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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

C.P.No.4/92 in
C.P.No.88/91 in
O.A.No.1032/90.

Date of Judgement 27.8.1992.

B.Venkataswamy ..Petitioner

Vs.

Shri Madan M.L.Sharma,
General Manager, S.C.Rly.,
Secunderabad. ..Respondent

Counsel for the Petitioner ::Shri P.V.Krishnaiah for
Shri G.Vedantha Rao

Counsel for the Respondent ::Shri N.Rajeswara Rao for
Shri D.Gopala Rao, SC for Rlys.

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri T.Chandrasekhara Reddy : Member(J)

I Judgement as per Hon'ble Shri R.Balasubramanian, Member(A) I

This contempt petition has been filed by Shri B.Venkataswamy (also the applicant in O.A.No.1032/90 and C.P.No.88/91 in the O.A. thereof) against Shri Madan M.L.Sharma, General Manager, S.C.Rly., Secunderabad, seeking to punish the respondent i.e., the General Manager, S.C.Rly., Secunderabad for wilfully disobeying the order dt. 4.11.91 passed in C.P.No.88/91 which was filed in O.A.No.1032/90. Orders passed in the relevant and connected cases are as below:

(a) Order dt. 30.3.91 in O.A.No.1032/90. The Bench held that the O.A. applicant Shri B.Venkataswamy was entitled to be considered for promotion to the post of Sr. Accounts Officer subject to his suitability and if he is found fit for promotion, he should be promoted from the date when his juniors were promoted. He was also entitled to get the arrears of pay and seniority on such promotion.

(b) Order dt. 4.11.91 in C.P.No.88/91. This C.P. was filed with a prayer to punish the respondents for non-implementation of the judgement dt. 30.3.91 in O.A.No.1032/90. This C.P. was dismissed by an order dt. 4.11.91 holding that there was

no wilful disobedience on the part of the respondents viz: the South Central Railway. While dismissing the C.P. the Bench observed that it was reasonable to infer that the sealed cover procedure was not adopted because at the time of consideration of the case of the applicant there was a charge sheet pending against him. The Bench, therefore, directed the respondents to convene a review DPC to assess the suitability or otherwise of the applicant for promotion at the time when his juniors were promoted and further directed that if the applicant was found suitable he should be promoted in accordance with rules. A time limit of two months was also indicated.

(c) O.A.No.675/91. This was disposed of by the Bench by an order dt. 31.1.92. It was observed that while passing the punishment order dt. 23.4.91 the disciplinary authority while disagreeing with the enquiry report has failed to issue a show cause notice and also consider the reply of the applicant thereon. It was further observed that the disciplinary authority had/come to his own ^{not} independent conclusion giving full and cogent reasons for differing with the enquiry report. The Bench, therefore, set aside the punishment order dt. 23.4.91 and further gave liberty to the respondents to proceed further from the enquiry report stage by issuing a show cause notice to the applicant and directed the disciplinary authority to come to its own logical conclusion after getting a reply thereon.

(d) R.P.No.20/92 in C.P.No.88/91 in O.A.No.1032/90. This review petition was filed by the O.A. respondents, seeking a review of the order dt. 4.11.91 passed in C.P.No.88/91. According to the review applicant, the promotion in question was only an adhoc promotion and not a regular promotion of the applicant and, therefore, no DPC whatsoever was required to meet to review the decision. It was further averred that in the case of adhoc promotion

it is only on a zonal level and that the local selection or screening committee was only required to examine the suitability or otherwise of the applicant. The Bench, therefore, clarified the order dt. 4.11.91 in C.P.No.88/91 stating that the local selection or screening committee which considered the applicant for adhoc promotion in January, 1989 should consider the case of the applicant for promotion as on 27.1.89 when his juniors were promoted. The Bench further directed that further action would be taken in accordance with law.

2. We shall now deal with the case in the light of the above decisions. Shri P.V.Krishnaiah, appearing for the applicant, ~~vehemently~~ argued that the direction in the O.A. was for promotion of the applicant if he is found fit and the promotion, whether regular or adhoc, should not in any manner depend upon the existence on that date of a charge-sheet. The respondents oppose this stating that further orders had already been passed by the Bench while dismissing C.P.No.88/91 although under the impression that it was a regular promotion. In that order it had specifically been stated that the promotion would, however, depend not only on the applicant being found fit but also in accordance with rules. All that was done at the time of disposal of the review petition was only a further clarification that a DPC was not required but that a local selection or screening committee would suffice, again emphasising that the promotion would be subject not only to his fitness but also would have to be in accordance with rules. According to them, the rule position is clear that when there is a charge-sheet pending, a person shall not be promoted. A review by ~~the~~ selection committee as directed in our order dt. 4.11.91 in C.P.No.88/91 met on 6.4.92. We saw the minutes of the selection committee which no doubt found the applicant fit to be promoted but in view of the

pendency of the disciplinary case he could not be promoted.

3. The case was heard afresh on 30.7.92. During the hearing, Shri P.V.Krishnaiah appearing for the applicant, stated that even today the respondents are not giving the applicant the adhoc promotion on the plea that there was a charge-sheet pending. It was also alleged that the respondents had not yet availed of the liberty given to them in the judgement dt. 31.1.92 in C.A.No.675/91 in that they have not yet proceeded further from the enquiry report stage by issuing a show cause notice to the applicant. We had already directed the respondents to consider the applicant for adhoc promotion in January, 1989. It had also been seen that the Selection Committee met as per our directions on 6.4.92. As stated earlier, from the minutes of the Selection Committee it is seen that the applicant was found fit for adhoc promotion. What now comes in the way according to the respondents is the pendency of ~~the~~ charge-sheet. In this connection we consider it worthwhile to refer to the instructions of the Dept. of Personnel & Trg. vide O.M.No.22011/5/86-Est(D) dt. 10.4.89. Paras 17.8.1 to 17.8.3 are relevant to the issue and are extracted below:

17.8.1 There may be some cases where the disciplinary case, criminal prosecution against the Government servant are not concluded even after the expiry of two years from the date of the meeting of the first D.P.C., which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him adhoc promotion keeping in view the following aspects:-

- (a) Whether the promotion of the officer will be against public interest;
- (b) Whether the charges are grave enough to warrant continued denial of promotion;
- (c) Whether there is no likelihood of the case coming to a conclusion in the near future;
- (d) Whether the delay in the finalisation of proceedings, departmental or in Court of Law, is not directly attributable to the Government servant concerned; and
- (e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after adhoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out the investigations conducted by the Bureau.

17.8.2 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow adhoc promotion to the Govt. servant, his case should be placed before the next D.P.C. held in the normal course after the expiry of the two years period to decide whether the officer is suitable for promotion on adhoc basis. Where the Govt. servant is considered for adhoc promotion, the D.P.C. should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

17.8.3 After a decision is taken to promote a Govt. servant on an adhoc basis, an order of promotion may be issued making it clear in the order itself that--

- (i) the promotion is being made on purely adhoc basis, the adhoc promotion will not confer any right for regular promotion; and
- (ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel at any time the adhoc promotion and revert the Govt. servant to the post from which he was promoted.

The case before us is different only on two aspects:

- (a) that there is no D.P.C. in this case but only a Selection or Screening Committee, and
- (b) that there is no sealed cover procedure.

Nevertheless, what is important is that when a disciplinary case is pending for more than two years there is no bar to adhoc promotion being given and what is under consideration in this case is only adhoc promotion. The applicant was found fit for adhoc promotion w.e.f. 27.1.89.

Although the review Selection Committee which met on 6.4.92 found the applicant fit for adhoc promotion w.e.f. 27.1.89, they also found that a charge-sheet was pending on 6.4.92.

Hence they did not promote him. We do not know when exactly the charge-sheet was served. In a situation like this we feel that the applicant is entitled to adhoc promotion either from 27.1.89 if there was no charge-sheet served on him by that date or after the expiry of two years from the date of the charge-sheet.

We, therefore, direct the Respondents to accord adhoc promotion to the applicant from 27-1-89 itself if there was no charge-sheet pending against him on that date. If, however, there was a charge-sheet pending against him on that date, then he should be given adhoc promotion only from the date two years after the date of the charge sheet. ~~or 27-1-89~~. The Respondents have naturally to satisfy about the conditions listed in para 17.8.1 extracted supra.

4. Nothing in this judgement shall come in the way of the respondents proceeding with the disciplinary case according to the rules and coming to independent conclusions and passing appropriate orders thereon.
5. We dispose of the contempt petition with the above directions with no order as to costs.

R.Balasubramanian

(R.Balasubramanian)
Member (A)

T.Chandrasekhara Reddy
(T.Chandrasekhara Reddy)
Member (J)

Dated: 27 ^{Aug} August, 1992.

Deputy Registrar (J)

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To

1. Mr.Madan M.L.Sharma, General Manager,
S.C.Railway, Secunderabad.
2. One copy to Mr.G.Vedantha Rao, Advocate
Advocates Association, High Court of A.P.Hyderabad.
3. One copy to Mr.D.Gopala Rao, SC for Rlys,CAT.Hyd.
4. One spare copy.

pvm.