

SUPREME COURT OF INDIA

Collector of Thanjavur Distt.

Vs.

S. Rajagopalan

C.A.No.3401 of 1993

(M. Jagannadha Rao and A. P. Misra JJ.)

03.02.2000

ORDER

M. JAGANNADHA RAO, J.

1. This is an appeal filed by the Collector of District, the Special Commissioner and Secretary to Government of Tamil Nadu. There are five Respondents in this appeal. The learned Counsel for the Appellants has submitted that we are not concerned with the 5th Respondent. The order which we propose to pass will therefore apply to Respondent Nos. 1 to 4.

2. The writ petition was filed by Respondents 1 to 4 in the High Court of Madras the same being transferred to the Administrative Tribunal of Tamil Nadu. The writ petitioners were working as Assistants. The question of their promotion as Deputy Tahsildars was in issue before the Tribunal. The list of Deputy Tahsildars for the year 1982 was drawn by the Collector Thanjavur on 7.2.1983 and the said list did not contain the names of the writ petitioners (Respondents 1 to 4 in this appeal). Their names were omitted on the ground that minor punishment was imposed on them consequent to disciplinary enquiry. The punishment which was inflicted on them was stoppage of increments. At the time of considering the cases of the above four Assistants, the Collector excluded their names in the list of Deputy Tahsildars for the year 1982. Their names were omitted on the ground that

punishments were imposed against them during the anterior period.

3. The Respondents questioned the non-inclusion of their names in the panel before the Tribunal. The Tribunal allowed their petition and issued a direction that the case of the writ petitioners for inclusion in the list of Deputy Tahsildars should be considered uninfluenced by the minor punishment inflicted on them and that if by that such consideration they were found fit for inclusion in the list, suitable place be allotted to them in the list of seniority for the cadre. Against the above said direction this appeal has been preferred by the Collector, Thanjavur and Special Commissioner.

4. Learned Counsel for the Appellants contended that the Tribunal was in error in thinking that the non-inclusion of the Respondents (writ petitioners) in the above select list of Deputy Tahsildars would amount to a second punishment on them. The Tribunal felt that minor punishments could not be taken into consideration while considering their case for inclusion in the panel of Deputy Tahsildars for the year 1982. Learned Counsel for the Appellant contends that this view of the Tribunal is incorrect in view of the decision of this Court in *Union of Indian and Ors. v. K.V. Jankiraman and Ors.*: (1991)IILLJ570SC

5. The Respondents have been served notice but they have not chosen to appear personally or through counsel. We are, therefore, compelled to dispose of this appeal treating them as ex-parte.

6. We are of the view that the Tribunal was in error in thinking that if the minor punishments inflicted on the respondents were taken into consideration at the time of considering their merit for the purpose of inclusion in the list of Deputy Tahsildars, that would amount to double jeopardy. In our opinion the said view expressed by the Tribunal is clearly contrary to the legal position in *Union of India v. K.V. Jankiraman and Ors.* This Court held that:

28. The Tribunal has also struck down the following portion in the second subparagraph after clause (iii) of paragraph 3 which reads as follows: "If any penalty is imposed on the officer as result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the findings in the sealed cover/covers shall not be acted upon" and has directed that if the proceedings result in a penalty, the person concerned should be considered for promotion in a Review DPC as on the original date in the light of the results of the sealed cover as also the imposition of penalty, and his claim for promotion cannot be deferred for the subsequent DPCs as provided in the instructions. It may be pointed out that the said sub-paragraph directs that "the officer's case for promotion may be considered in the usual manner by the next DPC which meets in the normal course after the conclusion of the disciplinary court proceedings". The Tribunal has given the direction in question on the ground the such deferment of the claim for promotion to the subsequent DPCs amounts to a double penalty. According to the Tribunal, "it not only violets Articles 14 and 16 of the Constitution compared with other employees who are not at the verge of promotion when the disciplinary proceedings are initiated against them but also offends the rule against double jeopardy contained in

Article 20(2) of the Constitution". The Tribunal has, therefore, held that when an employee is visited with a penalty as a result of the disciplinary proceedings there should be a Review DPC as on the date when the sealed cover procedure was followed and the Review DPC should consider the findings in the sealed cover as also the penalty imposed. It is not clear to us as to why the Tribunal wants the Review DPC to consider the penalty imposed while considering the findings in the sealed cover if, according to the Tribunal, not giving effect to the findings in the sealed cover even when a penalty is imposed, amounts to double jeopardy. However, as we read the findings of the Tribunal, it appears that the Tribunal in no case wants the promotion of the officer to be deferred if the officer is visited with a penalty in the disciplinary proceedings and the Tribunal desires that the officer should be given promotion as per the findings in the sealed cover.

29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in presenting. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after Clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.

7. We respectfully follow the said decision. It has been clearly pointed out there that the denial of promotion would not amount to penalty and that it would be open to the authorities to take into account the fact that some punishments were imposed on them during the relevant period.

8. For the aforesaid reasons we hold that the Tribunal was in error in granting the direction to which we have referred to herein before.

9. It is, however, not clear that any of the respondents have since retired. In case any of them have retired the direction which we propose to give in this order will not be applicable to such persons. The direction which we propose to give will only apply to such of the respondents 1 to 4 who are still in service. The direction granted by the Tribunal to consider the case of the respondents/Assistants for inclusion in the panel of Deputy Tahsildar of 1982 uninfluenced by the punishment on them is hereby set aside. It is, therefore, open to the competent authority to consider the cases of the respondents (who have not since retired) by taking into consideration the fact that the minor punishments were imposed on the said respondents during the relevant period. In case the competent authority comes to the conclusion, after taking into consideration the aforesaid minor punishment, that their names ought not to have been included in the Select List for 1982 for Thanjavur District, it will consider whether their names could be included in the Select List subsequently issued. In case any of the respondents (who is not retired since) had been promoted higher up beyond the post of Deputy Tahsildar on the basis of any promotion granted pursuant to the order of the Tribunal, it will become necessary to review the promotions given to such persons above the post of Deputy Tashildars in accordance with law.

10. We, therefore, allow the appeal in terms of the directions. There will be no order as to costs.

11. During the pendency of this appeal a sum of Rs. 5,000/- was directed to be deposited by the Appellant to the benefit of the respondents in the event they want to appear to contest. We direct the Registry to transfer the said sum to the Supreme Court Legal Services Committee.