

THE HON'BLE THE CHIEF JUSTICE SHRI MADAN B. LOKUR
AND
THE HON'BLE SHRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.1958 OF 2012

DATED:31.1.2012

Between:

Union of India
Rep. by the Secretary
Government of India,
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
North Block
New Delhi 110 001
and others

... Appellants

And

D.J. Prabhakar Anand
and another

... Respondents

THE HON'BLE THE CHIEF JUSTICE SHRI MADAN B. LOKUR
AND
THE HON'BLE SHRI JUSTICE SANJAY KUMAR

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ORDER: (per the Hon'ble the Chief Justice Shri Madan B. Lokur)

We have heard both the parties at the stage of admission in great detail and with their consent we pass the final order at this stage.

2. The petitioners are aggrieved by an order dt.17.6.2011 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, in O.A. No.17 of 2010.

3. Respondent No.1 was initially appointed as Income Tax Inspector in 1987 and promoted to the rank of Income Tax Officer in 1994.

4. Subsequently, it appears that allegations were made against respondent No.1 of having assets disproportionate to his known sources of income. A departmental enquiry was initiated against respondent No.1 alleging that his assets to the extent of Rs.6.77 lakhs were disproportionate to his known sources of income. The matter was also taken cognizance of by the Central Bureau of Investigation (CBI) and we are told that trial is going on in the Special Court against the respondent. Insofar as the disciplinary enquiry is concerned, we are told that the Enquiry Officer has given a report exonerating respondent No.1. The matter is still pending consideration before the disciplinary authority.

5. On these broad facts, since his request for ad hoc promotion to the post of Assistant Commissioner of Income Tax was not acceded to, respondent No.1 filed an original application before the Tribunal seeking ad hoc promotion. The application was allowed and hence this petition.

6. It is an admitted position that a regular Departmental Promotions Committee met and the case of respondent No.1 was considered in terms of the Office Memorandum (O.M) dt.14.9.1992 issued by the Government of India, dealing with promotions where disciplinary matters are pending.

7. There is no doubt that in terms of the O.M. dt.14.9.1992, in case respondent No.1 is exonerated of all the charges, both in the departmental enquiry and in the Special Court, the sealed cover is required to be opened and necessary orders will then be passed. At this stage, it is not permissible for the Tribunal to prejudge the issue and direct the petitioners to open the sealed cover in the event the disciplinary proceedings are not completed against respondent No.1 within a period of six months. To this extent, the direction given by the Tribunal is certainly not warranted.

8. The issue that survives really is about the ad hoc promotion of respondent No.1.

9. O.M. dt.14.9.1992 deals with such issues in paragraph 5 thereof.

This paragraph reads as under:

“5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which keeps its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of given him ad-hoc promotion keeping in view the following aspects:

- a) Whether the promotion of the officer will be against the public interest;
- b) Whether the charges are grave enough to warrant continued denial of promotion;
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;
- d) Whether the delay in the finalization of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- e) Whether there is any likelihood of misuse of official

position which the Government servant may occupy after adhoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arouse out of the investigations conducted by the Bureau.”

10. A perusal of the aforesaid paragraph indicates that if the promotion does not subserve the public interest or if the charges are grave enough to deny promotion or where there is a likelihood of misuse of official position after ad hoc promotion which may adversely affect the conduct of the departmental case/criminal prosecution, the appointing authority may not grant ad hoc promotion to an employee. However, the appointing authority should also consult the CBI and take their views into account in such circumstances.

11. In the present case, the view of the CBI has been obtained and according to the CBI, respondent No.1 should not be kept in a ‘sensitive’ position.

12. It appears that taking all these factors into consideration, including perhaps the gravity of the offence and likelihood of misuse of official position, the petitioners came to the conclusion that respondent No.1 ought not to be granted ad hoc promotion until the disciplinary proceedings and the criminal case against him are concluded in his favour.

13. We are of the view that charges against respondent No.1 are serious in nature inasmuch as it is alleged that he amassed assets disproportionate to his known sources of income. That being the position, in our opinion, if the respondent is granted promotion, even if it is on ad hoc basis, it would certainly be not in the public interest. Needless to say that if respondent No.1 is exonerated of all the charges against him, the sealed cover will be opened and the consequences thereof will follow.

14. We, therefore, do not think that this is a fit case where the

procedure should be short-circuited by granting an ad hoc promotion to respondent No.1

15. Under the circumstances, we set aside the order of the Tribunal and allow the writ petition. Miscellaneous application also stands disposed of.

MADAN B. LOKUR, CJ

SANJAY KUMAR, J

31-1-2012

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