

THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

WRIT PETITION NO: 10731/2025

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India for the following relief/s:-

“...to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents 1 to 4 in not granting appointment by transfer of service to the petitioner from the cadre of Junior Assistant Prohibition & Excise to Sub Inspector Prohibition & Excise Department on the ground of pending ACB case in Crime No.13/RCT-ACB-OGL/2023 of Ongole and granting appointment by transfer of service as S.I.,P&E to 5th respondent vide proceedings in Rc.No.68/2024/A2-32 dated 10.04.2025 who is junior to the petitioner as bad, illegal, arbitrary, punitive, violative of Principles of Natural Justice, without jurisdiction and violative of Articles 14, 16, 21 of Constitution of India and violative of principles of natural justice and consequently direct the respondents 1 to 4 to grant appointment by transfer of service as Sub Inspector, Prohibition & Excise, Zone III, Guntur Division to the petitioner by restoring seniority over 5th respondent and pass such other order or orders...”

2. Heard Sri D.V.Sasidhar, learned counsel for the petitioner and learned Assistant Government Pleader for Services-I for respondents.

3. Petitioner is working as Junior Assistant. An ACB case *vide* Crime No.13/RCT-ACB-OGL/2023 of Ongole, was registered on 20.12.2023 for the offences punishable under Section 7A of the Prevention of Corruption Act, 1988. The matter is under investigation. Petitioner was initially arrested and sent for judicial remand and later has been enlarged on bail. He was suspended

from the service on 25.12.2023 and came to be reinstated into service on 17.03.2025. In pursuance of the aforesaid crime, the investigation has so far not resulted in filing of charge sheet, nor have the respondents initiated any disciplinary proceedings against petitioner. Petitioner is stated to be eligible for appointment by transfer as Sub-Inspector in zone-III and in view of pendency of criminal proceedings, his case is not being considered. As per the provisional seniority list of Junior Assistant in zone-III, petitioner stood at serial No.83, persons who are in the seniority list below the petitioner have been considered for appointment by transfer, by proceedings dated 10.04.2025.

4. Learned counsel for the petitioner places reliance on Division Bench judgment rendered by this Court in W.P.No.3315 of 2019, dated 23.11.2020, and judgment of the Hon'ble Apex Court in ***Union of India and others vs. K.V.Janaki Raman and others***¹, while drawing attention to paragraph Nos.16 and 17, contends that unless charge sheet in a crime is filed, it cannot be said that disciplinary proceedings are initiated against the employee, inasmuch as in the present case such stage has not reached and the petitioner cannot be deprived the benefit of promotion. He also draws attention to G.O.Ms.No.66, General Administration (Ser.C) Department, dated

¹ (1991) 4 SCC 109

30.01.1991, in particular para-5 which also steps in line with the aforesaid judgment.

5. Opposing the aforesaid submissions, learned Assistant Government Pleader on instructions submits that in view of standing order No. 74(2) of AP Police Manual Volume-I, in case there is any departmental inquiry for grave charges or involved in any investigation/inquiry or trial into a criminal case or investigation by Anti-Corruption Bureau or Tribunal, such person is not entitled to be considered for promotion.

6. Perused the record and considered the rival submissions.

7. There is no dispute that petitioner is figuring in provisional seniority list prepared by respondents for zone-III and he stands within zone of consideration. But for the pendency of crime, which is under investigation, he has not been considered for promotion. Record also discloses that persons stand at serial No.84 and below have been considered for appoint by transfer as Sub Inspector.

8. Crime No.13/RCT-ACB-UGL/2023, registered against petitioner by Anti-Corruption Bureau is still at the stage of investigation and no charge sheet has been filed. The Apex Court in the above judgment has categorically held that unless charge sheet is filed it cannot be said that criminal proceedings are pending

against an employee, therefore, denying the benefit of promotion to such person on mere pendency of the investigation would be contrary to law. Even G.O.Ms.No.66, dated 30.01.1991, issued by the Government, is also to the same effect. Paragraph Nos.16 and 17 of **K.V.Janaki Raman** (supra-1) judgment read as under:

“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept

pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

() (4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before .

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the

employee. Thus read, there is no inconsistency in the two conclusions.”

9. In view of the Apex Court judgment, Clause-5 of the said G.O has to be construed in the context of the para-17 of the aforesaid judgment. As investigation has not resulted in filing of the charge sheet, petitioner has every right to be considered for promotion and on that ground respondents cannot deny him the said benefit.

10. In view of the facts and circumstances, the Writ Petition is allowed, directing the respondents to consider the case of the petitioner for promotion to the post of Sub Inspector, Prohibition & Excise Department, as per his seniority and in terms of G.O.Ms.No.66, General Administration (Ser.C) Department, dated 30.01.1991, in accordance with law. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE CHALLA GUNARANJAN

Date: 28.04.2025
KBN