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Court : Andhra Pradesh

Decided On : Nov-24-2015

Judge : R. Kantha Rao

Appeal No. : Writ Petition Nos. 26007 & 21093 of 2012

Appellant : K. Shyam Sunder

Respondent : APSRTC, rep. by its MD and Others

Judgement :

Common Order:

1. K. Shyam Sunder, Superintendent (Mech), in the official respondents-Andhra Pradesh State Road Transport Corporation (the Corporation, for short) filed these two writ petitions. Therefore, they are disposed of by the following common order.

2. W.P.No.26007 of 2012 is filed by the petitioner seeking a Writ of mandamus questioning the order dated 30-7-2012 whereby and whereunder he was ignored for the promotion to the post of Assistant Engineer (Mech) despite his selection to the promotional post which has been notified in Notification No.MEDI/255(2)/2012-PO-II, dated 28-3-2012, as illegal, arbitrary and in violation of Articles 14, 16 and 21 of the Constitution of India and to issue a direction to the official respondents-Corporation to promote him as Assistant Engineer (Mech).

3. The petitioner also filed W.P.No.21093 of 2012 for issuance of a Writ of mandamus to quash the proceedings dated 04-7-2012 served on the petitioner on 09-7-2012 whereby and whereunder he was reverted from the post of Superintendent (Mech) to the Deputy Superintendent (Mech)/Mechanical Chargeman and the consequential transfer proceedings dated 10-7-2012 as illegal, arbitrary, capricious and in violation of Articles 14, 16 and 21 of the Constitution of India and also in violation of principles of natural justice and consequently to direct the respondents-Corporation to extend all the consequential benefits to the petitioner in the cadre of Superintendent (Mech).

4. The brief facts leading to the filing of the writ petitions may be stated as follows:

(a) The petitioner joined in the 1st respondent-Corporation on 03-01-2006 as Deputy Superintendent (Mech) on regular basis by means of due process of selection. Subsequently, he was promoted as Superintendent (Mech) in the month of April, 2009 and he has been working under the Depot Manager, Tandoor as Superintendent (Mech) from 21-4-2009 onwards. The petitioner and some other employees were called for interview for the promotion to the post of Assistant Engineer (Mech). The Department Selection Committee met on 28-3-2012, interviewed the petitioner and selected him for the promotion to the post of Assistant Engineer (Mech). 80 candidates were called for the interview and 53 candidates were selected for the promotional post. The 2nd respondent also issued a Notification dated 28-3-2012 showing the number of candidates called for the interview and also the candidates selected for promotion to the post of Assistant Engineer (Mech). The petitioner was at serial No.35 in the said panel. Initially, the candidates 1 to 3 were promoted vide proceedings dated 28-3-2012. Subsequently, in the 2nd phase, the 2nd respondent issued proceedings dated 30-7-2012 promoting all the candidates from serial Nos.29 to 53 except the petitioner. The unofficial respondents 3 to 19 are juniors to the petitioner in the panel of select list dated 28-3-2012. As the petitioner was the only candidate, who was overlooked, he made a representation to the 2nd respondent dated 02-8-2012 under a copy to the 1st respondent stating therein that he was illegally overlooked for promotion and therefore, he may be promoted along with the other candidates. The same was not considered. It is under these circumstances, the petitioner filed

the present writ petition.

(b) The reason for the denial for promotion to the petitioner as can be understood from the counter affidavit filed by the respondents-Corporation is that he was reverted from the post of Superintendent (Mech) to Deputy Superintendent (Mech) vide order dated

04-7-2012 and therefore, he was not considered for promotion. However, questioning the said reversion order, the petitioner filed W.P.No.21093 of 2012 wherein this Court suspended the order of reversion as well as the order of transfer of the petitioner.

(c) The specific contention of the petitioner is that only with a view to deny him the promotion in an arbitrary manner, he was reverted to the post of Deputy Superintendent (Mech) without any proper enquiry. Thus, he assailed the aforesaid action of the respondents-Corporation in these two writ petitions.

5. The respondents-Corporation in their counter affidavit accepted all the assertions made by the petitioner in the Writ Affidavits but stated that having noticed that the petitioner was reverted to his former post of Deputy Superintendent (Mech) for a period of two years with effect from 04-7-2012 vide proceedings dated 04-7-2012, the promotion was denied to the petitioner.

6. In the Reply Affidavit, the petitioner specifically contended that insofar as the punishment order dated 04-7-2012 is concerned, he filed W.P.No.21093 of 2012 questioning the punishment and this Court suspended the same vide order dated 11-7-2012 and thereafter, the said order has become absolute on 06-10-2012. Pursuant to the said order, the petitioner was posted to work as Superintendent (Mech) vide order dated 16-11-2012 passed by the respondents-Corporation. Thus, according to the petitioner, the order of reversion alleged by the respondents-Corporation is not in existence but ignoring the said fact, the respondents-Corporation unjustly and arbitrarily denied promotion to him.

7. I have heard Sri V.Narasimha Goud, learned counsel appearing for the petitioner and Sri C.Sunil Kumar Reddy, learned Standing Counsel for the

Corporation (official respondents).

8. Except stating that by the impugned proceedings dated 04-7-2012 the petitioner was reverted to the post of Deputy Superintendent (Mech), the respondents-Corporation did not file any documents relating to the enquiry held against the petitioner. However, the petitioner in the Affidavit filed in support of W.P.No.21093 of 2012 stated that the Assistant Engineer (Mech), Picket Depot was appointed as an Enquiry Officer against him and the enquiry was conducted on 31-10-2011. According to the petitioner, no witnesses of the Department were examined to prove the charges levelled against him. The Enquiry Officer himself put some questions to the petitioner and thereafter passed a final order reverting him to the post of Deputy Superintendent (Mech). The 2nd respondent issued a Show Cause Notice dated 12-3-2012 to the petitioner. But without initiating any further proceedings pursuant to the said Show Cause Notice, the 2nd respondent considering the report dated 26-6-2012 submitted by the 3rd respondent, passed the impugned order dated 04-7-2012 reverting him to the post of Deputy Superintendent (Mech) for a period of two years. It is the version of the petitioner that the said order was passed intentionally with a view to deprive him of the ensuing promotion and the action of the respondents-Corporation is the result of arbitrary exercise of power and in violation of principles of natural justice. The reversion order was passed on the charge of slackness of supervision of the staff on the part of the petitioner.

9. The learned counsel appearing for the petitioner contends that the order of reversion passed against the petitioner is illegal, arbitrary and not valid in the eye of law and the same was passed in utter violation of principles of natural justice. In support of his contention, he relied on STATE OF UTTARANCHAL v. KHARAK SINGH ((2008) 8 SCC 236) wherein the Supreme Court held that the enquiry should not be an empty formality, that a witness should not be the Enquiry Officer, that the Departmental evidence should be adduced in the first instance and in the presence of the charged employee, that a copy of the enquiry report along with the material relied on should be furnished to the charged employee and that if these requirements are not fulfilled, the enquiry shall be held to be bad.

10. The learned counsel appearing for the petitioner further relied on STATE OF UTTAR PRADESH v. SAROJ KUMAR SINHA ((2010) 2 SCC 772) wherein the Supreme Court reiterated the same principle and held that the employee should be treated fairly in any proceedings which may culminate in punishment being imposed on him, that the Enquiry Officer acting in quasi-judicial authority is in the position of independent adjudicator, that he is not supposed to be the representative of the Department/ Disciplinary Authority, Government, he must be wholly unbiased and that the Enquiry Officer should not act as prosecutor as well as judge and his function to examine the evidence presented by the Department even in the absence of delinquent official to see as to whether unrebutted evidence is sufficient to hold that charges were proved.

11. In the instant case, as I have already pointed out that the respondents-Corporation did not place any material before this Court relating to the enquiry, whereas the petitioner specifically contended that the Enquiry Officer put some questions to him and thereafter passed the order and no Departmental witness was examined. To prove the charge of slackness of supervision of the staff on the part of the petitioner, the respondents-Corporation are under a duty to prove the same on behalf of the Department but admittedly, no witnesses were examined. The Enquiry Officer had assumed the role of a prosecutor, put some questions to the petitioner and basing on the answers given by the petitioner, he submitted an enquiry report basing on which, ultimately, the Disciplinary Authority passed the impugned order of reversion. Under law, no employee can be reduced in rank without proper disciplinary enquiry. In this case, it does not appear that any disciplinary enquiry as required under law is held against the petitioner. In the absence thereof, the Disciplinary Authority should not have passed the order of reversion basing on the report of the Enquiry Officer as the enquiry is not valid in the eye of law. Therefore, it is not open for the respondents-Corporation to contend that the petitioner was reverted pursuant to an enquiry and therefore, he was denied promotion. Further, in W.P.M.P.No.27039 of 2012 in W.P.No.21093 of 2012, this Court suspended the reversion order passed by the Disciplinary Authority and therefore, the date on which the case of the petitioner was considered for promotion, the reversion order was not in force. Despite the said fact, the respondents-Corporation denied promotion to the petitioner on the ground

that as there was reversion order against him he was not entitled for promotion. The entire approach adopted by the respondents-Corporation in denying the promotion to the petitioner is illegal and arbitrary.

12. Therefore, the order by which the petitioner was reverted to the post of Deputy Superintendent (Mech) is required to be set aside and accordingly the same is set aside in W.P.No.21093 of 2012. Consequently, the petitioner is entitled for promotion along with the remaining candidates in the panel and the action of the respondents-Corporation overlooking the petitioner for promotion is bad in law and the same is also liable to be set aside. Thus, the impugned order dated 30-7-2012 whereunder the petitioner was overlooked for promotion is set aside. The respondents-Corporation are directed to promote the petitioner to the post of Assistant Engineer (Mech) within a period of 4 (four) weeks from the date of receipt of a copy of this common order with all consequential benefits on par with the candidates who were promoted in the 2nd phase. Thus, both the writ petitions succeed and they are allowed. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

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