondent filed a counter stating that there is no illegality or infirmity in the two impugned orders challenged in this writ petition. Due to the re-organisation of the erstwhile state of Andhra Pradesh and the creation of the new State of Telangana, a general ban on all promotions has been imposed vide G.O Rt. No. 2147 dated 16.05.2014 till the process of allocation of employees to the successor States of Telangana and Andhra Pradesh. The allocation of the state employees in the applicable departments between the two states was due for final preparation and communication from the Government of India. That the promotions in SAR CPL, Hyderabad, relating to RSIs fit to act as RIs were taken up after the final allocation order vide No.20(4)(x)/2016 dt.29.08.2016. That the panel promotion for the panel year 2014-15 was not prepared as the respondents did not consider it necessary due to the ban on all promotions and special circumstances of bifurcation of the erstwhile state of AP.

4.1 It is further contended by respondent No.2 that the grievance of the Petitioner and others seeking notional promotion for the panel year 2014-15 was communicated to the Government and the Government rejected the same vide Memo

No.18808/Ser.I/A2/2016 dated 24.06.2017 with the reason that no panel shall be prepared for a particular panel year after the date of expiry of such panel year, for any reasons and such vacancies which were not filled in the panel year for any reason shall be considered for promotions during the next panel year as per Rule 6 of the State and Subordinate Service Rules. With respect to the seniority of the 5th respondent, he was eligible for promotion as of 01.09.2016 and is senior to the petitioner as per the feeder category of the RSI (AR) as per the rules. Accordingly, prayed to dismiss the Writ Petition.

5. Heard both sides. Perused the record.

6. Learned counsel for the petitioner submitted that it is neither a case of non-availability of vacancies nor is a decision taken not to fill up the vacancies and there cannot be an arbitrary decision not to prepare panels, which would result in eligible candidates being denied promotion and ineligible candidates becoming eligible with regard to selection posts, and that promotions were accorded to certain individuals in the same department for the panel year 2014-15 whereas the

actions of the 1st and 2nd respondents run contrary to this fact and their pleadings.

7. Learned counsel for the petitioner vehemently argued that the 5th respondent was under currency of punishment during the panel year 2014-15 with a punishment of PPI (Postponement of Increments) for three years vide proceedings dated 13.10.2012 and later modified in appeal to that of PPI for two years, as such, the 5th respondent was not eligible for promotion for the panel year 2014-15. He brought to the notice of this Court the Law laid down by the Apex Court in the decisions reported in **(2007) 9 SCC 743 and (2010) 4 SCC 290** stating that it is settled law that year-wise panels have to be prepared and even if the panels are drawn subsequently, the eligibility would relate to the relevant panel year viz. 2014-15 in this case.

8. The learned GP for Home submitted that the grievance of the Petitioner and others seeking notional promotion for the panel year 2014-15 was communicated to the Government and the Government rejected the same vide Memo No. 18808/Ser.I/A2/2016 dated 24.06.2017 with the reason that no panel shall be prepared for a particular panel year after the date

of expiry of such panel year, for any reasons and such vacancies which were not filled in the panel year for any reason shall be considered for promotions during the next panel year as per Rule 6 of the State and Subordinate Service Rules. He brought to the notice of this Court sub para 3 of para No. 70 of the Judgment delivered by the Apex Court in **2022 SCC Online SC 680**.

9. It is to be noted that the 3rd respondent himself called for the preparation of a promotion panel of RSIs (AR) fit to act as RIs (AR) for the year 2014-15 vide Memo dated 23.03.2015 which discards the plea of the respondents that promotion panel for the year 2014-15 was not prepared due to the ban on all promotions imposed by the erstwhile Government of Andhra Pradesh. The above said memo was issued only pursuant to the modification of the ban orders vide G.O.Rt. No.695 dated 03.03.2015 issued by the 1st respondent. The 4th respondent furnished the promotion panel with all relevant documents called for by the 3rd respondent vide R.c.No. A1/420/SAR/2015/1024 dated 24.04.2015 which copy was also submitted to the 2nd respondent herein. As such, the 3rd

and 2nd respondents, more specifically, the 2nd respondent being the Appointing Authority, was in knowledge and had every opportunity and duty bestowed upon the 2nd respondent to act on the above said communication, but chose to neglect the same for about 1^{1/2} year despite the petitioner making a representation dated 08.06.2015 requesting the 2nd respondent for promotion for the panel year 2014-15.

10. The respondents comfortably with a view to get the writ petition dismissed have **incorporated the incomplete words of Rule 6(b)** of the State and Subordinate Service Rules in para no.21 of the counter affidavit by only mentioning “... ***and no panel shall be prepared for a particular panel year after the date of expiry of such panel year, for any reason.***”

Whereas the wordings of the rule are clearly “***No panel shall be prepared for a particular panel year, after the date of expiry of such panel year, for any reasons, except review of panels already prepared***” followed by provisos. It is unfortunate that the official respondents resorted to deleting the important wordings of the rule “***except review of panels already prepared***” with an apprehension that their stand

would fall and this cannot be accepted. Admittedly, the panel for the year 2014-15 was already prepared and received by the Appointing Authority whereas the respondents neither acted on the panel promotions within time nor reviewed the already prepared panel and dragged the matter.

11. The issue on hand is covered under the decision reported in the case of **Vijay Singh Charak v. Union of India**¹ relied by the counsel for the petitioner, wherein it is observed as under:

“12. A select list can only be prepared for a particular year, and only those who are eligible in that particular year alone can be considered for selection in the select list. Even if the select list is not prepared in that very year, it will relate back to that particular year.”

“14. It is obvious, therefore, that clubbing is illegal. Since clubbing has been done for vacancies arising between 1991-1995 in IFS, this was clearly illegal in view of the decision in Union of India v. Vipinchandra Hiralal Shah [(1996) 6 SCC 721 : 1997 SCC (L&S) 41].”

12. In the present case, the promotions for vacancies for the post of RI (AR) for the years 2014-15, 2015-16 and 2016-17 were all taken up in the panel year 2016-17 making the

¹ (2007) 9 SCC 743

respondent no.5 who is otherwise eligible for promotion in the panel year 2015-16, ineligible for promotion for the panel year 2014-15. The fact that promotion panel for the year 2015-16 was also prepared and communicated to the Appointing Authority but due to administrative/protocol defects, the same was delayed and the petitioner and others were promoted for the panel year 2016-17 which is arbitrary and unjust as it is the sole fault and delay of the respondents and the petitioner cannot be put to suffering. As such, the 5th respondent was eligible for promotion as of 01.09.2016 and the petitioner was eligible for promotion as on 14.07.2014, this Court feels that the petitioner ought to have been notionally promoted for the panel year 2014-15 and be placed above the 5th respondent in seniority. Hence, this Writ Petition is liable to be allowed.

13. Accordingly, the Writ Petition is allowed by setting aside the impugned Memo No.18808/Ser.I/A2/2016 dated 24.06.2017 and the consequential rejection order in Rc. No.513/E3/2018 dated 22.02.2019 issued by the 1st and 2nd respondents and they are further directed to pass necessary orders in promoting the petitioner as Reserve Inspector (AR) in

the panel year of 2014-15 with benefits incidental thereto. Respondents No.1 and 2 are directed to include the petitioner's name over and above that of the 5th respondent in the final seniority list of Reserve Inspectors (AR) working in Special Armed Reserve, Central Police Lines, Amberpet, Hyderabad, within a period of three (03) months from the date of receipt of the copy of this Order. No costs.

As a sequel thereto, miscellaneous applications, if any, pending in this writ petition, shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

6th day of January, 2023

BDR