

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.123 of 2015

and

M.P.No.1 of 2015

- 1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
- 2.The Secretary to Government,
Home (Pol.II) Department,
Fort St. George, Chennai-9.
- 3.The Tribunal for Disciplinary Proceedings,
Kuralagam, Chennai-108. ... Appellants/Respondents

Vs.

R.Saravanan ... Respondent/Petitioner

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 21.2.2014 made in W.P.No.26222 of 2013. Writ Petition has been filed under Article 226 of the Constitution of India, praying for a writ of certiorarified mandamus to call for the records of the first respondent in connection with the impugned order passed in Rc. No.172888/NGBI(1)/2012 dated 22.5.2013 and quash the same and further direct the respondents to promote the petitioner as Inspector of Police in pursuance of his name in the 'C' List of Sub-Inspector of Police fit for promotion as Inspector of Police for the year 2010-11 dated 16.7.2011 by taking into consideration the Order of Discharge issued by the third respondent in TDP Case No.28/2010 in Rc. No.A1/1841/2010 dated 11.9.2013 and grant him all consequential service and monetary benefits on par with his juniors.

For Appellants : Mr.P.S.Sivashanmugasundaram,
Spl.G.P.

For Respondent : Mr.K.Venkataramani, SC
for Mr.M.Muthappan

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JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arise from the judgment dated 21.02.2014 passed in W.P.No.26222 of 2013.

2. Challenging the impugned order dated 22.5.2013 passed by the first respondent /first appellant herein, the writ petitioner/respondent herein came up with the writ petition, seeking to quash the said order and further sought a direction to the respondents/ appellants herein to promote the writ petitioner as Inspector of Police in pursuance of his name in C-List of Sub Inspector of Police fit for promotion as Inspector of Police for the year 2010-2011 dated 16.7.2011 by taking into consideration the order of discharge issued by the third respondent / third appellant herein and grant him all consequential service and monetary benefits on par with his juniors.

3. The facts in brief relevant for proper adjudication of the dispute are that a panel list of qualified Sub Inspectors of Police was prepared for consideration for promotion to the post of Inspector of Police, on 1.6.2010 for the year 2010-2011. The name of the writ petitioner was also empaneled in the C-List of Sub Inspectors of Police fit for promotion at Sl.No.59. He was also promoted as temporary Inspector of Police and allotted to Madurai City, by proceedings dated 18.7.2011. Thereafter, the writ petitioner was served with departmental proceedings dated 24.5.2011, on 30.5.2011 to appear before the Disciplinary Proceedings Tribunal on 8.6.2011 in respect of certain allegations made against him along with others for the period, he was working as Sub Inspector of Police, CB CID, Video Piracy in the year 2008. The writ petitioner, accordingly, appeared before framing of the charges.

4. The petitioner sent a detailed representation dated 10.8.2012 for posting on promotion in pursuance of his inclusion in the C-List for the year 2010-2011. No attention was paid to the said representation. Therefore, a writ petition in W.P.No.32594 of 2012, seeking direction to consider the representation, was filed. This court, by order dated 6.12.2012, directed the respondents therein to consider his representation and pass orders in accordance with law. Thereafter, the impugned order dated 22.5.2013, rejecting the claim of the writ petitioner was passed. The petitioner has come up with the instant writ petition, questioning the legality and validity of the said order.

5. In the meantime, the third respondent / third appellant

herein came to the conclusion that no case has been made out against the writ petitioner and as such, the proceedings were dropped on 11.9.2013 on the ground that no substantial material has been placed before the Tribunal to proceed against the writ petitioner. The learned Single Judge, having examined all facts of the case, came to the conclusion that on the relevant date, no charge sheet was pending consideration against the writ petitioner. Even if there was allegation of contemplated charges against the writ petitioner, the authorities / respondents/appellants herein would have adopted the sealed cover procedure and after exoneration from the charges, the writ petitioner was entitled to be considered from the date his junior was promoted with all benefits.

6. It was stated in the impugned order dated 22.5.2013 that promotion of the writ petitioner was deferred since the Tribunal for Disciplinary Proceedings issued charge memo and it was served on 1.6.2010. Though the crucial date for the panel preparation was 1.6.2010, but the said promotion Board met on 21.1.2011. In view of the pendency of the departmental proceedings before the Tribunal, the petitioner writ petitioner was not granted promotion.

7. The Supreme Court has considered an identical issue in Delhi Jal Board Vs. Mahinder Singh¹ and held as under :

"5. The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department, would not, in our view, come in the way of giving him the

1 (2000) 7 SCC 210.

benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection. There is, therefore, no question of referring the matter to a larger Bench."

8. The counsel for the appellants failed to produce any statutory provision or executive instruction, which prohibits consideration for promotion on the ground that departmental proceedings is pending against the employee. Thus, the general principles of Service Rules would be applicable, which was incorporated by the State of Tamil Nadu in the General Rules for the Tamil Nadu State and Subordinate Services (Part II in Volume 1 of the Tamil Nadu Services Manual, 1987) also, later on, which reads as under :

II. Consideration of members for inclusion in the approved lists:-

(1) In cases where enquiry (except Tribunal for Disciplinary Proceedings enquiry) including preliminary or detailed enquiry by the appropriate Investigating Authority is pending against a member of service and no specific charges have been framed, promotion or appointment of such member of service shall be considered on the basis of the merit revealed through Annual Confidential Reports, Record Sheets and Punishments imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded. On exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion."

9. In the case on hand, though on the date the selection Board met for promotion, there was no departmental enquiry was pending, even the charge memo was not issued against the writ petitioner for proceedings against him. Even otherwise, if there was any disciplinary proceedings against him, the authorities ought to have considered his case on merits and a recommendation must be kept in a sealed cover. In the event the employee is exonerated, the recommendation kept in the sealed cover be given effect to. Accordingly, the learned Single Judge directed the respondents/appellants herein as under:

"....The respondents are directed to consider the claim of the petitioner positively to promote him as Inspector of Police in pursuance of his name in the 'C' list of Sub Inspector of Police fit for promotion

as Inspector of Police for the year 2010-2011 dated 16.7.2011 by taking into consideration the order of discharge issued by the third respondent in TDP case No.28 of 2010 in Rc.No.A1/1841/2010 dated 11.9.2013 and grant him all consequential service and monetary benefits on par with his juniors. The said exercise has to be carried out within a period of six weeks from the date of receipt of a copy of this order...."

10. We have examined the entire facets of the case. We do not find any irregularity, irrationality or error in the order sought to be impugned before us. Accordingly, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar

vvk

To

- 1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
- 2.The Secretary to Government,
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Fort St. George, Chennai-9.
- 3.The Tribunal for Disciplinary Proceedings,
Kuralagam, Chennai-108.

+1 cc to M/s.M.Muthappan, Advocate SR.7073 dated 10/2/15

+1 cc to the Government Pleader, High Court, Madras SR.7176 dt.10/2/15

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AD(CO)
JK 21/02/15