

A L. RAJAIAH
v.
INSPECTOR GENERAL OF REGISTRATION AND STAMPS,
HYDERABAD AND ORS.

B FEBRUARY 5, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Service Law :

C *A.P. State & Subordinate Service Rules—Rule 34(b)(ii)—Promotion—Seniority-cum-fitness—Penalty of stoppage of increments—During the period of penalty, the official is not entitled to be considered for promotion as he was under disability undergoing punishment—However after the period of punishment, he is entitled to be considered for promotion.*

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3349 of 1996.

From the Judgment and Order dated 5.8.94 of the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A. No. 7580 of 1992.

E A.D.N. Rao for the Appellant.

K. Ram Kumar for the Respondents.

The following Order of the Court was delivered :

F Leave granted.

G The appellant was appointed as a Junior Assistant in the Registration and Stamps Department in the Warangal District of A.P. in 1978. Respondent Nos. 4 and 5 were juniors to his as Junior Assistants. The appellant was promoted temporarily as Senior Assistant on October 23, 1989. But when his seniors were reverted, he had given place to them. In G.O.M.S. No. 378 on March 30, 1991 two posts of Senior Assistant were created and respondents No. 4 and 5 were appointed to those posts but the appellant was not considered and was thus denied the appointment. Consequently, he filed an application in the Tribunal. The Tribunal in the impugned order
H dated August 5, 1994 made in O.A. No. 7580/92 while holding that the

appellant was not entitled to the promotion from the date on which his immediate juniors were promoted, directed the respondents to consider his case for promotion to the post of Senior Assistant as per the rules and eligibility. Calling in question the said orders this appeal by special has been filed.

Shri A.D.N. Rao, the learned counsel for the appellant, contended that stoppage of increment is not a penalty for promotion. Under Rule 34(b)(ii) of the A.P. State & Subordinate Service Rules, if promotion is withheld as a penalty, the appellant became ineligible only for promotion. Stoppage of increment is not a penalty by way of promotion. Under A.P. Classification, Control and Appeal Rules, various types of penalties have been prescribed. Penalty by way of promotion is one of the punishments imposed. Therefore, the respondents cannot deny the promotion to the appellant. Though *prima facie*, the argument is plausible, it is difficult to accept the same. Rule 34(b)(ii) itself clearly indicates that promotion would be made on the basis of seniority-cum-fitness. The Rule reads as under :

"Promotion to non-selection category or grade notwithstanding anything contained in Special Ad hoc Rules and promotions to Non-section category or grade shall subject to the provisions of Rule 16, be made in accordance with the seniority- cum-fitness unless promotion of a member has been withheld as a penalty."

A reading thereof clearly indicates that notwithstanding anything contained in special *ad hoc* rules all promotions to non-selection category or grade shall, subject to the provisions of Rule 16, may be made in accordance with seniority-cum-fitness unless promotion of a Member has been withheld as a penalty. Though due to stoppage of increment, he is not ineligible for consideration for promotion, he is otherwise entitled to be considered in accordance with the Rules, namely, seniority-cum-fitness. However, when seniority-cum-fitness is the criteria, the imposition of the penalties for one year on 1.3.1988 and in another enquiry, stoppage of increment for five years from 1.3.1989, i.e., till 28.2.1994, disentitled him to be considered; so he had did not regain fitness for consideration for promotion as he was under disability undergoing punishment. Consequently, when the promotion to the post of Senior Assistant is on the basis of merit and ability under special rules, fitness is one of the considerations

A for the purpose. Since he was undergoing punishment during the relevant period, he is not eligible for consideration for promotion. Therefore, his juniors have stolen march over the appellant as Senior Assistants. He cannot thereby have any grievance. However, he is entitled to be considered for promotion according to rules after March 1, 1994.

B The appeal is accordingly disposed of. No costs.

G.N.

Appeal disposed of