

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.6792 of 2007(T)

(O.A.No.6593 of 2002)

Alexander Napoleon

.. Petitioner

-vs-

1. The Government of Tamil Nadu
rep.by Commissioner & Secretary
to Government
Home Department
Fort St.George
Chennai 600 009

2. The Director General of Police
Chennai 600 004

3. S.Durairaj

... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, to forthwith direct the first and second respondents to promote the petitioner as Commandant from the date of promotion of his junior, the third respondent and grant monetary and other benefits.

For Petitioner :: Mr.P.Wesley Isaac

For Respondents :: Mrs.M.E.Rani Selvam
Additional Government Pleader
for R1 and R2
R3-not ready in notice

ORDER

The petitioner went before the Tamil Nadu Administrative Tribunal in O.A.No.6593 of 2002 seeking a prayer for a direction to the respondents 1 & 2 to promote him as Commandant from the date of promotion of his junior Mr.S.Durairaj and grant all monetary benefits. After the abolition of the Tribunal, the matter was transferred and renumbered as the present writ petition.

2. Learned counsel for the petitioner submitted that when the petitioner joined as Sub Inspector of Police on 16.5.66 by direct recruitment, he was promoted as Inspector of Police on 26.3.81 and he was further promoted as Assistant Commandant on 17.2.88 and once again further promoted as Deputy Commandant on 27.5.2000, whereas the third respondent, who was initially appointed as a Constable on 3.10.77, was promoted as Inspector of Police on 31.12.87 and later on further promoted as Assistant Commandant on 21.6.96 and also became the Deputy Commandant on 7.5.2001. On the date when the third respondent's name was included in the panel of Deputy Commandant fit for promotion as Commandant, the petitioner did not suffer any adverse remarks or punishment. However, while including the third respondent's name in the seniority list dated 1.10.2002 for promotion to the post of Commandant, the respondents wrongly overlooked the case of the petitioner. In other words, the claim of the petitioner is that he was not considered in the panel of Deputy Commandant fit for promotion as Commandant for the year 2001-02 due to the adverse remarks, namely, 'below average' in his ACR, citing a wrong reason that the performance of officers should be assessed as recorded through the personal file, over a period of five years prior to the crucial date. When the panel of Commandant Category-III for the year 2001-02 was issued in G.O.Ms.No.16, Home (Police-I) Department dated 4.1.2002 five years prior to the crucial date, the petitioner admittedly did not suffer any adverse remarks or punishment. This has been admitted by the respondents in their counter affidavit filed on 24.3.2003. The adverse remark and the award of 'Censure' shown in the counter affidavit were all relating to the period prior to 1996 viz., 20.11.96. Therefore, when the petitioner has not suffered any adverse remark or punishment over a period of five years prior to the crucial date, along with his junior-third respondent Mr.S.Durairaj, who has been shown in Serial No.10, when the petitioner was shown in Serial No.7, the name of the petitioner should have been considered in the panel of Deputy Commandant fit for promotion as Commandant for the year 2001-02. It was also submitted that the petitioner retired from service on reaching the age of superannuation on 31.3.2003. If the prayer is considered, the petitioner will get the benefit of promotion in the post of Commandant for a period of three months from 4.12.2002 to 31.3.2003.

3. A detailed counter affidavit has been filed by the respondents. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner has no case for stepping up of his seniority in the rank of Inspector of Police on par with his juniors and consequent promotion as Commandant, as the Government in Letter (Ms.) No.941, Home (Police-I) Department dated 3.10.2002 had considered the representation of the petitioner and passed orders stating that there was no case for stepping up of his seniority to the rank of Inspector of Police on par with his juniors and consequent promotion as Commandant. The said communication was also served upon the petitioner and he has also acknowledged the same

on 18.11.2002. Adding further, she has stated that the third respondent-Mr.S.Durairaj, who has been promoted as Commandant, is no doubt junior to the petitioner in appointment to the service as well as in the ranks of Inspector of Police, Assistant Commandant and Deputy Commandant. However, while considering the case of Deputy Commandant fit for promotion as Commandant Category-III during the panel year 2001-02, the seniority list of Deputy Commandant was prepared showing the petitioner in Serial No.7 and the third respondent in Serial No.10. When the petitioner was placed at Serial No.7, the third respondent was placed at Serial No.10. But the case of the petitioner was not considered in the panel of Deputy Commandant fit for promotion as Commandant for the year 2001-02 due to the adverse remarks 'below average' in his ACR within the check period, i.e., for the period from 31.3.97 to 31.3.2001. Besides, the petitioner was also imposed with the heavy load of punishments and he was also having consistent bad record of service. Initially, he was imposed with the punishment of censure in P.R.No.122 of 1969 on 16.3.70 for obtaining a medical certificate from a private medical practitioner on 26.6.69 for 15 days medical leave while undergoing treatment as an out patient. Again he was imposed with the punishment of reduction of pay by one stage for one year in P.R.No.76 of 1969 on 31.3.70 for his reprehensible conduct in running a mess of 'E' company during April, 1969 at Tiruvarur. Similarly, 17 other punishments were awarded, of which the last punishment of censure was awarded in P.R.No.1 of 1996 dated 20.11.96 for his gross dereliction of duty in having failed to check the unauthorised stay of persons for a long period from 5.5.92 to 6.9.93 in the TSP IV Battalion quarters C-69 allotted to PC 1487 Gopalakrishnan and for having not reported the violation of rules by the allottee to the Commandant. Therefore, the petitioner's name was not included in the panel of the year 2001-02 for the post of Commandant and he cannot have a comparison with the case of the third respondent-Mr.S.Durairaj. However, when the petitioner's name was included in the panel of Commandant for the year 2002-03, he retired on 31.3.2003, it was pleaded.

4. This Court finds some merits in the stand taken by the respondents. The past record of the petitioner shows that he had suffered the following 19 punishments:-

Sl. No.	Nature of punishment	Nature of offence
01	Awarded Censure in P.R.No.122/69 dt. 16.3.70.	Obtaining a medical certificate from a private medical practitioner on 26.6.69 for 15 days M.L. while undergoing treatment as O.P.
02	Reduced pay by one stage for one year in P.R.No.76/69 dt. 31.3.70.	Reprehensible conduct in running the mess of 'E' company during 4/69 at Thiruvarur.

Sl. No.	Nature of punishment	Nature of offence
03	Awarded Censure in P.R.No.73/70 dt. 28.9.70.	Reprehensible conduct in having absented from 18.00 hrs on 13.7.70 to 5.30 hrs on 14.7.70.
04	Awarded Censure in P.R.No.81/71 dt. 18.1.72.	Dereliction of duty in absenting for the morning parade at 5.45 hrs on 16.8.71 at Avadi.
05	Awarded Censure in P.R.No.76/72 dt. 20.10.72	In-disciplinary behaviour in leaving Tiruvottiyur post without leave or permission from 22.00 hrs on 21.8.72 at 9.30 hrs on 22.8.72.
06	Awarded Censure in P.R.No.16/73 dt. 26.3.73.	In-disciplinary conduct in violating departmental procedure when availed medical leave from 6.12.72 to 26.12.72 and 27.12.72 to 2.1.73 and availing leave without orders or permission.
07	Postponement of increment for a period of one year without affecting his future increments in P.R.No.27/73 dt. 16.12.73.	Gross in-disciplinary conduct in having absented from the camp at Dindigul from 20.00 hrs on 16.3.73 to 12.30 on 18.3.73 without orders or permission on while doing law and order duty under Dindigul Town Police Station.
08	Reprimand in P.R.No.47/74 dt.2.4.74.	Slack supervision over check posts in North Arcot and Chengleput Districts.
09	Awarded Censure in P.R.No.20/77 dt. 1/77	Slackness in existing control and discipline over his subordinates during 1777.
10	Awarded Censure in P.R.No.54/77 dt. 6.5.77	Unbecoming conduct in furnishing false reasons and amount in the GPF loan application dt. 9.3.77.
11	Awarded Censure in P.R.No.72/77 dt. 17.8.77	Most unbecoming conduct in not maintaining and submitted general diaries of Arumbakkam and Tnkai detachments for the period from 7.4.77 to 2.6.77 and disobedience of orders of superiors.

Sl. No.	Nature of punishment	Nature of offence
12	Awarded Censure in P.R.No.59/77 dt. 25.9.77	Gross in-disciplinary conduct in disobeying orders of the officer commanding and retaining R.T.N.K.621 Raju from 9.3.77 to 12.3.77 A.N. Furnishing false information to DSP (Hqrs.) on 9.3.77.
13	Awarded Censure in P.R.No.87/77 dt. 25.9.77	i) Gross misconduct in misusing bus warrants Nos.447040 & 447161 for the journey from Krishnagiri to Salem and back in the name of PC 411 Muthu of 'D' company TSP IV Bn on 9.3.77 to 10.3.77 respectively. ii) In-disciplinary conduct in not submitting explanation to officer commanding, 'D' company as required by the officer commanding in his memo dated 12.5.77 and reminded.
14	Awarded Censure in P.R.No.50/81 dt. 20.1.82	Irresponsible and in-disciplinary conduct in availing one month M.L., from 11.7.81, as recommended by the M.O by handing over the charge of the Coy to S.T.Subbiah without informing and getting orders from the Commandant.
15	Awarded Censure in P.R.No.57/81 dt. 2.2.82	Gross neglect of duty in not renewing the insurance policy on 4.7.81, taken on motor cycle purchased out of Government loan and violating Art 230(c)(4) of Tamil Nadu Financial Code Volume-1.
16	Awarded Censure in P.R.No.13/83 dt. 7.5.83	Neglect of duty in not replying memo C.No.A4/17223/82 dt. 10.9.82 and subsequent reminders.
17	Reprimand in P.R.No.35/83 dt. 7.5.83	Indiscriminate detailing of personnel on tapal duty and store duty to battalion headquarters during Sep.82 and thereby wasting manpower of the company of law & order duties.

Sl. No.	Nature of punishment	Nature of offence
18	Awarded Censure in P.R.No.90/90 dt.21.9.90	i) Gross misconduct and neglect of duty in having failed to visit 'F' coy on 18.2.90 to see the injured police personnel in the General Hospital at Ramnad and Madurai. ii) Unbecoming conduct in having furnished false report in the weekly report for the week ending 18.2.90 to 24.2.90.
19	Awarded Censure in P.R.No.1/96 dt. 20.11.96	Gross dereliction of duty in having failed to check unauthorised stay of persons for a long period i.e., from 5.5.92 to 6.9.93 in the TSP IV Bn. Quarters C-69 allotted to PC 1487 Gopalakrishnan and in not having reported the above violation of rules by the allottee to the Commandant.

5. That apart, the Government also in letter (Ms.)No.941, Home (Police-I) Department dated 3.10.2002 had considered his representation and passed orders stating that there was no case for stepping up of his seniority to the rank of Inspector of Police on par with his junior-third respondent and consequent promotion as Commandant. That was acknowledged by him on 18.11.2002. The said letter dated 3.10.2002 having not been challenged and the petitioner also retired from service on reaching the age of superannuation on 31.3.2003, this Court is not able to consider the prayer favourably. Therefore, the writ petition fails and it is dismissed. No costs.

Sd/-

Assistant Registrar

Dated:11.3.15

True Copy

Sub Assistant Registrar

To

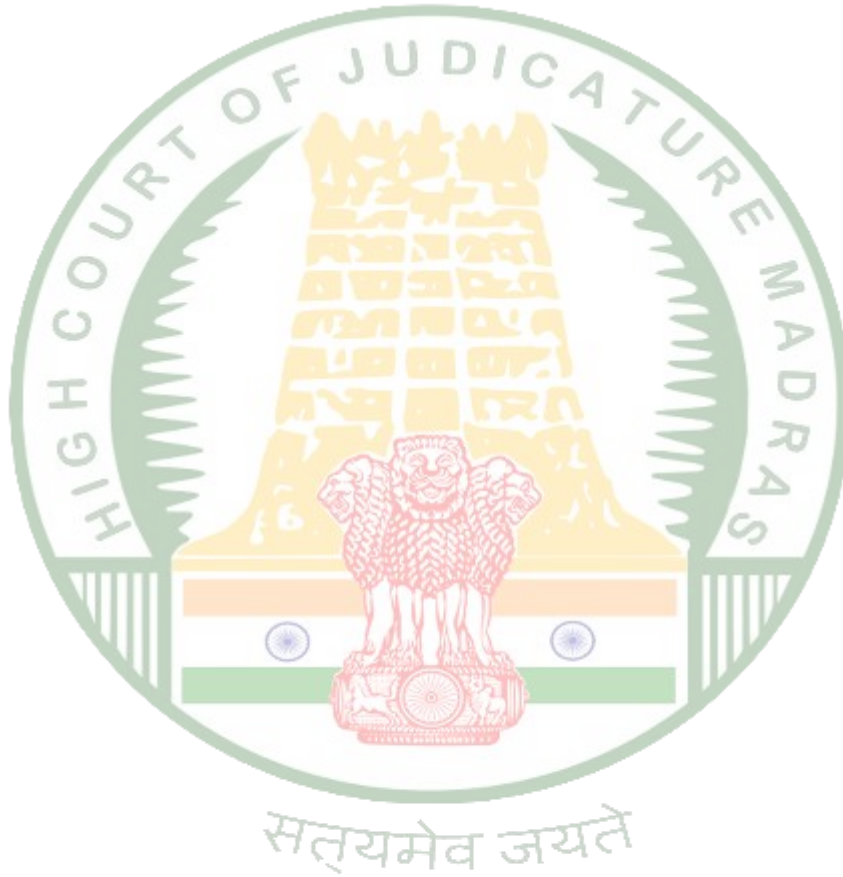
- The Commissioner & Secretary
to Government
Home Department
Fort St.George
Chennai 600 009

2. The Director General of Police
Chennai 600 004.

+1 cc to Government Pleader, SR.2099.

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