

(2001) 04 AP CK 0006

Andhra Pradesh High Court

Case No: Writ Appeal No. 593 of 2001

Chittoor Co-operative Town Bank
Ltd.

APPELLANT

Vs

A. Devendra Reddy and Others

RESPONDENT

Date of Decision: April 27, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2001) 4 ALT 116

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: E. Kalyana Ram, for the Appellant; Duba V. Nagarjuna Babu, for the Respondent

Judgement

S.B. Sinha, C.J.

This appeal is directed against an order dated 5-1-2001 passed by a learned Single Judge of this Court in Review W.P.M.P. No. 4024 of 2000 in W.P. No. 14596 of 1997 whereby and whereunder the learned Judge has allowed the review application.

2. In short, the facts of the case are as follows:

The review petitioner-1st respondent herein was appointed as a Clerk in the appellant-Bank on 02-02-1976 and respondents 2 to 6 were appointed much later to him. A departmental enquiry was initiated against the 1st respondent in the year 1989 as regards false identification of a person by name Bujji, as a result whereof, the said Bujji could withdraw a sum of Rs. 50,000/- from S.B.A/c.No. 1880 of one Sri P. Venkatarama Reddy with a mala fide motive, and a charge was levelled against him, which read:

"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."

3. During the pendency of the enquiry, two vacancies in the cadre of Accountant have arisen in July 1993. The promotion is to be granted on seniority basis depending upon the cadre strength. The respondents 2 and 3 were promoted ignoring the case of the review petitioner whereafter a representation was given. The departmental proceeding was concluded on 20-12-1994 wherein a punishment of stoppage of three annual increments prior thereto without cumulative effect was imposed on him and the appeal preferred thereagainst by the 1st respondent-review petitioner is pending. The other unofficial respondents were also promoted on 24-6-1997; whereagainst the 1st respondent again submitted a representation. As no action was taken thereupon, a writ petition was filed. The learned Single Judge dismissed the writ petition on the ground that the mode of promotion was on merit-cum-seniority but, not on seniority-cum-merit. In the review proceeding, it was conceded by the appellant-Bank that the promotion to the post of Accountant during the relevant period was seniority-cum-merit till February 1997. The learned Single Judge, in the aforementioned situation, while passing the impugned order, held:

".....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....."

4. The learned Single Judge thereafter proceeded to consider the departmental proceedings on merit and held that the punishment was illegal. It was observed that assuming the departmental enquiry was valid, as the appeal had not been disposed of, it is evident that the respondent-Bank is following different standards in dealing with different employees of the Bank and the same is violative of Article 14 of the Constitution of India.

5. The learned Counsel appearing on behalf of the appellant-Bank inter alia submitted that the learned Single Judge erred in holding that non-grant of promotion accounted (sic. amounted) to double jeopardy. Reliance in this connection has been placed on a decision of the Apex Court in [Union of India and others Vs. K. Krishnan](#), .

6. According to the learned Counsel, the validity or otherwise of the departmental proceeding was not the subject matter of the writ petition and as such the learned

Single Judge must be held to have erred in entering into the said question.

7. The learned Counsel appearing on behalf of the 1st respondent, however, submitted that seniority being the criterion for promotion, the same ought to have been granted automatically.

8. Having regard to the fact that the petitioner had suffered a punishment, if his case for promotion had not been considered, the same cannot be said to be illegal. Rule of seniority-cum-merit for promotion although was applicable, the appellant-Bank could, in law, refuse to consider the case of a person who was suffering a punishment in a departmental proceedings. An employee of a Bank holds a post of trust. In that case of abuse of his position as a trustee, there cannot be any doubt that he can be departmentally proceeded against. The 1st respondent herein did not question the order of punishment. Admittedly an appeal there-against is pending. In the meantime, the period during which the increments, which had been directed to be stopped from February 1992 to February 1994, had expired in February 1997. In the aforementioned situation, the doctrine of double jeopardy could not be made applicable.

9. In Krishnan's case (1 supra) the Apex Court held:

"4. There is only one punishment visiting the respondent as a result of the conclusion reached in the disciplinary proceeding leading to the withholding of increment, and the denial of promotion during the currency of the penalty is merely a consequential result thereof. The view that a Government servant for the reason that he is suffering a penalty or a disciplinary proceeding cannot at the same time be promoted to a higher cadre is a logical one and no exception can be taken to Rule 157. It is not correct to assume that Rule 157 by including the aforementioned provision is subjecting the Government servant concerned to double jeopardy. We do not find any merit in the argument that there is no justification or rationale behind the policy; nor do we see any reason to condemn it as unjustified, arbitrary and violative of Articles 14 and 16 of the Constitution of India. On the other hand, to punish a servant and at the same time to promote him during the currency of the punishment may justifiably be termed as self-contradictory....."

10. In [State Bank of India and others Vs. Mohd. Mynuddin](#), the Apex Court held that in the absence of any allegation of bias or mala fide, the selection process cannot be set aside and the High Court should not direct the employer to promote the employee. In that case, the employer was directed to consider the case of the respondent for promotion within the time specified therein.

11. The learned Single Judge, therefore, in our opinion, erred in law holding that non-grant of promotion to the 1st respondent amounted to double jeopardy.

12. It is, of course, true that after the period of punishment was over, his case should have been considered for promotion. We, therefore, in modification of the

order passed by the learned Single Judge direct that although the promotion must be granted on the basis of seniority-cum-merit, merit also cannot be said to have no role to play.

13. In the aforementioned situation, the only relief which can be granted in the review application was a direction to the respondents to consider the case of the 1st respondent for his promotion together with the other eligible candidates. The respondents could also be directed to consider his case for promotion with retrospective effect, in the event he is found eligible to hold the promotional post upon applying the principle of seniority-cum-merit. It is so directed. It is, however, made clear that such a consideration should be made at an early date, not later than three (03) months from the date of communication of this judgment.

14. The appeal is disposed of, with the aforementioned directions. However, in the facts and circumstances of this case, there shall be no order as to costs.