

Spall

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD



OA/021/833/2017

Dated : 31/10/2018

BETWEEN

P. Komuraiah, S/o. Durgaiah,
Aged about 52 years,
Technician "G" IC No.326,
Production Process Section,
Government of India, Heavy Water Plant,
Manuguru.

....Applicant

AND

1. The Union of India rep. by its
Administrative Officer-III,
Government of India,
Heavy Water Plant (Manuguru),
Gauthami Nagar Post,
Ashwapuram – 507 116,
Bhadradi Kothagudem District,
Telangana.
2. The Assistant Personnel Officer (R),
Government of India,
Heavy Water Plant (Manuguru),
Gauthami Nagar Post, Ashwapuram – 507 116,
Bhadradi Kothagudem District, Telangana.

....Respondents

Counsel for the Applicant	:	Mr. K. Sudhakar Reddy
Counsel for the Respondents	:	Mr. V. Vinod Kumar, Sr. CGSC

CORAM :

Hon'ble Mr. Justice R. Kantha Rao, Judl Member
Hon'ble Mrs. Naini Jayaseelan, Admn. Member

[Signature]



ORAL ORDER

(Per Hon'ble Mr. Justice R. Kantha Rao, Judl. Member)

Heard Shri K. Sudhaker Reddy, learned counsel appearing for the applicant and Shri V. Vinod Kumar, learned Senior Central Government Standing Counsel for the respondents.

2. The applicant, who is a Technician 'G', was one of the candidates for consideration for promotion to the post of Senior Technician 'H' in the respondent's department. For that purpose, a DPC meeting was held on 24.3.2015. It came to the notice of the DPC that an FIR was registered against the applicant on the date of the DPC. On the ground that an FIR was filed against the applicant and on the premise that the matter is under investigation, the case of the applicant for promotion was placed in sealed cover. In view of the said fact, the applicant was denied promotion from the date of DPC till date.

3. The action of the respondents is assailed by the applicant in the present O.A. He sought a direction to the respondents to give effect to the recommendations of ASSC Committee held on 24-27th March, 2015 for promotion of the applicant to the said post w.e.f. 1.7.2014 along with his batch mates with all consequential benefits.

4. Shri K. Sudhaker Reddy, learned counsel for the applicant would contend that on mere registering of the FIR, the Committee shall not keep the proceedings relating to promotion of the applicant in the sealed cover and the procedure adopted by the Committee is totally erroneous.

5. On the other hand it is contended by the learned Senior Standing Counsel appearing for the respondents that though after investigation, the Police



concerned referred the case against the applicant as false, since no order for closure of the case has been produced by the applicant, he cannot seek a direction to the respondents to open the sealed cover and give effect to the proceedings of the Committee.

6. In this context, it would be relevant to refer to the DOPT O.M. dated 2.11.2012. The O.M. was issued basing on the judgement of the Hon'ble Supreme Court in Janakiraman's case reported in AIR 1991 SC 2010, according to which the vigilance clearance for promotion may be denied to the candidate only in the following circumstances:

- i) Government servants under suspension
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- iii) Government servants in respect of whom prosecution for a criminal charge is pending

7. The O.M. further clarifies even if the complaints against the employee, who was a candidate for promotion before the Committee, are serious in nature like corruption or other offences involving moral turpitude, unless he is suspended by the competent authority, the vigilance clearance cannot be denied except in the above mentioned three circumstances.

8. Coming to the nature of the FIR lodged against the applicant, it was lodged by his brother-in-law in a land dispute between the both. The allegation against the applicant was that he and another person bet his brother-in-law with hands. The Magistrate forwarded the case to the SHO, Karimnagar Rural Police Station basing on which the case u/S 325 IPC was registered against him.



framed against the applicant by the Magistrate concerned, it is not possible for the applicant to file the result of the case before the department.

9. Even otherwise, the O.M. above referred does not contemplate a situation to keep the proceedings of promotion of an employee in a sealed cover on the mere ground that an FIR was registered against him. Therefore, at the crucial dates i.e. 24 – 27th March, 2015 when the DPC was held, neither disciplinary proceedings were initiated by the department nor criminal prosecution was pending against the applicant. Therefore, having regard to the terms of the above referred O.M., the action of keeping the proceedings relating to the promotion of the applicant in a sealed cover resorted to by the DPC itself is illegal. The DPC, in our considered view, ought to have considered the case of the applicant along with the other candidates for promotion without waiting for further information.

10. For the foregoing reasons, we are of the view that the applicant ought to have been promoted along with his batch mates w.e.f. 01.07.2014. However, the promotion orders were issued to his batch mates under Memo dated 18.8.2015. The respondents are directed to open the sealed cover and give effect to the recommendations of the ASSC Committee held on 24 – 27th March, 2015 on par with his batch mates whose names were considered in the said ASSC Committee meeting, if he is successful, with all consequential benefits within eight weeks from the date of receipt of a copy of the order.

11. The O.A. is accordingly allowed. There shall be no order as to costs.

प्रमाणित प्रतः
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केस संख्या
CASE NUMBER... OA 833/201