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WP No. 30412 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.07.2026

Pronounced on : 24.07.2026

CORAM

THE HON'BLE MR.JUSTICE T. VINOD KUMAR

WP No. 30412 of 2019

S.Thayalan

..Petitioner(s)

Vs.

1. The State of Tamil Nadu
Rep by its secretary to Government
Environment and Forest Department
Fort.St.George.,
Chennai – 600 009.

2. The Principal Chief Conservator of
Forest Panagal Building,
Saidapet Chennai – 600 015.

.. Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second Respondent by Proceedings in Se.Mu.Order No.BB2/6551/2015 dated 08.07.2019 to quash the same and to issue consequential directions to the respondents to give notional promotion to the post of Assistant Conservator of Forest on par with the Petitioner' s junior with all consequential benefits.

For Petitioner : Ms.K.Jenitha

For Respondent(s) : Ms.Y.Kavitha
Government Advocate.



ORDER

WEB COPY Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent and perused the records.

2. The petitioner by the present writ petitioner has assailed the action of second respondent in issuing proceedings dated 08.07.2019, whereby, the review application for granting notional promotion to the post of Assistant Conservator of Forest on par with his junior, with all consequential benefits, was rejected.

3. Briefly put, the case of the petitioner is that he had joined the service by way of direct recruitment on 22.06.1981 and having served for 25 years, he was required to be appointed to the post of Assistant Conservator of Forest by transfer on promotion from Forest Range Officer; that the respondent using the disciplinary proceedings initiated under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955 (for short hereinafter referred to as D & A Rules), denied the promotion; that the said disciplinary proceedings though are stated to have culminated in the passing of the final order vide proceedings dated 30.10.2009 imposing a punishment of recovery of Rs.3,757/- in November 2009, was not served on the petitioner till 06.08.2013; and that, on account of delay caused in serving the final order of punishment, the petitioner



last his opportunity for being considered for promotion to the post of Assistant Conservator of Forest for the panel year 2013-2014, even though, no disciplinary proceedings were pending on the crucial date; that the crucial date for preparation of Panel is 15th August; that the crucial date for considering the eligible employees for the Panel Year 2013-14 is 15.08.2012; that if only the respondents had served the punishment order dated 30.10.2009 immediately after passing the same, the currency of the punishment would have been over in November 2009 itself, thereby, the petitioner would be eligible for being considered for promotion in the panel year 2013-2014.

4. It is the further case of the petitioner that due to the delayed service of the punishment order, he had lost promotion opportunity for no fault on his part; that in the mean time, he has permitted to retire from service in November 2014; that on account of his retirement, in order to settle his retirement benefits, he deposited the recovery amount in the Government Account in November 2014 itself, immediately after receiving the order of punishment dated 30.10.2009 on 06.08.2013; that he had filed an appeal to the second respondent through proper channel on 09.08.2013; that as the said appeal was kept pending, he had submitted a review petition to the second respondent on 20.02.2015; that the officials of the second respondent, on receiving the said review petition, sought documents from the Conservator of Forests, who in turn sought particulars from the Divisional Forests Officer, Salem; that the concerned



authority forwarded the same to the second respondent on 23.06.2015; that, as no orders were passed on his Review Petition, he submitted application under RTI Act, to know about the status of the appeal on 20.06.2019 and 28.08.2019; that the second respondent after receiving his application under RTI Act, passed the impugned order dated 08.07.2019 and rejected his claim for notional promotion without proper appreciation of facts, which action of the respondents. it is contented, is illegal, arbitrary and a failure to exercise jurisdiction by the second respondent.

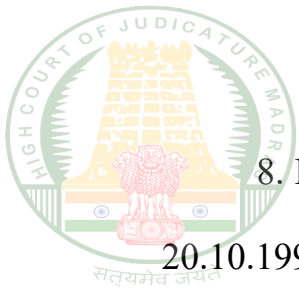
5. Counter affidavit on behalf of the respondent is filed.

6. The respondents by the counter affidavit while denying the claim of the petitioner, contended that not only one disciplinary proceedings has been initiated against the petitioner, but in all, there were three disciplinary proceedings initiated against the petitioner; that in two of the disciplinary proceedings, petitioner was awarded the punishment of postponement of next increment for six months vide order dated 10.05.2013; and in the another disciplinary proceeding, the petitioner was awarded the punishment of “censure” vide proceedings dated 19.09.2014; that the above said two proceedings in addition to the disciplinary proceedings which was initiated vide Charge Memo No.11 of 2009 dated 05.05.2009 wherein the petitioner was awarded the punishment vide proceedings dated 30.10.2009, were pending on



the crucial date for preparation of the panel for promotion to the post of Assistant Conservator of Forest for the panel year 2013-2014; that the respondents, considering the punishment awarded vide proceedings dated 10.05.2013 and the pendency of two other disciplinary proceedings did not consider the name of the petitioner for being included in the panel for the year 2013-2014.

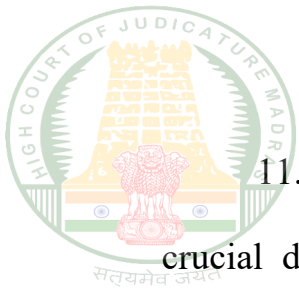
7. The respondents further contended that though the petitioner had claimed of having submitted his appeal petition on 09.08.2013 against the order dated 30.10.2009 received by him on 06.08.2013, there is no evidence of receipt of the said appeal; that, as per Rule 27(3) of the D & A Rules, the petitioner is required to file an appeal within 60 days of the receipt of the order; that the petitioner instead of preferring appeal within 60 days from the receipt of the said order, had submitted a review petition directly to the second respondent on 25.02.2015, after a lapse of about 1 1/2 years; that on receiving the aforesaid review petition the connected records were called for by the concerned authority and, on perusal of the same, as it was found that there was no illegality in passing the final order; and that the petitioner is not eligible for promotion to the post of Assistant Conservator Forest, as the punishment awarded was in currency on the crucial date for preparation of the panel for the year 2013-2014.



8. It is further contended that the Government by Letter Ms.No.248 dated 20.10.1997, issued instructions to be followed while preparing the promotion panel; that, as per the instructions, a Government servant is not eligible for inclusion in the panel, if, within a period of five years prior to the crucial date, he has been awarded any punishment other than censure; that, in so far as censure is concerned, the period is reduced to one year prior to the crucial date; that since, the petitioner was awarded the punishment of postponement of the next increment for six months vide order dated 15.05.2013 and censure vide order dated 19.09.2014; the petitioner is not eligible for inclusion in the panel year 2013-2014, since, the punishment imposed vide order dated 10.05.2013 was in currency on the crucial date, while the disciplinary proceedings which resulted in the award of punishment of censure was pending consideration as on the crucial date; and that even if the punishment order dated 30.10.2009 though served with delay on 06.08.2013, is excluded from consideration, the same would not make the petitioner eligible for inclusion in the promotion panel for the year 2013-2014.

9. Contending as above, the respondents seek for dismissal of the writ petition.

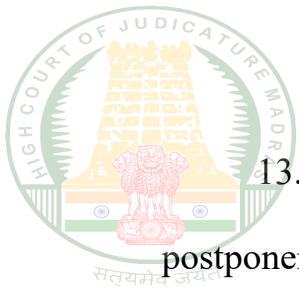
10. I have taken note of the respective contentions urged.



11. At the out set, it is to be noted that the petitioner claims that the crucial dated for the panel year 2013-2014 is 15.08.2012. The expression “panel year” is used in the Service Rules for estimating the vacancies during the period of 12 months. Thus, the 12 months period for the panel year 2013-2014 can commence only from a date falling in the year 2013 and ending the year 2014. Thus, the contention of the petitioner that the crucial date for the panel year 2013-2014 is 15.08.2012 is *ex facie* wrong and the correct crucial date to be considered for the Panel Year would be 15.08.2013, if 15th August of Each Year is taken as the date fixed in the Service Rules.

12. Further, the Tamil Nadu Public Service Commission in its answer to the frequently asked questions relating to the Departmental Promotion Committee proposal, issued on 29.04.2021 with reference to the effective date and what constitutes the panel year has provided its answer as under :-

4	What is the panel year?	The year(s) in which the estimate of vacancy period covered in the 12 months period. eg.1 : If the panel period is from 05.03.1994 to 04.03.1995 then the panel year is 1994 to 1995. eg.2 : If the panel period is from 01.01.1994 to 31.12.1994 then the panel year is 1994
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13. The petitioner having been awarded with punishment of postponement of the next increment for six months vide order of the disciplinary authority dated 10.05.2013, the said punishment would commence from 01.07.2013, being the second half of the year. Thus, on the crucial date, as now held by this Court to be on 15.08.2013, the punishment awarded was in currency. Since, the punishment awarded to the petitioner was in currency on the crucial date as noted hereinabove, the name of the petitioner could not be included in the panel of the year 2013-2014 as per the instructions contained in para 4 (II) of Letter Ms.No.248 dated 20.10.1997 issued by the Government.

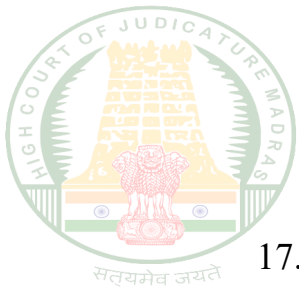
14. Though the petitioner had claimed that the aforesaid punishments were subsequently set aside in appeal, the appellate order came to be passed only in December 2014, by which time, the petitioner had already retired from service. Therefore, even though, he was exonerated of the charges in appeal, the petitioner cannot claim that he ought to have been considered as eligible for notional promotion or that he was wrongly denied the opportunity of having his name included in the panel for the year 2013-2014.

15. Insofar as the claim of the petitioner regarding the delay in serving the order of punishment dated 30.10.2009 only on 06.08.2013 and the respondents relying on the said proceedings to deny inclusion of his name in the panel for the year 2013-2014 is concerned, firstly, it is to be noted that the



petitioner while filing the present writ petition did not disclose the existence of the two other disciplinary proceedings initiated against him wherein in one of the proceedings, an order of punishment having been passed against the petitioner on 13.05.2013. Notwithstanding the fact that the said proceedings were subsequently set aside vide order dated 13.12.2014, it is the duty of the petitioner to make true and complete disclosure of all the facts and cannot be himself take a decision as to the relevancy or otherwise of the same, particularly while invoking Equity Jurisdiction of this Court. It is the respondent who brought the said fact to the notice of this Court in the counter affidavit filed by it. Thus, this Court is of the view that the petitioner had resorted to suppression of material facts while approaching this Court.

16. Secondly, though the petitioner claims that on the respondents serving the order dated 30.10.2009 to the petitioner on 06.08.2013, he had preferred an appeal to the second respondent on 09.08.2013 and the said appeal not being disposed of, he had filed the review on 20.02.2015, the said assertion made on behalf of the petitioner during the hearing is contrary to the assertion made by the petitioner in paragraph no.9 of the writ affidavit, wherein, the petitioner himself had stated that the appeal submitted by him on 09.09.2013 was not forwarded to the second respondent. Thus, there is no appeal in the eye of law, for the petitioner to claim of he having filed an appeal validity and on the same being not disposed, he had filed review application.

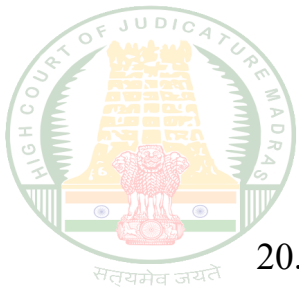


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17. Since, the petitioner did not avail of the remedy of appeal against the order dated 30.10.2009, on the same being served on him even though with delay, the said order has attained finality, It is only after a lapse of 1 1/2 years from the date of service of the order awarding the punishment of recovery, that the petitioner choose to file a revision before the second respondent on 20.02.2015 seeking review of the order passed by the disciplinary authority.

18. However, the power of review under Rule 20 of the D & A Rules is conferred only upon the Government. Further, the petitioner while filing the said revision petition did not mention about filing of any appeal and the same being pending consideration. Had the petitioner in the review petitioner claimed of having filed appeal on 09.08.2013, the said statement would be contrary to the assertion made in Paragraph No.9 of the writ affidavit as noted above. However, in the revision petition, the petitioner merely claimed that the punishment imposed on him is harsh punishment and sought review of the same.

19. The second respondent, having considered the said representation filed in the form of a mercy petition submitted by the petitioner, did not find any valid reason to interfere with the order of the disciplinary authority, which had attained finality by efflux of time, and accordingly rejected the same.



20. The petitioner, having allowed the order of the disciplinary authority dated 30.10.2009, though served belatedly on him, to attain finality, cannot, after lapse of 1 1/2 years, file a review petition before the authority having no jurisdiction. Further, on the second respondent rejecting the said review petition, cannot claim that the order is illegal, arbitrary or that the second respondent failed to exercise jurisdiction. As noted hereinabove, the power of review vests only with the Government and the petitioner cannot confer jurisdiction upon the second respondent by submitting an application. Equally, the second respondent cannot assume jurisdiction when the statutory rules do not confer such power on him. Therefore, the petitioner cannot claim to be aggrieved by an order passed by an authority lacking jurisdiction so as to maintain a challenge before this Court.

21. Since, the order dated 30.10.2009 had attained finality in the absence of the petitioner filing any appeal there against, within the time prescribed under the rules, the petitioner cannot be allowed raise the plea of delay in the writ petition filed six years after service of the order. Further, the petitioner having attracted the disqualification as per Letter Ms.No.248 dated 20.10.1997, on being awarded with Punishment vide order dated 10.05.2013 and also the order dated 30.09.2009, this Court is of the view that the petitioner cannot claim that it is only on account of non-serving of the punishment order dated 30.10.2009



in time, he was denied the opportunity of inclusion of his name in the Panel for the year 2013-14.

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22. Thus, considered from any angle, the claim of the petitioner for grant of notional promotion without assailing the order of the disciplinary authority by filing an appeal is wholly misconceived.

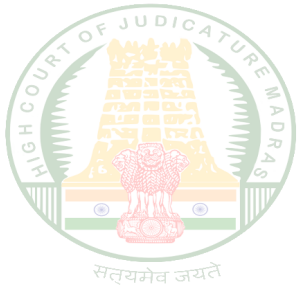
23. In view of the above, the writ petition fails and is dismissed. No order as to costs. Miscellaneous Petitions if any, stand closed.

24-07-2026

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
KKD

To

1. The Secretary to Government,
Environment and Forest Department,
Fort.St.George, Chennai 600 009.
2. The Principal Chief Conservator of Forest,
Panagal Building ,
Saidapet Chennai-600 015.



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T.VINOD KUMAR, J.

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Pre-delivery Order in
WP No. 30412 of 2019

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