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Court : Andhra Pradesh

Decided On : Jan-25-2001

Reported in : 2001(2)ALT221

Judge : B.S.A. Swamy, J.

Acts : [Constitution of India](#) - Article 14

Appeal No. : Rev. W.P.M.P. No. 4024 of 2000 and W.P.No. 14596 of 1997

Appellant : A. Devendra Reddy

Respondent : Chittoor Co-operative Town Bank Ltd. and ors.

Advocate for Def. : E. Kalyan Ram, Adv. for Respondent No. 1 and ;S.V. Bhatt, Adv. for Respondent Nos. 2 to 6

Advocate for Pet/Ap. : Duba V. Nagarjuna Babu, Adv.

Disposition : Petition allowed

Judgement :

ORDER

B.S.A. Swamy, J.

1. This application is filed to review the Judgment of this Court in W.P.No. 14596 of 1997 dated 31-03-1998 stating that the respondents got the writ petition

dismissed by misleading the Court on the rule position prevailing at the time of promotion from the post of Clerk to Accountant.

2. The case of the petitioner is that he was appointed as a Clerk in the first respondent Bank on 02-02-1976 and respondents 2 to 6 were appointed much later to him. While he was working as clerk, departmental enquiry was initiated in 1989 against him and on the strength of the letter of V. Prakasham, there was a false identification of a person by name Bujji and thus the petitioner facilitated him to withdraw Rs. 50,000/- from S.B.A/c. No. 1880 of one Sri P. Venkatarama Reddy with a mala fide motive. It is useful to extract the charge levelled against him.

'(1) You have furnished a false identification of the cheques by name Bujji who presented the cheques for withdrawal of Rs. 50,000/- from the S.B.A./c. No. 1880 of Sri P. Venkatarama Reddy, with a mala fide motive. The false identification is made on the strength of a letter of Sri B. Prakasam who was not working in the Head Office of the Bank in Church Street, Chittoor. You have not properly verified as required by you which is detrimental to the interest of the Bank'.

While enquiry is pending, two vacancies in the cadre of Accountant have arisen in July, 1993 and as per the Rules of the Bank, the promotion to the post of Accountant from the post of Clerk is on seniority basis. The rule is that the promotion to the employees belonging to all cadres shall be on the basis of seniority from cadre to cadre. Seniority means cadre seniority. On the strength of this, the petitioner being senior to respondents 2 and 3 would have been promoted in the normal course. But, the case of the Bank is that as the petitioner was facing departmental enquiry for a grave charge, his promotion was considered by the Selection Committee and kept in a sealed cover.

3. Be that as it may on 10-07-1993 i.e., the very next day when R-2 and R-3 were promoted, the petitioner gave a representation to the authorities concerned to promote him with retrospective effect. Subsequently, the departmental proceedings were concluded on 20-12-1994 and the punishment of stoppage of three annual increments prior to that date i.e., the increments that have fallen due from February, 1994, February, 1993 and February, 1992, without cumulative effect.

4. It is not in dispute that the petitioner preferred an appeal against the above said punishment and the same is pending. Subsequently, the respondents 4, 5 and 6 were promoted as Accountants on 24-06-1997 and the petitioner gave another representation on 26-06-1997. When the respondent did not heed to the representations of the petitioner, the present writ petition was filed.

5. The writ petition was dismissed relying on the contention of the respondent-Bank that promotion to the post of Accountant is not on the basis of seniority, but on the basis of merit-cum-seniority and as the petitioner was found guilty in a departmental proceedings, his case could not be considered. The case of the petitioner is that when the counter was filed, learned Judge without giving time to file a reply dismissed the writ petition on the basis of the averments made in the counter, which is ultimately found to be false. Now the Counsel for the respondent-Bank fairly conceded that during 1990-1993 the promotion to the post of Accountant is purely on the basis of seniority, but not on the basis of merit-cum-seniority. As already referred supra, the promotion to the post of Accountant is on the basis of seniority-cum-merit till February, 1997 the day on which the promotion policy was changed. So, by the time the respondents 2 and 3 were promoted, the petitioner being senior he would have been promoted. But, the case of the respondents is that the Committee having considered his case kept the proceedings in the sealed cover. Even according to the respondents, the disciplinary proceedings ended in inflicting punishment of stoppage of three increments in 1994. Immediately the respondent-Bank would have given him promotion to the post of Accountant as the promotion to the post of Accountant is by virtue of seniority alone even as on that date and the respondents cannot refuse to consider the case of the petitioner for promotion on the ground that he was inflicted with a punishment of stoppage of three increments. If that is done, it amounts to double jeopardy. Hence, the action of the respondents in not promoting the petitioner after the departmental enquiry came to an end is vitiated and I have a doubt that it is a mala fide one for the reasons to be recorded hereunder:

6. The departmental enquiry was initiated against the petitioner on the ground that he wrongly identified a person which enabled him to withdraw an amount of Rs.

50,000/- from the S.B. Account of one P. Venkatarama Reddy. From the charge itself it is seen that such an identification was made by the petitioner on the strength of the letter given by Mr. B. Prakasham, who is also an employee of the same Bank. Initially the departmental enquiry was initiated against both the employees, but Mr. Prakasham was let off on the ground that he has given a letter regretting for what has happened and further action against him was dropped. It is interesting to extract the relevant paragraph from the order:

'With regard to the point raised by you about letting of Mr. B. Prakasam, he was let off because he has given a letter regretting for what has happened and therefore further action was dropped. As you have not repented for the misconduct and did not regret for what happened, the question of letting you off as in the case of Mr. B. Prakasam does not arise lest it may serve as a bad example to other employees. In fact, examples as of your's are to be deterred.'

From this it is seen that on the basis of an apology letter Mr. Prakasham was let off who is mainly responsible for identification done by the petitioner and the petitioner was inflicted with a punishment of stoppage of three increments on the ground that he has not given an apology letter. I am really astonished to note that when it is the specific case of the petitioner that at the instance of another co-employee, he identified the person though he has no personal knowledge of him and the co-employee who had given a letter to the petitioner to identify that person was let off and the poor petitioner was punished with stoppage of increments for obliging his co-employee, which according to me is illegal. Assuming for a moment that that the departmental enquiry is a valid one in the eye of law, the petitioner preferred an appeal immediately after receiving the orders of the Selection Committee, but the appeal stands undisposed of till now. From this it is evident that the respondent-Bank is following different standards in dealing with different employees of the Bank and the same offends Article 14 of the [Constitution of India](#). Hence, I have no manner of doubt to hold that the departmental enquiry which ended in inflicting stoppage of three increments is vitiated.

7. The Counsel for the respondent-Bank cited some decisions viz., Union of India v. K.V. Janakiraman : (1991)IILLJ570SC and State of Tamil Nadu v. Thiru K.S.

Murugesan : (1996)IIILLJ333SC to the effect that when a person is facing departmental enquiry, his case need not be considered for promotion. I have seen those Judgments. They relate to promotion to the post of selection post, but not the post to be filled on seniority basis. Even assuming that the respondent-Bank is justified in not giving promotion on the relevant date, I do not find any justification in not promoting the petitioner after departmental enquiry came to an end. Hence, those judgments are of no help to the petitioner.

8. For all the above reasons, I have no manner of doubt that the Counsel for the review petitioner has made out a case for reviewing the earlier order of this Court as the learned Judge simply proceeded on the assumption that the promotion to the post of Accountant is on the basis of merit-cum-seniority, which was not the position either on the day when the vacancies have arisen or on the day when the departmental enquiry came to an end. As the writ petition is decided on a false premise, the order if allowed to stand would cause severe prejudice to the petitioner. Hence, this review application is allowed and for the reasons recorded above, the order of this Court dated 31-03-1998 in W.P.No. 14596 of 1997 is set aside and the writ petition is allowed with a direction to give notional promotion from 09-07-1993, the day on which respondents 2 and 3 were promoted, with all consequential benefits limiting the monetary benefit from 08-07-1997 the day on which the present writ petition is filed and review the further promotions, if any made from that category without reference to the departmental enquiry against the petitioner and consider the case of the petitioner as per the rules. The respondent-Bank is given four weeks time to comply with the directions of this Court and pay arrears of salary due to the petitioner within eight weeks thereafter.

9. In the light of the orders passed in this Rev.W.P.M.P., the writ petition is allowed. There shall be no order as to costs.