

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

WRIT PETITION No.38953 of 2017

ORDER:

The petitioner is challenging G.O.Ms.No.24, dated 10.02.2021 by which, his case for promotion has been deferred until conclusion of disciplinary proceedings.

2. Heard. Perused the record.

3. The case of the petitioner is that he was initially appointed as Deputy Executive Engineer in the year 1987 and is presently working as Superintendent Engineer at Khammam. While so, the petitioner was placed under suspension on 12.11.2009 as a case has been registered by the Anti Corruption Bureau (ACB) against him on 23.09.2009 alleging that he was possessing assets disproportionate to his known sources of income. Subsequently, Departmental Enquiry was also initiated and both the departmental enquiry as well as the ACB case are pending as on date. During pendency of the proceedings, petitioner has made a representation to the respondents contending that the ACB has miscalculated his sources of income, which resulted in registration of crime against him. Basing on said representation, petitioner was re-instated into service on 14.07.2010. Now the grievance of the petitioner is non-consideration of his case for promotion to the post of Chief Engineer for the panel year 2020-2021.

4. Respondents have filed counter-affidavit. There is no dispute with regard to the appointment of petitioner, initiation of departmental proceedings as well as criminal proceedings and the pendency of such proceedings as on date. It is contended by the respondents that the petitioner has not submitted his written statement of defence in response to the charge memo issued vide G.O.RT.No.1546, dated 21.11.2012 and he has also not attended the Criminal Court on many occasions from 01.04.2020 to 15.02.2021, which resulted in delay in concluding the proceedings. In this connection, the respondents have referred to the judgment of Hon'ble Supreme Court in ***Ranjan Dwivedi Vs. C.B.I***¹, wherein, it is held that the accused cannot claim the right of speedy trial by causing delay. This judgment is not applicable to the facts of the present case, as there is no delay on the part of petitioner, as he explained the reason for his non-appearance before the court during Covid-19 lockdown.

5. Reply affidavit has been filed by the petitioner denying the averments in the counter affidavit that he has not submitted his written statement of defence in response to the charge memo vide G.O.Rt.No.1546, dated 21.11.2012 and stated that he has submitted his reply on 18.01.2013 and inspite of the same, the proceedings are still pending. It is also stated in the reply affidavit that his absence on the dates referred in the counter-affidavit was due to lockdown in view of

¹ W.P.(Crl).No.200 of 2011

Covid-19. Thus, he prayed to direct the respondents to consider his case for promotion to the post of Chief Engineer.

6. In this case, the petitioner is claiming consideration of his case for promotion as Chief Engineer on the ground that the Departmental as well as the criminal proceedings are pending since 2009 and it may take some more years for conclusion of those proceedings. In support of his contentions, learned counsel for petitioner has referred to the order of this Court in W.P.No.21306 of 2018, dated 31.07.2018, wherein, while relying on an earlier Judgment of this Court in **A. Jalander Reddy Vs. State of Telangana**², this Court ordered to consider the claim of petitioner therein for promotion on Adhoc basis. The learned counsel for the petitioner has also relied on a Division Bench Judgment of this Court in **K. Sai Ram Vs. State of Andhra Pradesh**³, wherein it is held that a person cannot be penalized by keeping disciplinary proceedings pending for unduly long periods and by not considering his case for promotion on purported ground of pendency of disciplinary proceedings.

7. The aforesaid two judgments (2 and 3 *supra*) are squarely applicable to the case of the petitioner herein. In the present case also, inspite of initiating the departmental proceedings and also the criminal proceedings in the year 2009, the respondents have failed to conclude the same even after lapse of almost 14 years. The petitioner cannot be made to suffer for this long period of time without his case being considered for promotion on the pretext of pendency of disciplinary

² 2017(4) ALD 538

³ 2017(6) ALD 623

proceedings against him. Therefore, in view of the above judgments and in view of the facts and circumstances of this case, this Court is of the considered view that the case of the petitioner can be considered for promotion on Adhoc basis.

8. Accordingly, the Writ Petition is disposed of directing the respondents to consider the case of the petitioner for promotion to the post of Chief Engineer on Adhoc basis, within a period of two months from the date of receipt of a copy of this order. If the petitioner succeeds in establishing his innocence in the disciplinary proceedings pending against him, he is entitled to claim all service benefits from the date of promotion of his juniors. No costs.

Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

JUVVADI SRIDEVI, J

28th August, 2023
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