

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

**AND**

**THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO**

**WRIT PETITION No.3352 of 2020**

**ORDER:** (per the Hon'ble Sri Justice A.V. Sessa Sai)

Heard Sri N.Aswartha Narayana, learned Government Pleader for Services-I and perused the material available on record.

2. Order, dated 05.02.2019 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (hereinafter called as 'the Tribunal') in O.A.No.1079 of 2018, is under challenge in the present Writ Petition.

3. Respondent herein is a Forest Beat Officer. Consequent upon a trap laid by the Anti-Corruption Bureau (hereinafter referred to as 'the ACB') officials on 04.04.2013, the respondent was suspended from service on 20.04.2013. Thereafter, on 11.12.2015, she was reinstated into service and admittedly respondent is continuing in service as on date. Assailing the action on the part of the authorities in not considering her case for promotion to the post of Forest Section Officer on the ground of pendency of ACB case, the respondent herein filed O.A.1079 of 2018 before the Tribunal. The Tribunal, by way of an order, dated 05.02.2019, which is impugned in the present Writ Petition, allowed the Original Application filed by the respondent herein, directing the authorities to consider the case of the respondent herein/applicant for promotion in terms of G.O.Ms.No.66, General Administration (Services-C) Department,

dated 30.01.1991, as was considered in the case of one Sri R.Vigneswarudu for promotion to the post of Forest Section Officer. The said order is under challenge in the present Writ Petition.

4. According to the learned Government Pleader, the order passed by the Tribunal is erroneous, contrary to the instructions of the State Government issued vide G.O.Ms.No.257 General Administration (Services-C) Department, dated 10.06.1999. It is also his submission that since the criminal prosecution initiated by the ACB is pending, the action of the authorities in not considering the case of the respondent herein/applicant for promotion cannot be faulted.

5. In the above background and in the light of the submissions of the learned Government Pleader, now the issue that emerges for consideration of this Court in the present Writ Petition is:

*“Whether the order passed by the Tribunal, in the facts and circumstances of the case, is sustainable and tenable?”*

6. In order to resolve the issue on hand, it would be appropriate to refer to the orders of the State Government issued, vide G.O.Ms. No.66, General Administration (Services-C) Department, dated 30.01.1991 and G.O.Ms.No.257 General Administration (Services-C) Department, dated 10.06.1999.

7. While referring to the judgments of the Hon’ble Apex Court in the case of State of **Madhya Pradesh Vs Bani Singh**<sup>1</sup> and the case

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<sup>1</sup> 1990 CrL.J.1315

of **C.O.Armugam and others Vs State of Tamil Nadu and others**<sup>2</sup>, the State Government issued G.O.Ms. No.66, General Administration (Services-C) Department, dated 30.01.1991. Paragraph No.5 of the said Government Order reads as under:

*“Government therefore, hereby direct that promotion/appointment by transfer to a higher post in respect of officers who are facing disciplinary proceedings or a criminal case or whose conduct is under investigation and whose case falls under the ground referred to in para 2(iii) of the G.O first read above, shall be deferred, only when charges of misconduct are framed by the competent authority and served on the concerned delinquent officer; or a charge sheet has been filed against him in criminal court, as the case may be. Subsequently, the Government issued another order, vide G.O.Ms.No.257 General Administration (Services-C) Department, dated 10.06.1999”.*

8. The learned Government Pleader, in order to substantiate his submissions, places strong reliance on paragraph 5-A of G.O.Ms.No.257, General Administration (Services-C) Department, dated 10.06.1999 and the same reads as under:

*5. Government also order that with immediate effect the following procedure and guidelines, be followed to consider the employees against whom disciplinary cases or criminal prosecution are pending or whose conduct is under investigation, for appointment by promotion or transfer, to next higher categories.*

*A. The details of employees in the zone of consideration for promotion falling under the following categories should be specifically brought to the notice of the*

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<sup>2</sup> 1990(1)S.L.R.P.298

*Department Promotion Committees or Screening Committees:-*

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

9. While referring to clause (iii) of paragraph 5-A of the above referred Government Order, it is submitted by the learned Government Pleader that since the prosecution of criminal charge is pending against the respondent herein/applicant, the Tribunal ought not to have directed the authorities to consider the case of the respondent herein/applicant, in terms of G.O. Ms.No.66, General Administration (Services-C) Department, dated 30.01.1991. It is abundantly clear from paragraph 5 of the said G.O.Ms.No. 66, General Administration (Services-C) Department, dated 30.01.1991 that the cases falling under the group referred to in para 2(iii) of G.O.Ms.No.424, General Administration (Services-C) Department, dated 25.05.1976 can be deferred for promotion, only when the charges of misconduct are framed by the competent authority and served on the concerned delinquent officer or a charge sheet has been filed against him /her in criminal court.

10. The instant case, obviously, does not fall under any such contingencies. According to G.O.Ms.No.257 General Administration (Services-C) Department, dated 10.06.1999, unless the charge is framed by the competent court, mere registration of crime cannot be the basis for the authorities to defer the promotion. It is absolutely

not in controversy that though the Criminal Case was registered by the ACB as long back as in the year 2013, no charge has been framed in the Criminal Case so far. Obviously, taking into consideration these aspects only, the Tribunal directed the authorities to consider the case of the respondent herein/applicant for promotion in terms of G.O.Ms.No.66, General Administration (Services-C) Department, dated 30.01.1991. It is also significant to note that no plausible explanation is also forthcoming as to why the case of the similarly situated individual viz., R.Vigneswarudu was considered for promotion and the Tribunal also had taken the said aspect into consideration and eventually passed the order under challenge. Therefore, this Court has absolutely no scintilla of hesitation to hold that there are absolutely no merits in the case on hand, which warrant any interference of this Court under Article 226 of the Constitution with the well-articulated order passed by the Tribunal,

11. Accordingly, the Writ Petition is dismissed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any in the Writ Petition, shall stand closed.

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**A.V.SESHA SAI, J**

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**R.RAGHUNANDAN RAO, J**

13.02.2020

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